Appendix B: Draft EIR Comment Letters

Regional and Local Agency Comments (Comments A-D)

Comment A

November 1, 2019

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
John J. Bauters
Pauline Russo Cutter
Scott Haggerty
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice
(Chair)

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Gordon Mar
Shamann Walton
Tyrone Jue
(SF Mayor's Appointee)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Doug Kim

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
(Secretary)
Liz Kniss
Rod G. Sinks
(Vice Chair)

SOLANO COUNTY
James Spering
Lori Wilson

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

Meenaxi Raval
Department of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street, 3rd Floor Tower
San Jose, CA 95113-1905

RE: Charcot Avenue Extension Project – Draft Environmental Impact Report

Dear Ms. Raval,

Bay Area Air Quality Management District (Air District) staff has reviewed the draft Environmental Impact Report (DEIR) for the proposed Charcot Avenue Extension (Project). The City of San Jose proposes to extend Charcot Avenue from its eastern boundary at Paragon Drive, over Interstate 880 (I-880), to Oakland Road in the North San Jose area to improve connectivity around the freeway. The proposed two-lane extension is approximately 0.6 miles and includes an overcrossing of O'Toole Avenue and I-880 that would be approximately 720 feet in length. The project is expected to impact 0.44 acres of Orchard School campus, which includes an elementary and middle school as well as the on-site Champions preschool.

The Air District understands that the City considers the Project to be an important roadway connection that is anticipated to alleviate traffic congestion on nearby Brokaw Road, Trimble Road, and Montague Expressway. However, by diverting traffic to Charcot Road, nearby sensitive receptors at the Orchard School campus could potentially be exposed to a significant increase in air pollution and elevated health risk from mobile sources. According to the DEIR, roadway volumes along the Charcot Avenue extension could have approximately 1,080 peak-hour trips and 8,700 daily trips under the Existing Plus Project conditions and approximately 1,720 peak-hour trips and 13,900 daily trips under the Year 2040 Project conditions. In addition, the new road connection would increase traffic, including heavy-duty truck traffic, and may discourage students from using active modes of transportation, such as walking or biking, to get to and from the campus.

Staff reviewed the Project Air Quality and Greenhouse Gas Emissions Assessment (Appendix E). The DEIR concludes that the exposure of sensitive receptors to substantial pollutant concentrations would be less than significant. However, the modeling methodology concerning exposure of sensitive receptors to pollutant concentrations of toxic air contaminants and $PM_{2.5}$ deviates from practices recommended by the Air District and the State of California's Office of Environmental Health Hazard Assessment. While the DEIR used CT-EMFAC2014 and Sacramento Metropolitan Air Quality Management District's Road

Construction Emissions Model, the Air District recommends that the analysis use the most recent models to calculate emissions, such as EMFAC2017 and CalEEMod 2016.3.2. Furthermore, the modeling underestimated the exposure duration, used inconsistent breathing rates, and included several discrepancies regarding construction, VMT, and vehicle speeds. Therefore, the Air District is concerned that cancer risk and $PM_{2.5}$ concentrations may be significantly underestimated in the DEIR. Staff highly recommends that the City revise the air quality and health risk analysis and coordinate with the Air District on the best practices and protocols to ensure the most current models and methods are used.

The DEIR also does not demonstrate consistency with the California 2017 Climate Change Scoping Plan, which recommends a 15 percent reduction in light-duty VMT beyond what existing plans and policies achieve to meet the State's GHG reduction targets. The Project's increase in VMT would contribute to an increase in greenhouse gas (GHG) emissions. Staff recommends the Project demonstrate consistency with all applicable measures identified in the 2017 Climate Change Scoping Plan needed to achieve the Statewide 2030 GHG reduction goal and be on track to meet the 2050 climate stabilization goal.

Furthermore, Air District staff recommends that the City strongly consider an alternative project that would not site a major roadway within ¼ mile of a school. The DEIR considers eight project alternatives, including options that would not require encroachment on the Orchard School campus. The DEIR should evaluate the potential health risk for each alternative, and the Air District recommends that the City consider an alternative that would either not increase or have the smallest possible increase on the exposure of sensitive receptors to air pollutants.

Air District staff is available to assist the City in addressing these comments. If you have any questions or would like to discuss Air District recommendations further, please contact Josephine Fong, Environmental Planner, at (415) 749-8637 or jfong@baaqmd.gov.

Sincerely,

Henry Hilken
Director of Planning and Climate Protection

cc: BAAQMD Director Margaret Abe-Koga
BAAQMD Secretary Cindy Chavez
BAAQMD Director Liz Kniss
BAAQMD Vice Chair Rod G. Sinks

Comment B

County of Santa Clara

Roads and Airports Department
Planning, Land Development and Survey

101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2400 FAX (408) 441-0276

November 1, 2019

David Keyon
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

SUBJECT: Charcot Ave Extension Draft Environmental Impact Report (DEIR) (PP18-044)

Dear Mr. Keyon:

The County of Santa Clara Roads and Airports Department appreciates the opportunity to review the Charcot Ave Extension Draft Environmental Impact Report (DEIR) (PP18-044) and submits the following comments:

In general, the County supports the Charcot Ave Extension project. Our general comment is that the proposed Charcot Ave extension will have a bigger and wider overall impact than just the few intersections surrounding one and half miles around Charcot. This project would change traffic patterns on a wider scale encompassing freeway corridors such as SR 87, U.S. Highway 101, I-880, and major arterials such as Montague Expressway, Zanker Street, First Street, Brokaw Avenue, and Oakland Road. To that end, the DEIR does not acknowledge the significance of the project on regional circulation. For example, in section 3.17, the analysis should state if, and to what extent, the Charcot project will improve regional and local circulation in consideration of future implementation of other projects in the North San Jose Plan and 2006 County/City Settlement Agreement. Even though the estimated vehicle miles travelled (VMT) doesn't appear to trigger the City's VMT impact criteria, the cumulative impact analysis excludes any description of the operational impacts that would occur as a result of local and highway recirculation patterns. The cumulative impacts should discuss chokepoint issues are displaced from location to another location, especially between interchange locations.

We recognize that a greater overview of regional circulation in the North San Jose area, separate from this specific project, is merited and we look forward to continue working with the City to discuss these issues.

Other specific comments are as follows:

- In general, the Traffic Study should also analyze O-D routes for the new trips on Charcot by looking at entry and exit points to freeways/expressway.
- Please provide project phasing, or timings, as compared to projects included in the Montague settlement agreement.
- On page XIV – The identified I-880 and Montague Expressway interchange improvement project in the North San Jose Plan would provide Montague Expressway with much needed congestion relief. The

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenburg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

Montague widening (to 10 lanes) mentioned in Alternative B in the DEIR goes beyond the 8-lane widening which County has planned. Please correct the language to 8 lanes.

- The DEIR should include all impacted Montague Expressway intersections in the analysis from Mission Blvd to Trade Zone Blvd.
- The Traffic Study should consider how transit and other modes on First Street would be affected by potential trip gain roadway due to traffic diversion.
- Page 143, Table 3.17-1 shows existing peak hour directional volumes on Montague Expressway which are much lower than CMP PM counts and 2013 County AM counts. Please see the attached redlines.
- Page 155, Tables 3.17-7 – 3.17-9: Please provide details and assumptions as to why Montague Expressway volumes would decrease due to project.
- Page 162, Table 3.17-11 should also include increases in travel time, not just reductions.

Thank you for the opportunity to comment on the Draft EIR. If you have any questions about these comments, please feel free to contact me at (408) 573-2482 or ellen.talbo@rda.sccgov.org.

Sincerely,

Ellen Talbo, AICP
County Transportation Planner

From: Wendy Gudalewicz
To: Raval, Meenaxi
Subject: File No. PP18-044
Date: Monday, October 28, 2019 8:27:30 AM

Comments on EIR

The EIR did not include impacts to traffic on Fox Lane. The families that currently drop off in the back of the school will no longer have that as an option. Also, those coming over Charcot to avoid Brokaw and work in the Ridder Park/Fox area will drive on Fox to enter which will add traffic.

Impact on Oakland Rod and Brokaw intersection, specifically the left turn from Oakland to Brokaw was ignored in the EIR. There will be more cars turning left which will cause delays.

Impact of the road to our classroom building, which we were told verbally at the EIR meeting wuold only be 20 feet from the classroom (road) and cars would only be 40 feet away.

Did not address any construction possibilities on the Orchard campus. The playground will have to be torn down and rebuilt. If the ball field is impacted then we will have to remove the two portable classrooms to accommodate the field.

What will be the impact of students crodssing (nealry 300 twice a day) on the Charcot traffic. Students will be crossing at the height of morning commute. With a Hawk signal and a light at Charcot and Oakland it will be a nightmare.

Did you account for hundreds of cars and diesel trucks idling for long periods of time in your air quality study?

Gasoline and chemical trucks will be yards away from where children play.

Where will staging take place if the road is built? IS there an additional impact to the school?

What was the noise level expected for our students in the building closest to the road? Did you even bother to check? Do you know if the classroom has double pane windows?

Why would the sound wall on the school side be lower than the sound wall on the residential side?

What will the traffic impact be on the ressidential community off of Silkwood?

--
Wendy Gudalewicz
Superintendent
Orchard School District

Comment D

Santa Clara Valley Transportation Authority

November 4, 2019

City of San José Department of Transportation
200 E. Santa Clara St., 8th Floor
San José, CA 95113

Attn: Josephine Kimura
By Email: Josephine.Kimura@sanjoseca.gov

Dear Josephine,

VTA appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Charcot Extension Over I-880 project. VTA has reviewed the document and has the following comments:

VTA Complete Streets Policy

VTA's Complete Streets Policy states that complete streets are streets that prioritize the safety, comfort, and convenience of pedestrians, bicyclists, and transit riders (including access and operations) of all ages and abilities, as appropriate for the local context, while still providing safe accommodations for motorists and other roadway users. VTA believes Alternatives H and F best align with VTA's Complete Streets policy for the following reasons:

- Alternatives H and F provide the shortest crossing distances of Charcot Road of all alternatives for those traveling along Oakland Road, thereby reducing vehicle-pedestrian and vehicle-bicycle exposure time
- Narrower roadways incentivize drivers to travel more slowly than along wider roadways. With the school located immediately adjacent to this intersection, VTA recommends designing for the preferred vehicle speeds rather than relying on speed limit signs for enforcement. VTA acknowledges that safety issues at this intersection and approaching this intersection are balancing factors in the review of alternatives

Design Upgrades

VTA applauds the design recommendation for a pedestrian beacon at the Charcot Avenue/Silk Wood Lane intersection. Should the City choose Alternative H as the final design, VTA notes that a Rectangular Rapid Flashing Beacon (RRFB) would be acceptable as the Pedestrian Hybrid Beacon mentioned in the EIR.

VTA recommends a high-visibility design for all crosswalks impacted by this project including the intersections of Charcot Avenue at:

- Paragon Drive
- O'Toole Avenue
- Silk Wood Lane
- Oakland Road

Due to the presence of bicycle facilities on the proposed Charcot Avenue extension and on Oakland Road, VTA recommends redesigning the intersection of these two roadways to a partial protected intersection.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830.

Sincerely,

Lola Torney
Transportation Planner III

SJ1815

Organization, Business, and Individual Comments (Comments E-HH)

From: Eloisa Borlaza
To: Raval, Meenaxi
Subject: File No. PP18-044
Date: Sunday, November 3, 2019 11:40:20 PM

Attn:
Meenaxi R. Panakkal, AICP

From:
Eloisa Borlaza
Resident of Silkwood Ln, San Jose, CA 95131

Here are my comments to the Charcot Extension Draft EIR
The Charcot project which will cost millions of tax payers' money will not benefit commuters and the community.

1. Drivers will have to slow down when nearing Silkwood Lane since people can cross the street anytime. Peak hours are between 7am-10am and 3pm-6pm. Kids go to school around 7:30am-9am and goes home from school around 2:30pm-3:30pm. These times coincide with rush hour commutes when a lot of parents and kids are crossing Silkwood Ln. Therefore during the overlapping times no cars can really go fast. It can even be slower for them since they need to let pedestrians cross when pedestrians activate the HAWK beacon at the crosswalk.

2. Parents drop off and pickup their kids at the entrances on Silkwood Ln, Oakland Rd, and Fox Ln. Even with 3 drop off entrances, there is already a long queue of cars during drop off and pick up times from Oakland Rd both turning left and right towards Fox Ln and along Oakland Rd. With the Silkwood Ln entrance closed because of the Charcot project, those parents will have to drop off and pick up their kids at either Oakland Rd or along Fox Ln, causing more congestion on Oakland Rd and Fox Ln.

3. The Charcot extension ends at Oakland Rd. Those who do not live within the area enclosed by Montague, Lundy, Brokaw, and Silkwood Lane, will have to somehow go back to Montague and Brokaw/Murphy to be able to go farther (to let's say Flickinger, Berryesa, Landess, Capitol). Therefore, those commuters will hit the same congestion. Currently turning left from Oakland Road to Murphy already takes 8 to 15 minutes on busy hours. This will most likely take longer time since more traffic will be generated by cars coming from Charcot. If those cars saved a negligible 0.4 seconds from Charcot to Oakland, the time savings can easily be offset by the long wait to turn left at Murphy. The same is true for turning right from Oakland Rd to Montague or from Trade Zone to Montague.

4. The speed limit on residential streets is only 25 mph or less, then the same limit should be set on Silkwood Ln for the safety of the residents crossing Silkwood Ln. Since cars can only go 25mph or less along Silkwood Ln therefore cars cannot really go fast and save time during peak hours.

5. For non peak hours, Montague and Brokaw/Murphy are very open, no congestion

at all. Therefore there's really no use for the Charcot extension for 18 hours of each day. Millions of tax payers' money is going to be spent on a project with negligible benefit for 6 hours Monday to Friday (30 hours a week) and 0 benefit for the rest of the hours of Monday to Friday and full days of Sat and Sunday (138 hours a week).

6. This project is increasing the health risk to students, teachers, school personnel of the Orchard school and the residents of Silkwood Ln. We are already between I-880 freeway and main roads Oakland Rd and Brokaw/Murphy contributing to the air and noise pollution. Now the city wants to add another busy road along Silkwood Ln which will add more pollution to our community, not to mention that higher air pollution is introduced by stop and go cars which will be the case on Silkwood Ln.

7. This project is going to destroy several mature trees (trees that help lessen the air pollution) at Charcot and at the same time introduce more air pollution to the area. How is the city going to protect the people working in the area from more air pollution?

8. How is the city going to address the additional traffic from Oakland Rd to Rock Ave to Silkwood Ln? Rock Ave and Silkwood Ln are narrow streets and further narrowed by resident's cars parked on both sides of the streets.

9. Instead of building this extension which does not really benefit the commuters, can the city look into optimizing when the traffic lights change? The traffic light is green along Brokaw from Zanker but cars cannot move because the traffic light at Brokaw and 880 freeway entrance is red. Only very few cars will be able to move because by the time the traffic starts moving, the light at Zanker again turns red.

10. Why can't the city use the millions of tax payers' money to solve the more pressing problems we have right now?

10.a. Growing number of homeless people on our streets

10.b. Safety and Security of the people. There are a lot of crimes (theft, burglary, robbery, assault, homicide, car break-ins) happening everyday

10.c. Garbage along the streets, freeways

Respectfully yours,
Eloisa

From: Judianne Ganschow
To: Raval, Meenaxi
Subject: Reference File No. 18-044, Charcot Extension Project.
Date: Monday, November 4, 2019 4:36:22 PM

Reference File No. 18-044, Charcot Extension Project.

I am writing on behalf of my students at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

If you would like more, here are some facts from the first EIR.

The wall they plan to build around the school is only 6feet . The one across the street by the houses is 8feet.

We will have to restructure our entire playground.

The road will be only 40 feet from our classrooms.

Construction noise will be extremely disruptive.

Pollution in the area will double.

Traffic will threaten the safety of our students and make school less accessible to the community.

It is against the law to build a school so close to a road. Why do you think it's ok to build the road so close to the school? Illegal and immoral.

Please also consider that if the emission standards are changed per the administration, all the pollution numbers in the EIR are out the window. It will be much worse.

I fail to see how saving 30 seconds of commute time is worth this impact on the community. The EIR fails to address how damaging this will be to the community.

Finally, no "Safe Route" study was done for students walking, biking, and driving to school. This is missing from the EIR and should be included.

Sincerely,

--
Ms. Ganschow
Middle School Science and Engineering
Orchard School

From: Rebecca Hartley
To: Raval, Meenaxi
Subject: Reference File No. 18-044, Charcot Extension Project.
Date: Wednesday, October 30, 2019 11:27:53 AM

I am writing on behalf of my students at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

If you would like more, here are some facts from the first EIR.

The wall they plan to build around the school is only 6 feet . The one across the street by the houses is 8 feet.

We will have to restructure our entire playground.

The road will be only 40 feet from our classrooms.

Construction noise (need I say more)?

Pollution in the area will double.

Traffic will threaten the safety of our students and make school less accessible to the community.

This is not something this community needs.

Ms. Becky
Kindergarten Teacher.

Comment H

From: shill@orchardsd.org
To: Raval, Meenaxi
Subject: File No. PP18-044 Charcot Extension EIR
Date: Monday, November 4, 2019 1:40:30 PM
Attachments: Charcot Extension.pptx

Ms. Raval,

Please see my comments and requests for the Charcot Extension Project contained in the Power Point presentation attached.

I respectfully submit this document for consideration and formal response.

I represent myself as a community resident that will be affected by the project, as well as Orchard School District's Board President.

We have shared our concerns every step of the way, and at the last community meeting at Berryessa Library (which was a difficult and inconvenient spot for those of us most affected by the extension) our comments fell upon deaf ears.

I have personally attended all of the scoping meetings and community meetings associated with Charcot Extension, and I can say with certainty we have never claimed to be in support of this project nor have we approved drop-off and pick-up provisions included in the EIR. This was an absolute false statement brought up by the planners at last month's meeting. Our board never agreed to any part of this for the record.

The fact that the meeting occurred during City Counsel and School Board meeting times made it impossible for Orchard/City representatives to be there. We decided to cancel our meeting in order to provide opportunity to be there. We felt it was that important.

This project should be canceled in my opinion – the gain is absolutely not worth the very "underestimated and incomplete" impact assessment presented in the EIR.

We are prepared to defend the health and safety of our children and staff, and no matter how many times we have heard this was in the works a long time ago, it is an ill planned project and you can't convince me otherwise.

Best regards,

Stephanie Hill
Orchard School Board President
921 Fox Lane
San Jose, CA 95131
(408) 234-9668

Charcot Avenue Extension is not good for Orchard School

Comments and submittal after Environmental Impact Report Community Meeting 9/24/19

Stephanie Hill - Orchard Board of Trustees, President

EIR (Environmental Impact Report) findings

- Project was limited in scope to 6 elements
- Aesthetics (cannot be mitigated to less-than significant)
- Biological Resources (will be mitigated)
- Cultural Resources (will be mitigated)
- Hazards & Hazardous Material (will be mitigated) – *this only pertained to things that may be uncovered in the construction process – i.e. contaminated soil, pesticides, etc.*
- Noise (will be mitigated)
- Recreation (cannot be mitigate to less-than significant)

The category that is strikingly missing is the evaluation of the student and staff safety of Orchard as a result of the Charcot Extension.

Drop-off and Pick-up Currently - 900 students must safely arrive and depart from school

Our Current Situation (2) locations suitable for pick-up and drop-off: Fox Lane, and Silkwood Lane (Charcot Extension will severely compromise this heavily used drop-off)

1. Fox Lane (front of the school) bisecting the loading area is Ridder Park Lane. We have had **one student hit by a vehicle** due to limited visibility, it's a well used-shortcut around lights at Brokaw and Oakland road commonly used by commuters, service trucks, gas fueling trucks (there is a large sweeping turn at Ridder Park and Fox that allows these big trucks to bypass railroad track stops on Brokaw, and a succession of 3 highly congested stop lights. Excessive speed causes a dangerous situation at this intersection.

2. Silkwood is a narrow, "protected" cul-de-sac and parents with children line up to deliver their children to school. They enter the school through an opening in the gate. Not ideal under any circumstances but better than Fox Lane. **This is where Charcot Extension will go, adding potentially 4-5 lanes of congestion.**

3. Major problems with both locations, and we have no real good existing optimal solution **AND** Charcot Extension will drop a large number of additional drivers right in the area that was our best option. EIR reports the board was consulted about a break in the sound wall on Silkwood and we agreed. We did not ever have this discussion. **This is an absolutely false statement. I have been part of every public community meeting hosted by the City and DOT including the original scoping meetings. EIR does did not evaluate this as a category in the report!!! ****We want this included and studied – and we want to be included in the analysis because we have been told that all of our complaints fall below acceptable levels and they are irrelevant – ONE CHILD INJURED is too many!!!****

4. Our **safety concerns prior** to the impacts of the Charcot Extension have fallen on deaf ears. We have asked for proper signage **25MPH in school zone**, reduction of the 40MPH speed limit on Oakland Rd. (rejected by City Counsel vote) appropriate resources, i.e. crossing guards, lights, ADA access and other requests, some only recently have been fulfilled after years of efforts on our part. **This will only be exacerbated with thousands of "redistributed trips"** from the Charcot extension. It is not the place to be funneling more traffic activity. This has been communicated since the inception of the scoping meetings.

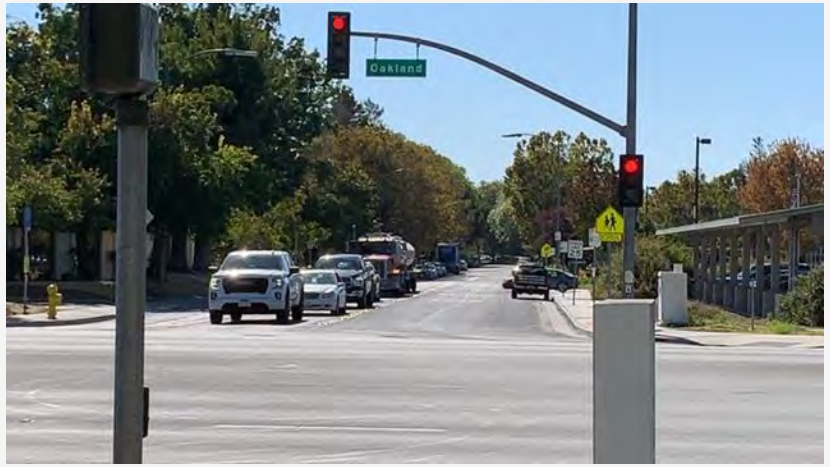
Gas Tankers on Brokaw going to turn on Ridder Park to avoid train tracks and lights.

Silkwood with parents waiting at pick up

Gas Tankers and Large Trucks avoid crossing 2 sets of railroad tracks

Gas Tankers and Large Trucks who must stop at two separate Railroad crossings (one on Brokaw and another on Oakland Rd.) can **"cut the corners"** by traveling along Ridder Park to turn in front of Orchard.

There have been frequent **near misses**, and one student was hit by a vehicle in 2019 in front of our Superintedant who witnessed the accident. **One child hit by a vehicle does NOT achieve Vision Zero.**



This is NOT okay and there is no impact analysis of this in the EIR Plan as it exists today.

School Safety Impacts

We do not believe that the EIR properly studied the ancillary effects of an overpass.

- The **overflow of traffic in the housing areas** will be severely impacted.
- Redistributed traffic on all of the surrounding roads (Silkwood, Fox, Ridder Park, and Oakland) **will create an unacceptable number of stop lights, wait times, and unnecessary risk especially at the Orchard School endpoint vs. any perceived gains in traffic relief on Brokaw and Montague.**
- Increased places for **homeless encampments** which is already a chronic problem we face on a daily basis. Our janitors push the homeless out at dawn before school starts, clean up the hypodermic needles and waste they leave behind while sleeping on the campus at night, and prepare the campus for students to arrive.
- **Drug activity has increased** as a result of homeless proximity near the school.
- **Study of traffic violations and traffic accidents occurring around the school site.** Gather current statistical data on traffic accidents, violations, injuries, and school property damage. We do not feel a "sound wall" will provide a sufficient safety component and there is certainly not enough coverage. Protective walls should sustain penetration by vehicle, trucks, and tankers and should extend the length of Oakland Road.

Students parking and leaving in surrounding neighborhoods north of Silkwood

Requests for EIR further study

We respectfully request these points for further consideration.

1. Add a school, student and staff **safety analysis** while students are coming, going and during school hours.

2. Add a school, student and staff **impact analysis** of ancillary issues related to more congestion in the area from; vehicles, trucks, gas tankers, pedestrian, bicycle, and transient (homeless) increases.

3. … And request for the DOT, City and all stakeholders to reconsider this DOT project altogether. Locate it elsewhere or re-allocate $$'s to another project.

Closing Comments

1. We will **STRONGLY OPPOSE** the Charcot Extension project and will actively defend and protect the safety and well-being of our students and staff.

2. We feel that the recently released **EIR is NOT ACCURATE or COMPLETE** and at times the information is confusing and contradictory at best. Other important analysis categories need to be added.

3. The **BENEFITS** and goals of "traffic redistribution" at the Charcot site are **NOT WORTH the RISK** the project brings to our school and this area.

From: Jo Ho
To: Raval, Meenaxi
Subject: Charcot Avenue Extension Project" File No. PP18-044 - My comment
Date: Monday, November 4, 2019 8:14:46 AM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

Your project is planned near 20 years ago and it's absurdly wrong since we have big community neat to the school already.

After you build this project, my kids have to walk across a very dangerous street to get to school and the polluted air they have to suffered every day is unacceptable.

You put young kids' life ahead of so-called traffic jam improvement is totally absurd.

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,

Comment J

CHARCOT AVENUE EXTENSION PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT
COMMENT CARD

Comments and questions must be submitted or referred to Meenaxi Raval via e-mail by 5:00 pm November 4th, 2019.

For the official record, please submit your written comment letter and reference ***File No. PP18-044.***

Meenaxi Raval
Department of Planning, Building, and Code Enforcement

200 East Santa Clara St., 3rd Floor
San José, CA 95113
(408) 535-3555

E-mail: Meenaxi.Raval@sanjoseca.gov

Name: Michael Hsu

Phone: 408-324-1295

Email: mmh00001@netscape.net

Date: 9-24-19

Affiliation (if applicable)

Address: 1046 Bramble Wood Ln, San Jose, CA 95131

Comment/Question:

1. Will the soundwall be built on private property? If so, will it trigger Prop 13 reassessment? will the city

Please continue on the back if necessary.

reimburse homeowners if it results in higher property taxes?

2. What is the expected impact if the homeless set up camp under the overpass?

3. How much gang graffiti will be caused by the addition of concrete soundwalls? Who will pay for graffiti removal?

4. Are any of the ducks currently presting in the school yard on the endangered species list?

5. Is a 10ft soundwall effective in mitigating noise heard by a person on the 2nd story (house along Silk Wood Ln)?

6. There is a sports car rental business on Charcot Ave. What expected traffic accidents/casualties are going to occur to school children by speeding sports cars?

From:	Michael Hsu
To:	Raval, Meenaxi
Subject:	Comment on Draft EIR for Charcot Avenue Extension Project (File No. PP18-044)
Date:	Monday, November 4, 2019 1:48:08 PM

From: Michael Hsu
1046 Bramble Wood Ln
San Jose, CA 95131
E-mail: mmh00001@netscape.net

The Draft EIR has severely understated the impact of Trip Diversion Scenario #2 mentioned in section 3.17.3.8.

This trip diversion deals with south bound traffic on Oakland Rd. which uses Rock Ave and Silkwood Ln. as a cut-through
route whenever there is congestion on the southbound Oakland Rd / westbound Charcot Ave intersection.

The draft EIR incorrectly stated that the cut-through traffic would be minimal simply due to the posted speed limit
being 25 mph. First, I don't recall ever seeing any clearly visible speed limit signs along the cut-through route.
Second, even if there were posted 25 mph signs, it's a commonly known fact that drivers would never follow that
rule and thirdly, there has never been an instance of anyone getting a single speeding ticket along the cut-through
route - even though speeding violations occur on a daily basis. And by opening up the cut-through route with this project,
even more traffic problems would result.

Since the AM and PM traffic through the westbound Charcot Ave route is estimated to be in the thousands of vehicles per day,
it seems more likely that the cut-through traffic along Rock Ave and Silkwood Ln would be approximately 50% of that amount.
This is because drivers have the following choices when they see traffic congestion at the Oakland Rd / Charcot Ave intersection
- (1) continue on southbound Oakland Rd and face a 100% probability of traffic congestion, or (2) take the cut-through
route on Rock Ave / Silkwood Ln and face a less than 100% probability of traffic congestion along the cut-through route.
If you had consulted with an expert in driver behavior (or conducted a survey of likely drivers), you would find that
most drivers (over 90%) would choose the cut-through route. Hence, this would result in a severe impact of
approximately 4,000 vehicles per day increase along Rock Ave and Silkwood Ln.

The Draft EIR fails to acknowledge the severe environmental impact of this cut-through traffic. It also fails to provide
any mitigation measures to reduce this significant impact to acceptable levels.

Also, when evaluating the "project build" option, it failed to list this impact as a non-mitigatable condition.

From: suwei huang
To: Raval, Meenaxi
Subject: the Charcot Avenue Extension Project
Date: Monday, November 4, 2019 12:52:41 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars.

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,

Comment L

From: k k
To: Raval, Meenaxi
Subject: SUBJECT: Charcot Avenue Extension Project File No. PP18-044
Date: Monday, November 4, 2019 5:00:01 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans, false facts and assumptions. It doesn't fit into the City's new vision of itself as a safe, vibrant, thriving, well researched and smart place to live. It will obviously increase traffic congestion, pollution to unacceptable and unhealthy levels and will make it very unpleasant and extremely unsafe to walk, jog, or ride a bicycle and drive. It will divide and destroy the neighborhood. The noise level will undeniably disturb students, school faculty, families, residents, the local businesses, etc.... The City needs to reconsider how polluted the air in the area already is, what the real reason and how logical it is to build this Extension to no where. Why do they want to destroy the peace and harmony that Orchard provides for its students, staff, faculty, families, neighborhood and community. The hap hazard and neglectful environmental study created for and by the City of San Jose does not adequately consider the current situation how it will affect the students, staff, faculty, families, community, neighborhood and the local residents.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students, families, staff, faculty at Orchard, neighborhood and community will be irreparable.

The health of the students at Orchard School and community needs to be more important than increasing the number and speed of the cars.

The City needs to understand and reconsider what this project will do and act responsibly to the community and to Orchard School and they need to seriously reevaluate this project and not ignore the people.

Kind regards,
Katherine Kasolas-Jacobson
Orchard School Board Member.

From: vicky_keo
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: File No. PP18-044
Date: Saturday, November 2, 2019 8:51:35 AM

To Whom It May Concern,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

I urge you and the City to take concerns of the community under this project under serious consideration and reevaluate the project as this project is based on outdated plans and assumptions.

This project will affect the surrounding communities drastically to save commuters a few minutes on commute, which is not enough to put this community at risk for health issues, congestion and accidents.

It will not only increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students at Orchard school. Taking away property from the school seems irresponsible as the school and community uses it as a space for recreation.

The City needs to consider how polluted the air in the area already is, not to mention the congestion during commute and school hours. The environmental study done for the City does not adequately consider the current situation of the community. It doesn't make sense to cut down tree that help clean the air and add more pollution to the area.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss.

In all, this project will do more harm to the surrounding communities then help. It seem irresponsible to spend more of tax payers money to increase congestion and importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School and the community needs to be more important than saving commuters several minutes of commute time.

Regards,

Vicky

Sent from my Verizon, Samsung Galaxy smartphone

From: Michael Lam
To: Raval, Meenaxi
Subject: Charcot Avenue Extension Project File No. PP18-044
Date: Monday, November 4, 2019 12:28:40 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans. The City needs to consider taking away from our school the recreational space and the refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood. Most importantly, the harm done to the students at Orchard will be irreparable. **Their safety is paramount and should be the primary consideration for the City.**

The City needs to be responsible for the community and terminate this project.

Kind regards,
Michael Lam
Bramble Wood Ln.
San Jose, CA 95131

Comment O

SILICON VALLEY LAW GROUP
A LAW CORPORATION ®

November 4, 2019

Via Hand Delivery & Electronic Mail: Meenaxi.Raval@sanjoseca.gov

Ms. Meenaxi Raval
City of San Jose
Department of Planning, Building, and Code Enforcement
200 East Santa Clara St., 3rd Floor
San José, CA 95113

RE: PS Business Parks Comments Regarding A Draft Environmental Impact Report (DEIR) for the Charcot Avenue Extension
File Nos.: PP18-044

Dear Ms. Raval:

I am submitting comments to the Draft Environmental Impact Report for the Charcot Avenue Extension, dated August 2019, (DEIR) on behalf of PS Business Parks.

Background

PS Business Park owns large properties on both sides of Charcot Avenue. Charcot Business Park I is located at 721-751 Charcot Avenue, 2023-2035 O'Toole Avenue and 2142-2190 Paragon Drive and consists of 19 units. Charcot Business Park II is located at 700-848 Charcot Avenue and 2001-2015 O'Toole Avenue and consists of 57 units. Charcot Business Parks I & II are collectively known as Charcot Business Park and operate together on the west side Interstate 880 in north San Jose. Because Charcot Avenue ends at highway 880 the road is not a hindrance and the two parks work essentially as a single entity. The project would extend Charcot Avenue for 0.6 miles from Paragon Drive on the west side of I-880 to Oakland Road on the east side of I-880. Improvements to intersections affected by the roadway extension are also included in the project.

No property is impacted more than the Charcot Business park by the western end of the proposed Charcot extension over Highway 880. The business park specializes in providing first class business locations for a variety of small and medium sized companies. Small and medium size businesses provide the bulk of the jobs and GNP in San Jose and the USA. San Jose is notoriously jobs deficit and providing an environment that welcomes business and the jobs they provide is supposed to be a high City priority. However, this project does not concern itself with

its detrimental impacts on business. Nor does there appear to be any concern that this project will effectively bifurcate the parks that currently function as a single operation.

Companies at the stage of their development during which they are tenants in the park can be fragile and require the access, visibility and flexibility the Charcot Business park currently provides. To protect the businesses in the park, PS Business Parks is highly motivated to ensure that the Charcot Business Park remains a secure, safe, high-quality environment for the types of businesses that fuel Silicon Valley and San Jose. Charcot Business Park I has had operations at this location since 1980, Charcot Business Park II has operated at its location since 1974. This long presence in this location gives the parks particular expertise in how the proposed changes to the physical environment foreseeably caused by this project could adversely impact the local urban environment.

Lack of Construction Mitigation Disclosure

Via an email dated May 22, 2018 PS Business Parks previously submitted extensive substantive issues to be studied in the DEIR in response to the City's Scoping Request. PS Business Parks is deeply disappointed to see that the DEIR did not adequately respond to those issues or even study many of the significant issues raised by PS Business Parks. For example, when asked about how the impacts caused by moving the utilities could be mitigated the drafters completely ignored the issue. The DEIR's proposal of shutting down operating business and not having a mitigation plan attached to the DEIR makes the entire DEIR deficient. Mitigation measures need to be incorporated in the DEIR before the DEIR is released to the public to ensure the mitigation measure does not escape public and governmental scrutiny. Pub Res C §21100(b)(3); 14 CCR 15126.4(a)(1)

The DEIR fails to identify several potential construction impacts of the Project. The DEIR, provisions regarding construction impact mitigation (and in particular mitigation for impairment of access to the business park and minimizing disruption to our tenants), do not provide sufficient information to constitute meaningful disclosure, do not establish objective measurable standards, and do not commit to further mitigation if the currently planned mitigation is ineffective. In short, the proposed construction impacts mitigation consists only of vague statements of undefined future actions. This is inadequate under CEQA.

Mitigation measures should describe with specificity the actions that will be taken to reduce or avoid an impact. It is inappropriate in the current circumstances to defer formulation of the mitigation measures. 14 CCR §15126.4(a). Also, mitigation measures must be enforceable. Pub Res C §21081.6. Here there is no adequate mitigation of the adverse impacts on utility disruption, construction impacts, building homeless habitat, security, impacts on Coyote Creek etc. Nor is enforceability addressed. Indeed, the DEIR virtually ignores the potential impacts on the western end of the project and does nothing substantive to mitigate those impacts.

Notice of Preparation (NOP) and Responses

It appears that the Notice of Preparation (NOP) was circulated in May of 2018, yet it took over 15 months for the DEIR to be circulated. The NOP should have been re-circulated if there was a delay in project implementation to give the public the opportunity to acknowledge any new information that could have been provided. Why did so much time elapse between the circulation of the NOP and the release of the DEIR?

Environmental impacts and the means by which they are analyzed, especially greenhouse gas emissions and transportation, are changing all the time, as is the existing condition. In fact, it was during this time that the City was working on their new Vehicle Miles Travelled (VMT) policy consistent with SB 743. The policy, which created a VMT evaluation tool to determine impacts of development projects, was approved in March 2018 and the Transportation Analysis Handbook was prepared in April 2018. Therefore, the new way of analyzing traffic impacts was fresh out of the gate without many (if any) projects using it to determine its success or failures. The sheer fact that the City created the evaluation tool shows they were interested and perhaps required to evaluate the results of the new tool – yet they didn't give it enough time.

A new NOP, let's say, a whole YEAR later, would have been able to reflect at least a year's worth of data on how the policy was working. It would have given the public and decision makers the opportunity to comment on what should be included in the DEIR based on changed conditions, thresholds, and methodologies. This was not provided in violation of CEQA (Section 15375) and should be corrected by re-circulating the NOP in a timelier manner.

In addition, the public scoping meeting for the DEIR was conducted in May 2018 – over 17 months ago. There could be new parents at Orchard School, new industrial park occupants, and new residents in the area with comments that have not been taken into account. Schools and residential uses are defined as sensitive receptors. These stakeholders will be dramatically impacted by the construction of a new roadway through their community. Again, the NOP must be re-circulated and the public scoping meeting must be scheduled within the timeframe of the circulation of the revised NOP.

The bulk of the responses to the NOP prepared by the City state "No further response is required as the comment does not raise any environmental issues". In fact, most of the comments relate to air quality, noise, safety, and traffic, which CEQA defines as environmental issues (Appendix G of the CEQA Guidelines) and should have been addressed. Instead, they were systematically dismissed.

The issues brought up in the NOP comments and responses (which the City dismissed as not being "environmental issues") actually ended up being included in the list of "Areas of

Public Controversy" (page xix of the DEIR). If the City is going to respond to NOP comments, the responses should be meaningful and describe how the issue will be addressed - they should not be dismissive.

Draft EIR

The basic premise of the project and the DEIR is that the extension of Charcot Avenue has been an identified improvement in North San Jose for many years. The project received program-level environmental review in the 1994 San Jose Focus on the Future 2020 General Plan, 2005 North San Jose Area Development Policy (NSJADP), and 2011 Envision San Jose 2040 General Plan EIRs. None of these EIRs were completed based on the current Council Policy 5-1 which requires a VMT analysis according to State law (SB 743).

SB 743 was passed in 2013 to eliminate the use of the standard intersection level of service, traffic congestion, and automobile vehicle delay as the metric for determining a significant impact under CEQA. The State gave cities the option of determining a new measure that "promote(s) the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses". The intent of the change was to appropriately balance the needs of congestion management with statewide goals related to infill development, the promotion of public health through active transportation, and the reduction of greenhouse gas emissions.

The City of San Jose's current 2040 General Plan includes a multitude of policies to create a successful multimodal transportation network supporting the City's sustainability goals. These include policies to reduce traffic trips, vehicle dependence, and greenhouse gas emissions, increase transit use, require Transportation Demand Management (TDMs) for development projects, and densify the City with complementary land uses to shorten trip lengths, including the following:

TR-1.1 Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).

TR-1.2: Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.

TR-1.3: Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle. The 2040 commute mode split targets for San José residents and workers are presented in the following table.

Table TR-1: Commute Mode Split Targets for 2040

COMMUTE TRIPS TO AND FROM SAN JOSE		
MODE	**2008**	**2040 GOAL**
Drive alone	77.8%	No more than 40%
Carpool	9.2%	At least 10%
Transit	4.1%	At least 20%
Bicycle	1.2%	At least 15%
Walk	1.8%	At least 15%
Other measures (including work at home)	5.8%	See Note 1
Source: 2008 data from American Community Survey (2008) Note 1: Working from home is not included in the transportation model, so the 2040 Goal shows percentages for those modes currently included in the model.		

TR-1.4: Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes, giving first consideration to improvement of biking, walking and transit facilities and services that encourage reduced vehicle travel demand.

TR-1.5: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.

TR1.6: Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.

CD-3.3: Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

LU-10.3: Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

As stated in Chapter 6, "As a means to reduce energy consumption, to reduce greenhouse gas emissions and to create a healthier community, San José maintains a goal to reduce the number of vehicle miles traveled in the city by 40% per service population. Achieving this goal

will require a multi-pronged strategy that includes both land use and transportation. This section includes the transportation goals, policies and actions that are intended to achieve an initial VMT reduction of 10% in Tier I, followed by a 20% reduction in Tier II, and ultimately a 40% reduction by 2040. All reductions are measured from the 2009 base year."

The General Plan also includes a "Balanced Transportation System Actions furthering the Tier I VMT reduction goal" as stated below.

TR-1.13 Reduce vehicle capacity on streets with projected excess capacity by reducing either the number of travel lanes or the roadway width, and use remaining public right-of-way to provide wider sidewalks, bicycle lanes, transit amenities and/or landscaping. Establish criteria to identify roadways for capacity reduction (i.e. road diets) and conduct engineering studies to determine implementation feasibility and develop implementation strategies.

We also know that streets in San Jose have been put on "road diets", including Lincoln Avenue, Winchester Boulevard, San Fernando Street, Hedding Street, S. 10th Street, and S. 11th Street to name a few. We also know that additional streets, including Alma Avenue are expected to be reduced from four lanes to two lanes while Class II bike lanes and on-street parking are retained. The goal of these road diets is to meet the Vehicle Miles Traveled goals of the General Plan and State law thereby reducing the need to drive and the associated emission of greenhouse gases.

The proposed project flies in the face of the goals and policies of the City's General Plan. Constructing a new street, which it can be imagined would cost upwards of a billion dollars, to allow more vehicle travel is not consistent with the City's General Plan or State law. A better use of this funding would be to redo the 2005 analysis that required the roadway in the first place utilizing the City's VMT Evaluation Tool!

As stated on page 8 of the DEIR, "The Charcot Avenue Extension has been included in each version of the NSPADP (sic) in 2005. It is assumed that this means the extension has been included in all updates. But is it still needed? The DEIR cannot answer this question, because the analysis has not been completed. This section also states that the extension was identified in 2005 as a measure that will "improve transportation conditions and air quality in North San Jose." But will it reduce drive alone trips by 40% as required by the General Plan. No analysis has been completed to determine accomplishment of this vital goal.

Air quality has improved dramatically since the 2005 analysis was completed due to more restrictive regulations and advances in vehicle technology and cleaner running fuels. How do decision makers and public know that this improvement is still warranted in light of the fact that VMT is not reduced with the construction of NEW roadways! This is why so many streets are put on "road diets".

Also, just because the improvement is continuing to be included in the General Plan Transportation Network Diagram, does not prove that the extension is needed. Analysis does that and without that analysis, it cannot be shown that the project will be counter to General Plan policies to reduce greenhouse gas emissions.

Right-of-way and construction, retaining wall, and utility easements are required from the properties in Table 2.3-1. Two of these properties (237-02-064 and 237-02-084) are owned by PS Business Parks, who's ownership and management are not in favor of the roadway extension for all of the reasons in this letter. They are not inclined to participate. Does the City intend to utilize eminent domain to acquire easements on these privately-owned parcels (and others, both privately and publicly owned properties) in Table 2.3-1? There is no discussion about this in the DEIR or how these businesses will be affected, displaced, or relocated. This must be corrected in the Final EIR.

The purpose of extending Charcot Avenue across I-880 is to provide a safe multi-modal facility, improve connectivity for vehicular, bicycle, and pedestrian travel routes, provide the opportunity to utilize alternative travel modes, and reduce travel time for the east-west travelers in the North San José Area.

The objectives for the proposed project are as follows:

► Improve connectivity between the east side of I-880 and the west side of I-880;

► Increase the capacity for east/west travel across the I-880 corridor;

► Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete

Streets Policy;

► Implement a programmed roadway network improvement project identified in the Envision

San José 2040 General Plan; and

► Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan.

There is plenty of connectivity between the east and west sides of I-880. We count five over the four-mile distance between Gish Road in the south and SR-237 in the north. In addition, the Brokaw Road interchange is only 0.35 miles to the south of Charcot Avenue. The number of crossings of I-880 is comparable to those on US-101 and I-680 to the east of I-880.

Similarly, the objective to increase the capacity for east/west travel across I-880 is not necessary in the project area.

A safe bicycle/pedestrian facility over I-880 can be provided at existing interchanges and crossings and should be consistent with General Plan and Complete Streets policies. A new roadway is not necessary to accomplish this objective. Implementing roadway construction projects simply because they have been on the books for so long is not fiscally or environmentally responsible. Development in North San Jose/Berryessa has continued for almost 15 years, including during the current construction boom without the Charcot extension. What's to say that cannot continue?

Therefore, the project objectives do not warrant construction of a new roadway with significant unavoidable impacts that would increase VMT in the City. Impacts associated with the safety of children and the viability of many businesses are not consistent with the NSJADP or General Plan – especially when there is no proof that the extension of Charcot Avenue is even necessary.

Further, it is not apparent that the location of this proposed extension would improve traffic conditions in North San Jose proper, which is located more to the northwest. It could be argued that Charcot Avenue is located more in the Berryessa area of San Jose. In addition, there is no direct access from Charcot Avenue to any other major freeway connections such as US-101, unlike Brokaw Road and Montague Expressway. Charcot Avenue is easily accessed from Oakland Road in the east and there is a direct route to the Brokaw Road interchange from O'Toole Avenue on the west side of I-880. How can this roadway extension really improve overall traffic conditions in the project area?

Spending the money on a new traffic analysis that may very well determine, especially with current TDM measures such as reduced parking, bicycle parking, ride-sharing, and TDM coordination, that the traffic impacts of North San Jose development would be less than significant. TDM measures are now routinely included in projects in the City and there could be other more minor roadway improvements that could reduce impacts to a less than significant level. However, without an updated traffic report using the City's VMT Evaluation Tool, public dollars would be wasted to build a new roadway inconsistent with General Plan policies and State law – a new roadway that would inevitably increase greenhouse gas emissions.

The project cannot move forward without Caltrans approval for the required encroachment permit. Caltrans often requires its own environmental review proceedings to approve such projects. This process should be more explicitly explained in the DEIR, rather than the one sentence provided on page 2 of the DEIR.

School lands are considered to be a 4(f) resource by the federal agencies and the displacement of businesses must be evaluated as part of Caltrans' review. In fact, the Federal Highway Administration's Visual Impact Assessment method ("Viewer Response") is used to determine visual impacts in Section 3.1.1.2 of the DEIR. Therefore, additional analysis could be required for the project, which is not included in this DEIR. This section should be revised to include a complete description of what is entailed in "Caltrans approval", which could involve topics not included in the DEIR. In addition, subsequent environmental review may be required.

It is also our belief that the conversion of parkland, which is what the playfields are described as in the DEIR, to development must be approved of by the voters of San Jose. The City Charter requires this for the loss of parkland and it must be implemented.

Aesthetics

The DEIR states that a significant number of mature trees would be removed from the project area to construct the proposed project. The DEIR only describes this as a change, but in fact, it is a long-term impact. There appears to be no evaluation of how air quality in the project area would be affected in the long-term as trees absorb the energy from the sun that would otherwise be reflected back into the atmosphere. Through the process of photosynthesis in green trees, carbon dioxide, a greenhouse gas, is absorbed by them from the atmosphere. They turn carbon dioxide and water into food using energy obtained from the sun light. There is no discussion about how the loss of trees is not only an aesthetic impact, but also a greenhouse gas impact.

How is the construction of a noise barrier along a school boundary adjacent to a playground, open space playfields, and single-family homes any replacement for a view of the outdoors and nearby trees? Stamping the noise barrier with an "aesthetic treatment" does not replace a scenic vista, as shown on Figure 3.1-4 of the DEIR. This impact must be <u>significant unavoidable</u> and the City must make findings for a Statement of Overriding Conditions in which it must be determined that the project is so important for the public good that it outweighs the impacts of the roadway extension and the loss of views to a school and residential uses. A tall order.

Figure 3.1-2 shows a crosswalk and bike lane at the base of the elevated freeway overcrossing. It appears that there would not be enough sight distance for westbound vehicular traffic to render this a safe crosswalk. This must be evaluated in the DEIR.

Impact AES-4 does not address impacts of car lights coming in the windows of the homes shown on Figure 3.1-4. A similar effect would occur at the home located on the west side of Silk Wood Lane. Only street lights can be dimmable, programmable, and directly downward

and outward. As shown in this photo simulation, the proposed barrier wall would not block eastbound car traffic lights. This must also be a significant unavoidable impact.

The air quality section of the DEIR again states that the extension of Charcot Avenue is identified as part of the City's planned roadway network in the Envision San Jose 2040 General Plan, the North San Jose Deficiency Plan, and the North San Jose Area Development Policy. Therefore, it is claimed that it is consistent with these plans because it would implement one of the projects identified therein.

Again, the project is not consistent with many General Plan policies as previously noted, especially those related to reducing VMT and GHG emissions. New analysis of the total NSJADP is warranted since air quality thresholds have changed and GHG emission were not even calculated when the NSJADP was prepared in 2005. This renders the project in conflict with implementation of air quality plans, CEQA, and the City's General Plan.

Air Quality

Again, this section states the incorrect premise that because the extension of Charcot Avenue is identified as part of the City's planned roadway network, it is consistent with the General Plan and NSJADP. However, as stated above the construction of a new roadway is inconsistent with all of the goals and policies related to greenhouse gas emissions. The traffic report itself states that new roadways inherently increase VMT. The air quality analysis should have equated increased VMT with increased emissions of criteria air pollutants, which is in conflict with the applicable air quality plan.

Has anyone contacted BAAQMD to see if they are in favor of building a new roadway in an area with plenty of other transportation options? It seems unimaginable that they will not have considerable concerns that would lead to a conclusion of a significant unavoidable impact due to obstruction of the implementation of the applicable air quality plan, which they are responsible for implementing.

The first incorrect assumption is that the project would only take 10 months to complete. The roadway extension includes a vehicle overpass of I-880. As Bay area commuters have noticed, construction of overpasses on US-101 at Willow Pass Road took over two years to complete and that was to just widen an existing bridge. When you include all of the utility relocation, signal installations, concrete piers, sound walls, and slip ramp envelope (whatever that is) that will be required as well as grading and drainage, it could take between two and three years to complete the project.[1]

[1] https://www.quora.com/How-long-does-it-take-to-build-a-highway

I-880 is an interstate facility with eight lanes in this location in addition to four shoulders on each side and a median down the middle. To negotiate the construction of a new two-lane bridge with sidewalks and bike lanes will take years, not to mention the rest of the roadway to Oakland Road and Paragon Drive will take much longer than 10 months. It can four months alone for concrete piers to cure. In addition, Caltrans is not known for their quick turnaround and they will definitely be part of the construction process, as I-880 is one of their facilities. This inaccurate construction length renders the evaluation of air quality emissions, including dust and particulate matter during construction, inadequate.

Further, page 39 of the DEIR does not contain the City's current Standard Conditions that are to be implemented for an impact to be considered less than significant and must be revised. They are currently as stated below. Without the successful implementation of all of these measures, impacts will be significant and unavoidable.

And who will be responsible for guaranteeing that the City will actually police itself on a public project and how will it be done? Since the City is the applicant and most likely not the contractor, how can the public be sure all measures, although these measures were not included in the DEIR, are implemented?

Standard Permit Conditions: During any construction period ground disturbance, the project applicant shall ensure that the project contractor implement the following standard BAAQMD measures to control dust and exhaust:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day or often as needed to control dust emissions.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered and/or maintain at least two feet of freeboard.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.

- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff onto public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

The traffic report states that VMT will increase as a result of the project construction. Therefore, how can it be stated that emissions that result from traffic "would be slightly lower than under No Project conditions"? Especially in an area with plenty of vehicle travel options over I-880, including Brokaw Road and Montague Expressway, which have much better access to both jobs and housing than Charcot Avenue. Similarly, the statement that operational criteria pollutants would decrease over time if the project is completed. Constructing a new roadway adjacent to housing and school playgrounds cannot possibly result in fewer impacts than the existing condition.

The section on Toxic Air Contaminants (TACs) does not accurately reflect the existing condition and impacts to residents and children – the very definition of sensitive receptors. Page 41 of the DEIR states that these sensitive receptors could "potentially be affected during construction and operation of the proposed roadway extension.

The sheer fact that cancer risk to infants and children must be assessed is frightening enough. Would the placement of six- and 10-foot high soundwall barriers along a playground, playfields, and the side and backyards of homes serve to trap TACs in areas where infants and children spend vast amounts of time? This was not discussed or analyzed.

To have misrepresented the length of construction as previously discussed results in an inaccurate assessment of TAC impacts. Durations of exposure is tantamount to the evaluation and with the roadway to be constructed adjacent to an existing school playground and playfields, the assessment must be recalculated with the correct duration, the impact conclusion changes to significant unavoidable and the DEIR recirculated.

How can the odors of bakeries and restaurants even be compared to those of construction equipment and asphalt paving? Diesel exhaust adjacent to homes and school play areas for extended periods of time (much longer than described in the DEIR) would be significant to a significant number of children and infants and must be mitigated with more than a five-minute limit to equipment idling. Therefore, not only is the impact incorrect, but the mitigation measure is not adequate to reduce the impact to a less than significant level. This must be corrected.

All of the above comments also relate to the cumulative air quality impact discussion in the DEIR.

Biological Resources

The tree survey was completed for the project over 20 months ago. It must be updated as trees can grow in that amount of time such that they become ordinance size and impacts identified are most likely less than what will actually occur. The larger the tree canopy, the more potential there is for raptors and other birds to utilize the trees during the nesting season. Therefore, the tree survey must be updated for an accurate assessment of impacts to protected bird species.

The tree replacement section of the DEIR states that the City can pay the City if trees cannot be replaced along the project alignment. How will the public be made aware that the City has paid themselves or planted trees at alternative sites? Public projects must be held to a higher standard and mitigation must be feasible and transparent.

Although Coyote Creek is described as being "330 feet west and outside of the project alignment", it cannot be ignored that additional traffic on Charcot Avenue would result in the potential for additional hazardous materials to enter the creek during storm events. As stated in the biology section, federally threatened and California species of concern such as steelhead and western pond turtle are known inhabitants of Coyote Creek. In addition, two sensitive vegetation habitats are located within its banks. Additional traffic on the bridge over the creek would result in additional toxins, including gasoline, oils, and carbons being transported to the waterway and affecting water quality detrimentally for flora and fauna. This impact was not addressed in the biology section, which must be corrected.

The project may not be located within the boundary of the Santa Clara Valley Habitat Plan (SCVHP), but it will certainly lead to additional nitrogen deposition by way of additional VMT, which is also covered by the SCVHP. This impact must be identified and all appropriate fees paid.

Energy

One of the main complaints about the project is that travel speeds will increase on Charcot Avenue both on the east and west side of I-880. This will adversely affect the business parks on the west and the school and residential uses on the east side of the highway. This fact is somehow determined to be a desirable situation in the discussion of energy use during the operational phase on page 66 of the DEIR.

It is stated that "by creating additional roadway system capacity, the project would reduce travel time and improve travel speed on roadways in the project area, which reduces energy (i.e., gasoline and diesel) consumed by vehicles traveling more efficiently in and through the City of San Jose." It is not apparent why improving travel speeds on roadways reduces the use of gasoline.

In addition, improving travel speeds must mean speeding them up, which is exactly what will happen on a roadway with sensitive uses. This increase in travel speeds is a significant impact that is not addressed in the transportation section, yet the City admits to it occurring. General Plan policy CD-2.1 states that the circulation goals and policies include creating a "comfortable and safe pedestrian environment by implementing wide sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds…"

The DEIR states that the project removes street trees and increases traffic speeds. Traffic calming is proposed in concept without any details for Silk Wood Lane on page 169, but there are no traffic calming measures proposed for Charcot Avenue right in front of residences and a school on a roadway where the City admits speeds will increase. For these reasons, not only is an inadequate discussion of an increase in traffic speeds and its effects on sensitive users not included in the DEIR, but the project inconsistent with the General Plan related to reducing travel speeds and energy consumption.

Noise

The project depends on 6-, 10- and 12-foot soundwalls along the Charcot Avenue extension and at Oakland Road to mitigate for significant project-generated traffic noise. These soundwalls will be adjacent to an elementary school and single-family residential uses. There is no discussion of how this mitigation would result in its own environmental impacts – namely aesthetic and shade and shadow impacts.

Soundwalls in the Bay area are primarily constructed along highways and expressways – not along 2-lane roadways. This shows how detrimental and expensive this project will be. If you purchase a home or enroll your children into a school that are along highways or freeways, you understand what you and your children will be exposed to. But who wants to have these tall structures erected in your backyard or along your playground for a project with a very suspect purpose and need?

In addition, there does not appear to be a discussion of the construction impacts of constructing these walls – noise, air quality, greenhouse gas emissions immediately adjacent to residential and school uses? Walls along Oakland Road would be as high as 12-feet. Most highway soundwalls are not that tall. These yards will be shaded much of the time with an inability to grow vegetation at certain times of the year. This impact was not discussed.

Construction of the project will take longer than 10 months to complete, as previously described, yet the construction noise analysis assumes this incorrect timeframe. Residents and school children will be subjected to noise and vibration, including pile driving for much longer. We would like to see an example of a project of this magnitude only taking 10 months to complete. And daytime hours of construction are the most sensitive for school uses.

Cumulative noise has been determined to be significant at backyards, side yards, and at the school. The mitigation is to build walls that separate a community and use taxpayer dollars for a project for which there is no apparent need.

Transportation

Section 3.17.2.2 states that because "project meets certain screening criteria (Table 3.17-2), the project is presumed to result in less-than-significant VMT impacts and a detailed VMT analysis is not required under CEQA." There appear to be two tables in the DEIR labeled as Table 3.17-2, one of which shows existing truck volumes and not any screening criteria. The table on page 138 states the screening criteria.

It should be noted that SB743 was not intended to eliminate traffic analyses – it was only intended to change the metrics by which impacts are determined. Again, these "screened" projects have not been qualitatively tested for VMT impacts. This policy has only been in place for a little over a year and as far as we know, the construction of a new roadway has not been completed in San Jose since they were enacted. Therefore, there is no qualitative proof that the construction of a new roadway as part of a roadway network that has also not been analyzed from a VMT standpoint will not result in significant transportation impacts.

As shown on Figure 3.17-2 of the DEIR, there are ample sidewalks and bike lanes in the project area that provide conveniently located ways to get across I-880, including Brokaw Road where recent commercial development has been constructed. This is where bicyclists and pedestrians will be travelling and they will come down Brokaw Road – they will not be traveling on Charcot Avenue. It is also not shown how this roadway will serve vehicle, bicycle, and pedestrian travel for North San Jose proper. Yet, apparently the "screening criteria" listed in the wrong Table 3.17-2 show the project will improve conditions for pedestrians, bicyclists, and transit. How is this determined with no analysis of a project that is simply just on the books.

There is no evidence that this project continues to be required for North San Jose development to continue to occur.

To have "presumed" that the project would have a less than significant transportation impact because it will provide inconvenient bicycle and pedestrian access is not consistent with the City's VMT policy. The City is relying on this "presumption" to dismiss completing a qualitative traffic analysis consistent with CEQA. A VMT analysis of not only the proposed roadway extension, but also of all NSJADP traffic could very well determine that the roadway is not required. The City should complete this analysis prior to constructing an expensive, unsafe roadway adjacent to highly sensitive residential and school uses.

The traffic volume data (page 142) is too old to be of any value and should be collected again. To rely on old data is in violation of CEQA. Again, it appears that delays occurred during the preparation of the DEIR, rendering the NOP comment responses and traffic data as too old. In addition, whatever traffic data and analysis that was done as part of the General Plan and NJSADP are too old and should be re-run according to the Council Policy 5-1 to determine whether the proposed project, from a VMT standpoint, is still required. Again, to state that the project would not conflict with any plans, ordinances, or policies is disingenuous until a new study is completed consistent with SB 743. Simply including a bike lane on the roadway does not negate the need for qualitative information to be provided related to its environmental impacts.

This project will be constructed with public dollars and/or monies collected as development has occurred. These funds would be better served preparing a new report and providing better bike lanes and transit on existing streets in the project area, which is not an Urban Village. Therefore, project cannot be considered to be consistent with applicable plans and policies encouraging the reduction of greenhouse gas emissions. As we have shown, the project is inconsistent with many specific General Plan policies, including TR-1.1, TR-1.2, TR-1.9, TR-2.7, TR-5.4, and many others.

A VMT analysis was completed for the proposed project even though the City determined that a VMT analysis was not necessary because the project was "screened". The traffic report completed for the project completed an intersection operations analysis that compared existing conditions with the Charcot Extension to Year 2025 conditions with the Charcot Extension.

CEQA requires that the proposed project be compared to the existing conditions at the time the NOP is circulated. In this case, the existing condition is without the Charcot Avenue extension, and traffic conditions over 17 months ago can easily be different than what they are

now. Therefore, the analysis must be corrected utilizing the correct existing condition and more up-to-date traffic data.

Further, it appears that information for the analysis was completed using "interpolation" of traffic volumes. What exactly does this entail? Is real information not utilized? This is not consistent with sound or normal traffic analysis methodology and could result in the utilization of incorrect data for the determination of important and accurate traffic impacts.

As shown on Figure 3.17-3 of the DEIR, there for very limited transit opportunities in the project area. The City's General Plan focuses on encouraging multi-modal improvements City-wide. The VMT screening that was relied on for traffic impacts should not have placed any value on transit for the purposes of screening the project. Better transit in the area, especially along Brokaw Road, where there is none, would provide valuable multi-modal opportunities and be much less invasive to residential and school uses than the construction of a new roadway over a highway.

The VMT analysis in the traffic report and the traffic section of the DEIR concluded that the proposed project would only result in a 0.1% increase in VMT in a 1.5-mile area. How was the 1.5-mile radius for impacts determined and is it adequate? We know of no known scientific data that shows that 1.5-miles is appropriate or if it constrains the impacts inaccurately so as to reduce potential VMT impacts. In fact, this roadway was reportedly a part of the Samsung headquarters traffic considerations and they are 3.7 miles away. North San Jose is a much larger area than the radius shown on Figure 5 of the traffic analysis.

How many times has the model been run for VMT impacts? The VMT Evaluation Tool has only been approved for 18 months and since so little information is given in the DEIR or traffic report, it is difficult to know if the 0.1% is accurate. What are the assumptions in the model? If the difference is so small, doesn't that call into question the actual need for the project? In other words, if there is statistically really no difference in VMT when the project is operational, how can it be said that the project is needed or that it will improve VMT and thus reduce greenhouse gas emissions – a main goal of the General Plan!

The previous means of determining traffic impacts was level of service at intersections. That is no longer the means by which impacts are determined. Again, if a total VMT analysis was done for the General Plan and NSJADP, the proposed project could very well be determined to not be necessary to reduce VMT, the new metric. Why rely on the level of service impacts determined in a 2005 study when the City could run the VMT numbers consistent with the General Plan and come to the reasonable conclusion that the project is not necessary – a much better use of public monies while also eliminating detrimental impacts to residents and school children?

The traffic report also analyzed some "non-CEQA" transportation impacts, including level of service at some local intersections. It was determined that the proposed project would result in significant impacts at the intersections of Paragon Drive/Charcot Avenue and O'Toole Avenue/Charcot, and improvements are recommended in the traffic report that are not included in the project description. These safety impacts are not described under Section 3.17.2.3 or 3.17.2.4 of the DEIR that are related to an increase in safety hazards due to a geometric design feature or emergency access.

The mitigation to improve the safety impacts at this intersection are not described or included in the project, and include "safety measures, such as advanced warning beacons, signage that provide drivers with advance warning of the upcoming signal, and the signal design should consider signal head placement and size to improve its visibility to drivers", (pages 21 and 28 of the traffic report). Bike detection at intersections is also not described in the DEIR. If this is a truly functional bicycle facility as defined by the screening criteria, these improvements must be included.

These improvements are not described in the DEIR project description or the traffic section as a required mitigation measure for safety impacts. Therefore, the project would substantially increase hazards and provide inadequate emergency services in the area. This must not be considered a non-CEQA issue. VMT alone may not get to the details needed to keep the public and school children safe. This safety impact cannot be simply considered to be a non-CEQA issue and must be included in the determination of impacts and identification of mitigation measures. This is in violation of CEQA.

The Average Daily Traffic (ADT) numbers for the new Charcot Avenue are astounding. More than 10,000 new trips in 2025 and 13,000 new trips in 2040 on a residential and school serving street? In fact, it looks as if Brokaw Road and Montague Expressway will have the capacity to continuing to serve the project area and the roadway extension is not needed (Figures 3.17-6 – 3.17-8).

In addition, travel time changes to not appear to be significant enough to warrant years of construction, long-term operational air quality, noise, and greenhouse gas emissions impacts for an exorbitant cost to be borne by the taxpayers and businesses. In fact, as stated on page 162 of the DEIR, "The proposed extension is projected to result in only minimal (i.e., less than three minutes) reductions in travel times for trips with origins and destinations that are located near Montague Expressway." Those major thoroughfares are where the majority of traffic in the area is currently using for vehicle trips. Again, the need for the project is not justified no matter how many previous EIRs prepared years ago assumed its existence.

Trip diversion and traffic calming options in the project area should be discussed in depth with the surrounding residents, school population, and businesses before an option is chosen. To suggest the use of bulb-outs (page 169 of the DEIR) only to then state that they impede emergency response vehicles is not productive or responsive and should be left up to those who will be driving in the area on a regular basis.

Significant Unavoidable Impacts

As previously stated under aesthetic impacts, not only is the loss of trees a significant unavoidable impact, but so is the construction of 10- and 12-foot soundwalls. Also, it is our belief that according to the City Charter, the impact due to the loss of recreational parklands may also require a referendum by City voters to approve.

Alternatives

Eight different alternatives were evaluated in the DEIR. While CEQA requires a "reasonable range" of alternatives be discussed, the fact that eight different alternatives are described may relate to the actual lack of need for the project and the abundance of alternative options. This section also states that the community has not been engaged since 2017 and 2018 – again, stakeholders may have changed dramatically since this time and should be re-engaged as soon as possible so the decision makers can get an accurate lack of enthusiasm for this project.

To determine that the widening of Brokaw Road and/or Montague Expressway is not feasible due to costs is not consistent with what CEQA requires. The proposed project also requires right-of-way, utility relocations, construction of a bridge over an 8-lane state highway facility, intersection improvements, including signals, soundwalls, retaining walls, and many more costly improvements. The DEIR does not include a cost comparison so that this alternative can be dismissed as infeasible.

Instead, CEQA requires a comparison of environmental impacts must be provided. The widening of these roadways may not affect schools or residential areas to the same extent as the proposed project. Perhaps fewer trees would require removal and there would be fewer soundwalls. Recreational areas with playgrounds and playfields may not be affected and significant unavoidable impacts could be reduced. To dismiss this alternative as infeasible is in violation of CEQA and must be corrected. The same could be said for Alternative C.

Because the need for the project has not been established from a VMT reduction standpoint, the No Project Alternative is a viable option and should not be dismissed. Again, just because the project is on the books, does not mean it continues to be required. A new VMT analysis, a much more cost-effective option, could show that based on a new State law and City Council Policy 5-1, the project is not required. Multi-modal options like the extension of BART,

trails, more bike lanes, ride-sharing, and state of the art TDM measures, if included in the No Project alternative could all render the project unnecessary, if a new analysis were to be completed. This is the fiscally responsible alternative.

The construction of a bicycle/pedestrian facility rather than a vehicle crossing of I-880 would be far cheaper, environmental impacts would be far less, and consistency with General Plan goals to reduce VMT and greenhouse gas emissions would be achieved. Businesses, schools, and residences would not be affected in the long-term and construction impacts would be dramatically reduced.

This alternative does meet connectivity and capacity objectives – for bicycle and pedestrian travel. Providing such facilities is the wave of the future and thinking of them only in terms of vehicles is against General Plan policies. Again, just because this improvement was included in the General Plan and NJSADP does not mean it is still needed. A new analysis could show that the future is now for increased non-vehicle, multimodal travel as emphasized in just about every section of the General Plan.

Homeless Habitat

As everyone in California knows we are in a homeless crisis. There have been occasional homeless issues at the business park. However, this physical change in the environment will foreseeably make the situation much worse. According to the *Homeless Encampment Response Report* dated May 23, 2014 by the City of San Jose this project will create a location that has four of the top criteria for developing a homeless encampment. (See Table 1) This location is by a creek, it has an off ramp/retaining wall near a freeway, it's a street and is a bridge/overpass. Moreover, the project creates preferential access between existing homeless encampments east of 880 by bridging the freeway that now divides them. Similarly, the seclusion from view/privacy and shelter from weather makes the location being created by the project preferential. (See *Homeless Encampments on Public Right-of Way, A Planning and Best Practices Guide*, Center for Urban Studies, September 2012, p.30) Transportation agencies need to plan how to address the impacts homelessness. (Id at 2) The DEIR fails in this task.

It is easily foreseeable based on City studies and observation that creation of access to a superior location will likely result is a large homeless encampment where little exists now. An overpass provides warm dry shelter year-round and being near the Coyote Creek it will be a prime location. The fact that an encampment is located at the Brokow overpass makes clear what will happen if the Charcot overpass is built as proposed without any analysis or mitigation. (See Figure 1: Homeless Encampment Map for Waterways)

Courts have held that an EIR should, when looked at as a whole, provide a reasonable, good faith disclosure of environmental impacts. *Laurel Heights, Improvement Ass'n v Regents of Univ. of Cal*, (1088) 47 Cal 3d 376. Building what can only be described as preferential habitat for a homeless encampment and yet not considering the impact this will have on the environment and the community and not disclosing or studying, this foreseeable impact is not good faith. Even worse, failing to disclose and study the issue means the DEIR fails to consider any mitigation which will result in the worse outcome imaginable.

For purposes of CEQA, a project is defined as the whole of an action that has the potential to result in a direct or indirect, reasonably foreseeable, change to the environment. 14 CCR §15378(a) This is to ensure that all the potential impacts of the project will be examined before it is approved. 14 CCR §15378(a)&(d). Here the City is surrounded by a homeless crisis and the City's own studies demonstrate that this project will exacerbate the crises by building this project. But, inexplicably, the DEIR ignores this likely outcome. As for the potential impacts the City, because it is in crisis, knows what will happen if the project is built without disclosure, analysis and mitigation. Nonetheless, for the sake of being explicit and putting evidence in the record here our many studies describing what will like occur:

An ever-growing number of rodents in California—particularly in Los Angeles—is being fueled by a spiking homeless population, according to a study released in July. Travis Fedschun, "Los Angeles, California cities 'overrun by rodents' that pose public health epidemic, study says," Fox News, July 17, 2019. See also Dennis Romero and Andrew Blankstein, "Typhus zone": Rats and trash infest Los Angeles' skid row, fueling disease," NBC News, October 14, 2019. This is a foreseeable impact on the Coyote Creek and the surrounding business community.

"Tasked with cleaning up rapidly multiplying numbers of homeless encampments, Los Angeles sanitation workers have asked the city for more resources to handle a backlog of thousands of service requests. … [S]anitation officials say they have requested $17 million to bring on new staff trained to clean in and around encampments—up from about $6 million this year." "LA sanitation needs $17M to keep up with homeless encampments," Curbed LA, Feb. 22, 2018.

Similarly, the City of San Jose does not have the staff or money clean up these encampments.

Numerous wildfires have originated from homeless encampments (whether from open fires or cigarettes). The Skirball fire that burned more than 400 acres in Los Angeles in 2017 "started as a cooking fire at a homeless encampment, according to an investigation by the Los Angeles Fire Department." Jennifer Medina, "Los Angeles Fire Started in Homeless

Encampment, Officials Say," The New York Times, Dec. 12, 2017. By mid-2018, Skid Row had seen 81 tent fires, up from 59 during the entirety of 2017. Amy Pollard, "Tent Fires Are on the Rise Among the Homeless in L.A.'s Skid Row," Slate, July 24, 2018.

NBC4 reports that L.A. firefighters are now extinguishing almost seven fires a day started at homeless encampments or tents across the city. This is a 211% increase in the number of fires from 2018. Some homeless tap into power lines to provide electricity in their tents; this can cause wires to short out and spark a fire. Firefighters say other fires begin when the homeless use stoves and barbecues in highly flammable tents. Meanwhile, hydrants are disabled by being jerry-rigged with faucets or repurposed as water pumps. Joel Grover and Amy Corral, "Firefighters Lose Critical Tool to Battle Rise in Homeless Fires," NBC4 News, July 22, 2019.

Fires regularly occur at the homeless encampments along the Guadalupe River in San Jose. The impact of these fires on the natural environment along the Coyote Creek and the urban environment of the business park is wholly undisclosed, studied or mitigated.

Brittany Falkers, Portland Fire & Rescue Has Responded to More Than 1000 Homeless-Related Fires in Last 3 Years, KGW (July 30, 2019), https://bit.ly/2ladKNj.

Similarly, on December 6, 2016, a malfunctioning camp stove sparked a fire in a long-term encampment near Legacy Emmanuel Medical Center, according to Portland Fire & Rescue. Although no one was injured, the blaze damaged nearby buildings, including a law office. Everton Bailey Jr., Malfunctioning Stove Sparks Fire, Burning Portland Homeless Camp, Neighboring House (Oregon Live Posted Dec. 6, 2016; Updated Jan. 9, 2019), https://bit.ly/2laj4A8.

Homeless encampments can foreseeably cause significant environmental harm

Workers cleaned thousands of pounds of human waste, and nearly 14,000 hypodermic needles, from Santa Ana River homeless encampments. Some 700 people were living in those encampments. Theresa Walker, "Thousands of pounds of human waste, close to 14,000 hypodermic needles cleaned out from Santa Ana River homeless encampments," The Orange County Register, March 8, 2018.

Communities are now forced to manage a startling volume of dangerous waste. Crews in downtown Portland cleared 52,048, 51,886, and 55,828 biohazards, in 2016, 2017, and 2018, respectively. The needle clean-up counts for the same period were 16,822, 27,787, and 38,394, respectively. Downtown Portland, Or. Clean & Safe Dist., Internal Cleaning Statistics, 2016–2019, available to Counsel; see also Yearly Clean & Safe Program Statistics, http://cleanandsafepdx.com/cleaningsecurity/yearly-statistics.html. The term 'biohazard" primarily consists of human waste.

San Jose has a similar experience in regarding needles during cleanups along the Guadalupe River.

A California water quality control district has sought to address the toxic water that encampments create. An affiliated geologist said: "It's a health issue. You know there's E.coli, there's fecal-born coliform in this water from these buckets and their toilets that are all along the stream." Steve Large, "Debris From Homeless Camps Ending Up In Local Waterways After Storms," CBS Sacramento, Jan. 9, 2018.

According to an NBC report, "[g]arbage and human waste from homeless camps pouring into rivers and creeks are creating a pollution problem in the South Bay." "It's a threat to all the communities around the Bay," said a water district official. "All the water flows through the creeks, ends up in the Bay and carries whatever trash, debris and contaminants." Terry McSweeney, "Pollution Problem: Water District Pulls in San Jose, County to Help Clear Homeless Camps From Creeks," NBC Bay Area, Feb. 9, 2016.

Moreover, there is personal injury and property damage risk to the inhabitants of camps along the Coyote Creek due to potential flooding. There is no good system for warning or saving the homeless from Coyote Creek flooding.

Sex trafficking is rampant among encampments and homeless communities. One journalist reported that there are "between 4,800 and 10,000 homeless minors in Los Angeles on any given night… Many will fall into, or be pressed into, sex work." The National Runaway Switchboard believes that "one in three teens will be recruited into sex work the first 48 hours on the street," and a U.S. Department of Health and Human Services study found that 46% of runaway and homeless youths report physical abuse. Lane Anderson, "Saving 'Throwaway Kids.' in Los Angeles, sex trafficking doesn't look like it does in the movies," Deseret News, December 31, 2015

Many residents who live near encampments are experiencing the dangers of encampments. Typical is Mark Shinbane, president of Ore-Cal Corporation, in Skid Row, who has faced multiple break-ins and thefts and now spends tens of thousands of dollars replacing doors, adding fences, and cleaning needles out of drains. Bob Smiland, CEO of Inner-City Arts, a school in Skid Row, has been forced by encroaching encampments to redirect thousands into security. Students and teachers walk in the street to avoid the tents that clog the sidewalks. See Motion to Intervene, Mitchell v. City of Los Angeles, No.16-CV-1750-SJO (C.D. Cal.), Doc. 120 (June 24, 2019).

In San Francisco, Matthew Zimmerman, who runs Aspect Framing Studio and Art Gallery on Polk Street, told the S.F. Chronicle that "[h]eaps of trash, sleeping bags, and used syringes line the alley bordering his business." "The last couple of years, things have gotten

worse as far as the amount of people that are on the streets and the amount of open drug use is another thing that is pretty detrimental to the community," he said. "I actually just checked my revenue from last year to this year, and I'm down 25%." Bigad Shaban, Robert Campos, Anthony Rutanashoodech, Mark Villarreal and Jeremy Carroll, "Mayor Breed's First Year: Feces, Needles Complaints Decline; Trash Gripes, Homelessness Rise," NBC Bay Area, July 10, 2019.

Businesses in areas near encampments now foot the cost of additional security measures, such as reinforced doors, alarm systems, and guards. Security expenses have grown along with the homeless population. One Oregon business, for example, assumed management of a property in 2008, where a part-time security guard worked for twenty-nine hours a week, primarily greeting guests. By 2017, security services were on the premises forty-nine hours a week, and that number has now reached sixty-nine hours a week to ensure, among other things, that people do not sleep in the building's vestibules.

Businesses have also adapted how they operate—locking down facilities during business hours, closing earlier, and shifting staff responsibilities to ensure their physical safety. This is blighting a neighborhood and should be evaluated. PS Business Parks as well as their business tenants will suffer greatly if this issue is not addressed in a clear eyed and forthright manner. Moreover, the lack of disclosure does not allow discussion of additional liability for property owners due to property owners having few tools to mitigate impacts from encampments adjacent to their properties. It is clear that if the project is built without consideration of the habitat it is creating that businesses will be inclined to find other locations without this problem. This potential project, because it is, inexplicably, not examining the biggest problem in San Jose, is as a result of this oversight creating blight.

For all of the above reasons, the DEIR is legally insufficient to support the Project and needs significant revision.

Respectfully Submitted,

SILICON VALLEY LAW GROUP

Jeffrey S. Lawson

cc clients

Comment P

CHARCOT AVENUE EXTENSION PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT

COMMENT CARD

Comments and questions must be submitted or referred to Meenaxi Raval via e-mail by 5:00 pm November 4th, 2019.

For the official record, please submit your written comment letter and reference ***File No. PP18-044.***

Meenaxi Raval
Department of Planning, Building, and Code Enforcement

200 East Santa Clara St., 3rd Floor
San José, CA 95113
(408) 535-3555

E-mail: Meenaxi.Raval@sanjoseca.gov

Name: Hock Lim

Phone:

Email: hockginlim@yahoo.com.

Date:

Affiliation (if applicable) — none —

Address:

Comment/Question: The environment report generate traffic. What & who decides what is an acceptable or non acceptable options.

Please continue on the back if necessary.

Experts or Politician?

Comment Q

From: Lynn Dinsay-Limqueco
To: Raval, Meenaxi
Subject: Comments on Charcot Avenue Extension Project File No. PP18-044
Date: Monday, November 4, 2019 3:59:08 PM

Hi Meenaxi,

I'm writing to add my thoughts on the Charcot Extension Project. I'm a parent of 2 kids attending Orchard School and a resident a few blocks away from where this project will be constructed.

Based on draft EIR, part of the city's plan to protect the children who are in the nearest pod to the overpass is to build a wall 20ft away from the bldg. How sturdy will the 6ft wall be? Can it withstand the impact of a container truck or worst a lorry carrying fuel/hazardous gas should it pass by and topple over to that side of the overpass? if you foresee that many cars passing by that overpass (increasing in the years ahead), how can it be guaranteed that wall will help soundproof so as to not distract the students during their learning time. Building a wall right next to the play structure doesn't make it any safer for our kids. The city is actually limiting the play area for 880+ kids of Orchard School. Think about it, if you were to build a new school right next to a road. Will that be acceptable and safe? so why build a road next to a school. How is the school going to be compensated for area taken away from it? I hope it's not monetary because it would mean, it's coming from taxpayer's money to put the health and safety of school children at risk.

Why does the city insist on building this overpass when it will just create more noise and air pollution to the back of the school? Why is this extension project more important than the health and lives of students in our area?

Based on photos Draft EIR, existing and proposed, the proposed is showing less greenery. Trees will be removed to make way for a road? When the city should be thinking of putting up more trees to help air pollution?

I hope the city with reconsider building the Charcot Extension Project. It may have been planned many years ago, but overall it brings more harm to students and residents in the area.

Thank you for your kind consideration.

Respectfully,

Lynn Limqueco
Concern Parent/Resident of San Jose

Comment R

LS Lozano Smith
ATTORNEYS AT LAW

Harold M. Freiman

E-mail: hfreiman@lozanosmith.com

November 4, 2019

City of San Jose
Department of Planning, Building, and Code Enforcement
Attn: Meenaxi Raval
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

Re: Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR
File No. PP18-044

Dear Ms. Raval:

Our firm represents Orchard School District ("District"). On behalf of the District, we submit these comments on the Draft Environmental Impact Report ("Draft EIR") prepared for the proposed Charcot Avenue Extension Project ("Project"). As set forth in this letter, the Draft EIR does not comply with the California Environmental Quality Act ("CEQA," Pub. Resources Code, §§ 21000, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 14, §§ 15000, *et seq.*, "CEQA Guidelines.") for both technical and substantive reasons. Moreover, the Draft EIR does not include sufficient information to evaluate potential environmental impacts particularly related to schools. In particular, the Draft EIR fails to adequately examine the very significant impact on the Orchard School ("School") and the safety of the children it serves. **Through this letter, the District emphasizes that this Project has the potential to have a profound negative effect on the District's students, their families, and the residents that reside in the vicinity of the Project.**

By its nature, CEQA is a technical process, but at its heart, the law intends that an EIR serve as an informational document that allows both elected officials and the public to make decisions about projects. (CEQA Guidelines §15121, 15151.) In this instance, the Draft EIR has utterly failed to serve as such an informational document.

The Project will undoubtedly have profound impacts on the School, as well as the businesses and residents that are located in the vicinity of the Project. The District will leave it to its neighbors to raise the many concerns about both the Project and the Draft EIR that specifically impact them. Here, we focus on the extraordinary impact that this Project will have on the School and the San Jose parents and schoolchildren that it serves.

The Project proposes to place a raised overpass immediately adjacent to the existing School, which has been in operation for well over two decades. The edge of the overpass will be merely

20 feet from classroom buildings; cars will pass by only 40 feet from those buildings (assuming that they stay in their lanes and that there are no accidents that would bring traffic even closer or, worse, onto the School's campus). The overpass will level out and go from two lanes to four at approximately the same point that District students will be crossing the new portion of Charcot Avenue to go to and from School. Remarkably, the Project proposes to take almost a half-acre of the District's playing field. Student's views of trees, which the Project will remove, will be replaced with a solid sound wall, and their environment will be subject to noise, pollution and classroom disruption. The District will be forced to reshuffle the back of its School to reconfigure the field, playground, two portable classrooms (the existence of which is not acknowledged in the Draft EIR), and possibly other outdoor and indoor spaces. With the elimination of a parent drop-off/pick-up location behind the school on Silk Wood Lane, all traffic to and from school will now be routed onto the narrow and already heavily-trafficked Fox Lane entrance at the front of the school. This, in turn, may require reconfiguration and expansion of the School's existing entrance, parking lot and pick-up/drop-off area. Like dominoes, the impacts continue, as that in turn may require reconfiguration of permanent school buildings and the School's administrative office.

Students and School staff will have to live through the construction of the Project and the reconstruction of the School that will be caused by the Project. Perhaps most significant of all, many schoolchildren will have to navigate the new thoroughfare that will divide their homes from the School, while many others will now have to fight their way through increased traffic to the front of the School.

Precisely none of these effects are analyzed in the deficient Draft EIR. Despite all of these impacts and more, the Draft EIR concludes that there is no meaningful impact on the School and the families it serves beyond the loss of some recreation area and removal of some trees. This conclusion is extraordinary, unsupported by the evidence, and flies in the face of reason. Most remarkable of all remains the complete failure of the Draft EIR to consider the safety impacts on the School's students.

The City of San Jose's Draft EIR tends to treat the Orchard School as merely a park and not a place where students spend the better part of each day learning and playing. The City seems most concerned with the loss of recreational land, essentially disregarding that this recreational space *is part of an operational public school site.* The Draft DEIR goes so far as to apply incorrect standards of significance that expressly treat this site as nothing more than a City park.

The Draft DEIR does acknowledge the public controversy related to "project location adjacent to an elementary school, including concerns related to increases in traffic, leading to safety, noise, and air pollution impacts." (Draft EIR, p. XIX.) The Draft EIR's cursory analysis of these areas as they impact the School demonstrates that this controversy was of no consequence.

Many of the specific technical deficiencies of the Draft EIR are discussed below. The District requests that the City revise the Draft EIR to address those serious deficiencies and meaningfully take into account the existence of a public school and the impacts of the Project on that public school. Impacts to the School should properly be analyzed, and where the obvious is confirmed – that the Project will have significant impacts on the School – adequate, enforceable mitigation measures *to be implemented by the City* (and not the District or other third parties) should be

identified. The Draft EIR, once revised, should be recirculated as required by CEQA. (CEQA Guidelines §15088.5.)

The City's recent conduct suggests that this Project is a foregone conclusion. This has included a statement essentially to this effect made by City staff to the District. For the CEQA process to be meaningful, such foregone conclusions are prohibited. Agencies may not predetermine project approval or "precommit" to carrying out a proposed action, because a "fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394, as modified on denial of reh'g (Jan. 26, 1989.) If the City is interested in meaningful dialogue about the Project and the District's significant concerns, the District remains willing to discuss these issues. However, at this point, it does not seem that there is a safe, appropriate means to place this substantial highway overpass project literally on top of a public school, nor has the Draft EIR identified a path forward to such means.

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Exhibits

(A) Orchard School District Notice of Completion

(B) Regular Meeting and Public Hearing of the Board of Trustees – Orchard School District, March 28, 1995

(C) Orchard School District Resolution No. 052504-02

(D) Agreement to Dedicate Road Easement between Orchard School District and Summerhill Home

(E) Grant of Easement

(F) Google Maps image of Orchard School

(G) Photograph of Silk Wood Lane taken at School dismissal time

(H) Transportation Analysis Peer Review by Keith Higgins

(I) Greenhouse Gas Emissions Technical Review and Comments by Ron Sissem

(J) Noise Study Peer Review by Walter J. Van Groningen

1. The Draft EIR fails as an informational document as it does not address safety issues that will affect the School.

CEQA is rooted in the premise that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Public Resources Code, §21000 (a).) Naturally, safety is crucial in the maintenance of a quality environment. "The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached." (Public Resources Code, §21000 (d).)

At issue for the District is the safety of the children at the Orchard School. Article I, section 28(c), of the California Constitution states that all students and staff of primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are "safe, secure, and peaceful." CEQA itself is also concerned with a Project's effects on humans, requiring an EIR to examine if there is substantial evidence that adverse effects on human beings will occur. Public Resources Code §21083 (b)(3) requires consideration of whether "the environmental effects of a project will cause substantial adverse effects. The CEQA Guidelines provide that "[a] lead agency shall find that a project may have a significant effect on the environment" requiring preparation of an EIR if the project "will cause substantial adverse effects on human beings, either directly or indirectly." (CEQA Guidelines §15065 (a)(4).) CEQA also focuses on the protection of public health and safety. "The Legislature has made

clear in declarations accompanying CEQA's enactment that public health and safety are of great importance in the statutory scheme. (Public Resources Code, §21000 (b), (c), (d), (g), §21001(b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment.) (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.)

CEQA notes that the people of this state require a quality environment and that all coordinated actions must be taken to prevent thresholds for the health and safety of the people of the state to be exceeded. The health and safety of the most vulnerable of individuals will be called into question with this Project. The placement of the roadway extension will cause children to cross the street on the same grade as cars exiting the overpass. The children will be subjected to the pollution of a construction project and then the pollution of cars using the overpass under Project conditions. The noise effects of Project construction and from the cars using the overpass will have a probable adverse effect on the children and affect their ability to hear instruction. This Project will make it more dangerous for children to reach the school on foot and more dangerous for students to be outside during and after Project construction. The Project will put a raised roadway immediately adjacent to classroom buildings, bringing risk of accidents that will threaten schoolchildren and staff.

This Project represents a significant change in the character of Charcot Avenue at Silk Wood Lane. Previously, students would cross through a car-free zone over an undeveloped, unoccupied area of land to the rear Orchard School gate. After completion of the proposed project, students walking to the school will have to cross a four-lane roadway to access the gate, protected only by a High-Intensity Activated Crosswalk ("HAWK") light and even that minimal protection is not assured by the Draft EIR. Cars will exit the extension on a downslope mere feet away from a school. Cars coming downslope on the roadway extension will be headed east and directly into the glare of morning sunlight. Thus, a driver will face numerous hazardous conditions coming down the overpass, but no analysis is included of the visibility of the HAWK signal for drivers who will be using the extension and the children who will be crossing the extension. The Draft EIR does not examine this effect on the School and its students and does not analyze whether a HAWK light will be an effective way to protect the students who will be walking to the school via Charcot Avenue and Silk Wood Lane.

Figure 3.1-4 of the Draft EIR depicts the before and after appearance of Charcot Avenue at Silk Wood Lane. The photograph depicting the proposed project represents a significant change in the character of the street as it pertains to pedestrians. A student would have to navigate across four lanes of traffic, with multiple cars as well as bicycles providing potential hazards for a student just trying to get to school. Beyond the HAWK light, the Draft EIR itself is silent as to other possible safety measures in the area, including the provision and placement of crossing guards. When questioned in the comment period to the Notice of Preparation about crossing guards, the City improperly deferred any analysis to the future. (See Section 3 below for discussion of improper deferral.) In response to comment 34.28, the City states that "if studies warrant a need, crossing guards may be placed at this location." Per this comment, a request can be made to the City and Police Department for crossing guards. This cursory response represents an inadequate analysis of the very real hazards that will inevitably result as a result of this Project. The placement of the extension in relation to the School raises significant concerns about the physical safety of the

students, none of which is addressed in the Draft EIR. Hazards will increase for the students who cross the street near the overcrossing.

Taking these hazards into account, the Project results in the following dangerous options for children to get to Orchard School:

1. The pedestrian crossway at the new roadway extension, with no mandated crossing guard.

2. The light at the end of Charcot Avenue and Oakland Road, which will be four lanes with turns in both directions and again with no crossing guard proposed.

3. The light where Fox Lane exits onto Oakland Road, which is already dangerous, has two crossing guards, and will see an enormous increase in pick-up/drop-off traffic once the existing informal pick-up/drop-off area at Silk Wood Lane is eliminated as a result of this Project.

4. Elsewhere in front of the School at Fox Lane, which again will have increased pick-up/drop-off traffic.

The School has already dealt with multiple automobile accidents on School grounds. The Superintendent has reported that there have been multiple instances of cars crashing through the school fence from Oakland Road. The roadway extension will funnel more traffic onto that route as cars turn right from Charcot Road to Oakland Road, which will increase the risk of even more accidents occurring, and increase the hazards for students.

This Project should also take into account that national pedestrian deaths have been steadily increasing over the past ten years. The national pedestrian death toll increased to 6,283 last year.[1] California saw 893 pedestrians involved in fatal crashes in 2018. Pedestrian fatalities in urban areas are up 69 percent over the last ten years. According to studies by the nonpartisan advocate groups Smart Growth America and the National Complete Streets Coalition, "we are continuing to design streets that are dangerous for all people...furthermore, federal and state policies, standards, and funding mechanisms still produce roads that prioritize high speeds for cars over safety." This Project, if constructed, will add another dangerous street to an urban area, prioritizing purportedly higher speed and efficiency over the safety of the children of Orchard School and their families.

The possibilities considered in this section are subject either to minimal analysis or no analysis at all in the Draft EIR. In this way, the Draft EIR fails as an informational document under CEQA Guideline section 15121. Under this guideline, an EIR is supposed to inform public agency decision makers and the public of the significant environmental effects of the Project. The Draft EIR is in violation of these guidelines as it does not adequately address the significant effects on student safety. The City plans to implement this Project against the backdrop of increasing dangers to pedestrians and an already existing history of automobile accidents and traffic congestion by or on school grounds.

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[1] https://www.mcclatchydc.com/news/politics-government/congress/article236574323.html

2. The City improperly suggests that impacts on the School can be disregarded because the District should have anticipated the Project.

The City addresses the history of the Project by stating that "developments along the alignment have been planned and approved in anticipation of the proposed Charcot Avenue Extension, which was added to the City's General Plan in August 1994." (Draft EIR 3.11.2.1.) The developments included:

- Orchard School (land purchase for school approved in 1995)
- Super Micro Campus (approved in 1998)
- Residential development along the north side of Silk Wood Lane (approved in 2004).
- Orchard School District dedication of land to City for the existing Charcot Avenue (approved in 2004).

(Draft EIR 3.11.2.1.)

The District's Notice of Completion and Initial Study & Discussion of Environmental Evaluation (Dated February 17, 1995) of the Orchard School site observes that "the proposed location for the new replacement elementary school will permit almost sixty percent of the current and future students to walk to school, thereby significantly reducing required vehicular trips during the morning peak period which may lead to reduced traffic congestion." (See Exhibit A.) Thus, the intent of the School's site selection was to provide a walkable campus for students and to correspondingly reduce automobile trips. As set forth in the Draft EIR, the City, through this Project, seeks to undo these objectives by introducing more traffic into the School's vicinity and severely reducing the walkability of the School site.

The District adopted a Final Negative Declaration and Notice of Determination for the original construction of the School on March 28, 1995. (See Exhibit B.) Comments to the Negative Declaration were provided by the State of California Department of Fish and Game and the Governor's Office of Planning and Research. As reflected in the attached Board Meeting Minutes, the City registered no objection and offered no comments or concerns regarding the location of the School and its relationship to the Project. (See Exhibit B.) If, as the City suggests, the District's concerns with the Project and its future impacts should be dismissed because the District should have been aware that the Project might happen someday, the City correspondingly should have offered some comment on the School's construction in 1995. Indeed, the fact that 25 years has passed since the Project was initially included in some vague and conceptual form in the City of San Jose's General Plan and yet the Project is still not a reality demonstrates the reasonableness of the District building the School many years ago. The District also had no way of knowing that the Project as proposed decades later would be so invasive to the School, including taking 0.44 acres of the School's property.

The City similarly failed to raise the specter of this Project when approving the residential development near the School. The District adopted Resolution 052504-02 on May 25, 2004, to convey an easement for road purposes to the City of San Jose in connection with Summerhill Homes' agreement to purchase 14 acres of property adjacent to the District's school for residential use. (See Exhibit C.) As a condition to the development of the property, the City

required that a portion of the School consisting of approximately 12,000 square feet be dedicated to the City for road purposes and Summerhill Homes requested that the District dedicate an easement for road purposes to the City, and was in fact dedicated to the City. (See Exhibit D, Exhibit E.) The easement consisted of a portion of the Orchard School property. Thus, the City previously had the opportunity to receive land dedications from the District, and took no action to seek additional dedication of property for the Project. This again indicates that the Project was not imminent or even on the foreseeable horizon in 2004. Furthermore, the City's actions shrunk the School site, creating an obstacle to the ability for the District to dedicate even more land in the future.

If the City prioritized the Project and considered the effects of the Orchard School construction and dedication of District land on the Project, then it is likely the City would have taken a more proactive and pragmatic approach than what is reflected above. Starting with the circulation of the District's Final Negative Declaration in 1995, the City offered no input or analysis of the School construction's compatibility with the conceptual Project. Further, the District dedicated land to the City in 2004, at a time when the City contends that the Project was anticipated. If this dedication was truly in conjunction with the Project, there is no explanation as to why the City did not enter into a transaction to acquire the 0.44 acres currently needed for the Project when dedication negotiations were active in 2004, or at a minimum, to raise the issue. Instead, the City chose to wait until now to move forward with the Project, at the cost of the School's fully developed and long-established recreation space and instruction space.

It is also telling that within the past two years, City staff has assured the Orchard School District's Superintendent that the Project would **not** be moving forward in the foreseeable future. Yet two years later, the Project now suddenly seems to be fast-tracked. There was no reasonable basis for the District to expect that the Project was ever likely to come to fruition, particularly in its current iteration.

Another consequence of the City's extraordinary procrastination and inactivity is that the current conditions of the area do not allow the City to replace the lost parkland/recreational acreage. In the City's own words, "there is no vacant land available contiguous to Orchard School that could be purchased and added to the School...therefore, the loss of 0.44 acre of recreational land would constitute an unavoidable effect on the project." (Draft EIR, MM REC-2.1.) Ironically, this impact might have been avoidable if the City had considered the Project and its land needs in 1995 and again in 2004. Nevertheless, the City has chosen to move forward with this project decades later in 2019, with significant negative impact to be felt by the children who attend the Orchard School.

From a CEQA perspective, the City has repeatedly made assumptions in the Draft EIR about existing conditions that are faulty. In many ways, as further discussed below, the Draft EIR reads as an analysis of conditions as they existed in 1994 when some version of the Project was conceived, rather than existing conditions in 2019. CEQA requires that impacts be assessed based on existing conditions, not historical or theoretical conditions. The City cannot now pretend that the School does not exist, and the Draft EIR's propensity to do just that renders the document insufficient under CEQA. The Draft EIR is so fundamentally and basically inadequate that it must be revised and recirculated to address accurate information about existing conditions. (CEQA Guidelines §15088.5(a)(4).)

3. The Draft EIR improperly defers mitigation measures to the District.

The Draft EIR determined that the Recreational Impacts would result in a Significant Unavoidable Impact. (Draft EIR, MM REC-2.1). MM REC-2.1 goes on to state that:

> The City **will work with** the District to determine the appropriate amount of compensation for the loss of acreage required by the Project. If an amount is not agreed upon, the City will follow local, state, and federal laws to determine the appropriate compensation amount to the District. This amount **may** include reimbursement to the District for the cost to reconfigure/reconstruct the existing recreational facilities affected by the project. This **could involve** shifting and reconstructing the affected facilities to the south of their current locations. The intent of this measure is that the replacement facilities would be comparable to the existing facilities in size, function, and quality.

(Emphasis added.)

Similarly, in the Draft EIR, the City recommends that the Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods. (Draft EIR, 3.17.3.7.) The Draft EIR goes on to suggest the School consider staggered arrival and dismissal schedules given the physical limitations of the use of public streets and school parking lots to accommodate the current demand of the school. (Draft EIR, 3.17.3.7.)

"Formulation of mitigation measures should not be deferred until some future time." (CEQA Guidelines §15126.4 (a)(1)B).) Deferral of mitigation is improper per CEQA. "Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.) Further, "an EIR is inadequate if '[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.' " (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670.)

While deferral of *specifics* is acceptable in some circumstances, the lead agency must articulate specific performance criteria and make further approval contingent on finding a way to meet them. (*Id.*) In *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260 ("*Santee*"), an EIR was disapproved by the court based on the fact that it improperly deferred mitigation of impacts to an endangered butterfly and <u>did not include any performance standards or guidelines</u> regarding the future mitigation measures. The court found that the anticipated plan for management contained nonspecific actions, and left the timing and other specifics subject to the discretion of the habitat preserve manager on prevailing environmental conditions. Therefore, the activities were not guaranteed to occur at any particular time or in any particular manner. Further, the EIR in *Preserve Wild Santee* did not indicate that it was in any way impractical or infeasible to specify standards or guidelines. In the current instance, the Draft EIR essentially just concludes that the

District may do something or other in the future and makes a few suggestions. That is not sufficient.

In MM REC-2.1 of the Draft EIR, the City will determine the compensation for the School's land at a future time and if an amount is not agreed upon, the City will follow laws to determine the appropriate compensation. This amount may or may not include reimbursement for reconfiguration or reconstruction of the School's existing recreational facilities, which could involve shifting affected facilities to the south of their current location. In the Draft EIR, the City does not offer much in the way of attempting to mitigate this significant unavoidable impact. There is no definitively formulated measure, and what is actually offered is based on speculation. Further, no definite standards or criteria are offered in this measure. No true consideration is given to the "shifting and reconstructing" of School facilities as a result of the Project and whether such actions would be feasible and what standards would apply. Through its use of non-committal language, the Draft EIR demonstrates an intent to have the District solve the problem at a later time. This is truly a measure that appears to be put off until a later time with the vague hope that the City may provide adequate compensation.

The Draft EIR states that "although the project would impact the ability to drop-off/pick-up students on Silk Wood Lane, it is likely that students would continue to cross Charcot Avenue/Silk Wood Lane as they walk between the School and the neighborhood to the North." (Draft EIR, 3.17.3.7.) In conceding an impact on the students, the Draft EIR puts no effort into mitigating its own self-identified Project impact. The Draft EIR offers no formulated mitigation measures, instead offering suggestions and recommendations as to ways that **the School** could reduce the adverse effects of a City-implemented Project. Any performance criteria is dependent on the School's action. This constitutes improper deferral of mitigation measures under CEQA.

The Draft EIR also disregards that at least one impact cannot be mitigated at a future date: the loss of land. MM REC-2.1 states that the intent of the vague mitigation measure includes making the "replacement facilities...comparable to the existing facilities in size." With the loss of 0.44 acres of playfield, the only way to avoid substantially shrinking the field in size is to shrink the playground or classroom space. The Mitigation Measure fails to indicate how it will result in comparable sized facilities in a School site that is landlocked, surrounded by roads and other development. Will the City condemn property adjacent to the School to the west (the only direction not surrounded by roads) to provide for expansion of the School campus? Is doing so feasible? How will this be determined? Again, there are no standards set forth to address these complex issues.

4. The Draft EIR improperly delegates authority for determining and implementing mitigation measures to the District.

The Draft EIR not only defers mitigation measures, but effectively delegates them from the Project proponent, the City, to another party altogether. MM REC-2.1 of the Draft EIR requires the District to take some affirmative action in working to determine the appropriate amount of compensation for the loss of acreage required by the Project. This is effectively delegating formulation of a mitigation measure to the District. Also included in MM REC-2.1 is the consideration that the District could reconstruct or reconfigure the existing recreational facilities.

This is another vague, half-hearted measure that shifts responsibility for the mitigation measure to the District. This is an improper deferral in violation of CEQA.

Mitigation measures are also delegated to the District in the context of the Project's impact on the School's drop-off/pick-up plan. Here, the City relies on the District to formulate mitigation measures to deal with the impacts of its Project on the school's drop-off/pick-up plans. In 3.17.3.7, the Draft EIR offers a few suggestions for how the School can reduce the Project's adverse effects. This again is an attempt by the City to shift responsibility to the District to implement vague, incomplete mitigation measures. This again results in improper delegation, in violation of CEQA Guideline section 15025(b)(1) which states that the decisionmaking body of a public agency shall not delegate reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90, the City of Richmond prepared a Draft EIR for a refinery to be built by Chevron within city limits. The Draft EIR prepared a menu of potential mitigation measures with specific measures to be selected by Chevron and approved by the City Council a year after project approval. (*Id.* at 92.) The Court of Appeal agreed with the trial court that the City's decision to approve the project, after giving the City Council final approval over a mitigation plan that Chevron formulates a year later outside the EIR process, does not satisfy CEQA's requirements. (*Id. at* 95.) Similarly in *POET, LLC v. State Air Resources Bd.* (2013) 217 Cal.App.4th 1214, 731, as modified on denial of reh'g (Aug. 8, 2013), the Air Resources Board violated a fundamental policy of CEQA when it gave the responsibility for completing the environmental review process to its Executive Officer because he did not have the authority to approve or disapprove the project. Therefore, CEQA compliance cannot be delegated to an official or body who is not responsible for project approval. (*Id.*at 731.)

These deferrals by the City all seek to delegate consideration of mitigation measures, and to shift responsibility to the District for this Project, much like the mitigation measures considered by the city of Richmond and Chevron in *Communities for a Better Environment* and the responsibility delegated by the Air Resources Board in *POET.* Thus, the District would be left to clean up the substantial mess left by this Project. Not only will public land be taken from the District for the Project, the District will have to determine how to mitigate the impacts of this loss of land. As stated above, there is also inconsistency in the City contemplating the reconstruction or reconfiguration of Orchard's recreational facilities as part of its mitigation measures, yet also ignoring these measures in its discussion of project impacts, which is further addressed below in Section 4c.

5. In delegating mitigation measures to the District, the Draft EIR errs in not designating the District as a responsible agency.

As stated above, the Draft EIR shifts responsibility for mitigation measures to the District. In the Draft EIR, the City designates only the California Department of Transportation (Caltrans) as a responsible agency. (Draft EIR, p. 2.) Per the Draft EIR, Caltrans will approve the portion of the project within its right of way. "Responsible agency" means a "public agency other than the lead agency, that has discretionary authority over some portion of a project." (CEQA Guidelines, §15381.) For projects requiring an EIR, the lead agency consults with responsible

agencies and trustee agencies both as regards the proper scope of the EIR, and as to the substance of the EIR. (CEQA Guidelines § 15082 & 15086 (a)(1).)

Through the Draft EIR, the City relies on the District to take action to dedicate land for the Project, determine compensation for the lost acreage, review its drop-off/pick-up policies, and reconfigure its School to accommodate the Project. These actions should appropriately be viewed as carrying out portions of the Project. Indeed, without the District's Land and other actions, this Project could not proceed. Therefore, the Draft EIR improperly fails to designate the Orchard School District as a responsible agency and the District should have been consulted with as such. By not designating the District as a responsible agency, the City has deprived the District of its opportunity to consult on the proper scope and substance of the EIR. That, in turn, might have avoided some of the absurd results of this Project

6. The Draft EIR fails to analyze the potential impacts of reconstruction of school facilities.

In MM REC-2.1, the Draft EIR asserts that the Mitigation Measures would not result in any new permanent impacts since they would be limited to the replacement of existing facilities at the same location. Though it would result in temporary noise and air quality impacts during the construction phase for the reconfigured/reconstructed facilities, the Draft EIR generically states that any resulting impacts would be mitigated by the implementation of standard construction measures for noise, water quality, and dust. (Draft EIR, p. 133.) These standard construction measures, and the City's general failure to address enforcement of these measures is discussed in subsequent sections of this letter. The replacement or reconstruction of the existing facilities would in fact have a significant effect on the children of the Orchard School. This impact is not considered in the Draft EIR. There are at least three effects stemming from the reconstruction of School recreational facilities that should have been analyzed in the Draft EIR:

a. Social and economic impacts stemming from physical impacts.

b. Direct and secondary physical impacts.

a. The Draft EIR fails to examine the social and economic impact on the School stemming from physical change.

CEQA Guideline section 15131 deals with the Economic and Social Impacts of a Project described in a Draft EIR. Subpart (b) states that "economic or social effects of a project may be used to determine the significance of physical changes caused by the project." Section 15131 (b) includes the following examples: "if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant...as an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment...the religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices." "Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain

the reason for determining that the effect is significant." (CEQA Guidelines 15131(b).) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. (CEQA Guideline 15131(b).)

The example in Section 15131(b) regarding religious practices is instructive in analyzing the impacts of the social impacts of the Project. The significant effect on the environment would arise out of the disturbance of the School's educational practices. Under Project conditions, the School would have to adjust to a loss of space and additional noise, during Project construction and then during Project operation. The areas that the Draft EIR considered solely as lost parkland/recreational acreage are also areas of instruction, used for outdoor education activities including physical education. In particular the loss of space may present a challenge to the School's ability to meet its legal physical education requirement. "Instruction in physical education in an elementary school maintaining any of grades 1 to 8, inclusive, shall be for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period." (Education Code § 51223(a).) In order to meet this legal requirement, physical education activities may be shifted to the School's indoor facilities, particularly during Project construction, forcing the School to scramble to meet its legal physical education construction environment. Any limitation on this ability to hold physical education classes outside may hinder the school's ability to meet this legal requirement.

The additional noise following Project completion will make it harder for School staff to monitor and instruct students in the outdoor areas. Children may no longer be able to participate in sufficient recess outdoors. Another concern raised by the loss of land is whether the School will have the appropriate room outside to assemble its students for emergency drills and actual emergencies, or how these events can be handled during construction of the Project. It is likely that the challenges discussed above will lead to a reconfiguration or reconstruction of the School site, which will have an economic effect on the School as well. In fact, the Draft EIR acknowledges, at a minimum, that reconfiguration of the play areas may be needed. (Draft EIR, MM REC-2.1.) However, no consideration is given to the cost of such reconfiguration, which may extend well beyond recreation areas, as discussed below.

b. The Draft EIR fails to analyze the direct and secondary physical impacts resulting from reconstructing the School.

Any reconstruction of the School's recreational facilities would set off a domino effect that will have significant physical impacts on the School. The Project would have a severe and immediate impact on the School's baseball field. Per the Draft EIR, the north bench area, backstop area, the northeast corner, and the north spectator bleachers of the field will be affected by the Project's taking of land. (Draft EIR, 3.16.2.2.) Any reconfiguration of the baseball field will also impact the two portable classrooms that are located at the outer edges of the baseball field grass. The two portable classrooms house the school music program and an English class. The portable classrooms were added to the School in the 2015-2016 school year, years before the Draft EIR was produced. Despite this, the portable classrooms are missing from many of the maps and photographs in the Draft EIR, and are never fully and directly addressed. (See Depiction in Exhibit F for a more recent depiction of the School and the portable classrooms.) No consideration is

given to the effects on the educational program of diverting students and portable classrooms from the School's outdoor area in order to accommodate the project. If the project is implemented as described in the Draft EIR, classroom space and play space will be taken from the school and the already crowded school building may have to reabsorb the programs from the eliminated portable classrooms. Thus the amount of shifting and reconstructing of affected facilities (as laid out in MM REC – 2.1) is more significant than addressed in the Draft EIR. The areas that the Draft EIR considered solely as lost parkland/recreational acreage are also areas of instruction, used for outdoor education activities including physical education.

The Project also shows the placement of a sound barrier around the school as a supposed mitigation for the Project's noise effects. (Draft EIR, Figure 3.1-4.) The placement of this sound barrier would be right next to the existing play structure, which would create safety risks for students playing on the area of the structure next to the top of the short six-foot wall. These risks would necessitate the reconfiguration of this play area, which would then affect the reconfiguration of the two existing portable classrooms and the School's ball field.

Additionally, the front of the School may need to be reconfigured to absorb more traffic due to the loss of the Silk Wood Lane informal pick-up/drop-off area. (Draft EIR, 3.17.3.7.) The significant traffic impact on the School is discussed below. There is no practical way for the small parking lot and drop-off area in front of the School to absorb the many drop-offs that will need to be rerouted. Any reconfiguration of the front of the School may in turn impact both classroom buildings and the limited space available for recreational facilities. There is very little available space between the District's front parking lot and the administration and classroom building, as seen in the depiction. (Exhibit F.) Enlarging or altering the parking lot from drop-off/pick-up will almost certainly require relocation or reconfiguration of permanent buildings, with accompanying tremendous cost and School disruption.

Inexplicably, Section 3.15.2.1 of the Draft EIR discusses Project impacts and states that it is not a Project that would construct new buildings and that no new public service facilities would be needed if the project is constructed. The wording of this findings omits that reconstruction on existing buildings, specifically at the School site, will take place. This reconstruction is already contemplated in MM REC 2-1, which states that "this amount may include reimbursement to the District for the cost to reconfigure/reconstruct the existing recreational facilities affected by the project...This could involve shifting and reconstructing the affected facilities to the south of their current locations." In this mitigation measure, the Draft EIR concedes that reconstruction of School facilities may be necessary, which is inconsistent with its conclusions in Section 3.15.2.1.

All reconfiguration of the School's recreational facilities would have to take into account the limited space of the School site due to the loss of acreage required for the Project. It is entirely possible that the School will not have enough land to reconstruct its recreational facilities, portable classrooms, front parking lot, and drop-off/pick-up area, and possibly permanent school buildings sufficiently as a result of this Project. Any reconfiguration of the School's facilities would involve additional construction above and beyond what is required for the Project. This would result in disruptive noise and odors, and would significantly likely limit usage of the outdoor areas of the school site. Thus, MM REC-2.1 would give way to numerous scenarios that would cause physical impacts. The lack of analysis of these impacts renders the Draft EIR inadequate under CEQA.

7. The Draft EIR does not meet its purpose as an informational document because it fails to provide an adequate description of the environmental setting related to the School.

The City's analysis of the project's traffic impacts is woefully inadequate because it fails adequately to examine the safety impacts on school children as well as the traffic impacts stemming from the closure of the portion of Silk Wood Lane currently being used as a pick-up/drop-off area. An environmental impact report is required to include a description of the physical environmental conditions in the vicinity of the project *as they exist* at the time the notice of preparation is published. This environmental setting constitutes the baseline physical conditions by which the lead agency determines whether an impact is significant. (CEQA Guidelines §15125 (a).) "Generally the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective." (CEQA Guidelines §15125 (a)(1).) The Draft EIR does not accurately describe the conditions of the Silk Wood Lane and Fox Lane pick-up/drop-off areas. The Draft EIR also fails to discuss current pedestrian and vehicle travel to and from the School.

a. The Draft EIR does not accurately describe the School.

As stated above, the Draft EIR's photographs do not accurately depict the School site. The outdated photographs on pages 7 and 196 of the Draft EIR (and on many other pages) do not account for the two portable classrooms that were added to the school in 2015-2016. (See Depiction in Exhibit F for a more recent depiction.) The loss of acreage would lead to the need to reconfigure outdoor play/physical education areas, leading to the reconfiguration of these portable classrooms, which would impact school curriculum and the classroom buildings. The Draft EIR does not adequately assess these existing conditions.

b. The Draft EIR does not adequately describe the impact of the pick-up/drop-off area on Silk Wood Lane.

In examining the impact on the School's pick-up/drop-off areas, the Draft EIR emphasizes that it is unlawful for vehicles to stop/park along the south side of Silk Wood Lane and under the Project it would no longer be possible for cars to stop/park illegally along the south side of Silk Wood Lane. (Draft EIR, 3.17.3.7.) On that basis, the City concludes that this would result in a greater use of the official Fox Lane drop-off/pick-up area. (*Id.*) However, the City also dismisses the existence of illegal stopping behind the School. Even prior or existing illegal activities cannot be ignored if they are part of the existing environmental setting. (*Riverwatch v. County of San Diego* (1999) 76 Cal App. 4th 1428, 1453.) Yet the City chooses to ignore the existing condition of the "illegal" pick-up/drop-off area in its analysis, and elsewhere the Draft EIR concludes that the Project would have no effect on the designated pick-up/drop-off area in front of the School. (Draft EIR, 3.17.3.7.) Any changes to the Draft EIR would have to address these glaring discrepancies. "An EIR cannot properly and accurately assess the impacts of the project or determine appropriate mitigation measures if it does not include adequate consideration and documentation of the existing environmental conditions." (See, *San Joaquin Raptor/Wildlife Rescue Center, et al. v. County of Stanislaus* (1994) 27 Cal.App.4th 713.)

According to the Draft EIR, parking or stopping along the south side of Silk Wood Lane at any time of day is currently prohibited. (Draft EIR, 3.17.3.7.) That determination is the extent of the City's analysis of the Silk Wood Lane parking situation, conveniently ignoring the reality that it is currently being heavily used as a major drop-off/pick-up point for the school. The District has observed that approximately 300 students routinely enter the school through the school access gate on Silk Wood Lane. These 300 students enter the gates both as pedestrians from nearby housing, and more substantially, students who have just been dropped off at the School by car. A simple visit to the School at any pick-up or drop-off time shows cars lined up. (See Exhibit G.) (Photograph taken by the undersigned at 2:09 P.M. on Thursday, October 17, 2019 as cars are just beginning to queue for pick-up on Silk Wood Lane.) The City appears to have failed even to visit the School it is impacting severely as part of the Draft EIR to observe existing conditions.

Whether informal or not, the usage of Silk Wood Lane is significant and eliminating its usage would lead parents and caregivers to find new pick-up/drop-off locations. Connecting the dots laid out by the City, the remaining official drop-off/pick-up areas are on Fox Lane and Oakland Road. By process of elimination, parents who previously used Silk Wood Lane would be forced to redirect, resulting in an influx of new traffic on Fox and Oakland. Despite this logical conclusion, the City states that "the Charcot Extension would have no effect on the school's drop-off/pick-up areas and/or parking lots that are located on Fox and Oakland." (Draft EIR, 3.17.3.7.)

c. The Draft EIR fails to take into consideration the existing difficulties in the official drop-off/pick-up areas.

The current pick-up/drop-off situation at the School is extremely challenging and this reality is not reflected in the Draft EIR. The official pick-up area on Fox Lane fills the narrow School parking lot with cars at the School's drop-off and pick-up times. The informal pick-up area on Silk Wood Lane is also extremely congested at the drop-off and pick-up times. The City intends to eliminate the informal drop-off/pick-up area on Silk Wood Lane, with the result that this will redirect pick-ups into an already cramped pick-up area in the Fox Lane parking lot. Many Orchard School staff members report extreme difficulty in exiting this parking area, due to the already heavy congestion. This Project will have the effect of changing the condition of the School pick-up/drop-off area from bad to untenable. The Draft EIR does not account for additional congestion to this parking area and surrounding streets as well as the resultant monitoring and safety issues. An increase of cars in the drop-off/pick-up area increases the risk of automobile and pedestrian accidents. The Draft EIR again does not take into account these existing conditions at the Project site, in violation of CEQA. The traffic impacts are discussed further below in Section 7.

d. The Draft EIR does not describe current paths of travel to and from the School.

The Draft EIR consistently fails to address the paths by which students, families, and staff go to and come from the School. (See Exhibit H, Traffic Peer Review, p.1 and 3, Section 7f and Section 7g below.) This is another failure to describe, analyze, or consider existing conditions, rendering the Draft EIR inadequate.

8. The Draft EIR does not contain an accurate Project description.

The District is concerned with a number of inaccuracies in the Draft EIR's Project description. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *Sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193.)

With respect to the Traffic Improvements section of the Project Description, Bullet 1 states "Charcot Avenue would be extended as a two-lane roadway from Paragon Drive on the west to Oakland Road on the east." (Draft EIR, p.8.) This is incorrect, as Charcot Avenue would be **four lanes** along the Orchard School frontage. Although this information is tucked away in later discussions, it is incorrect in the opening bullet for the proposed changes.

Further, while retaining wall heights are identified for some sections of the proposed roadway, the Project description fails to identify the height of the retaining wall fronting Orchard School. (Draft EIR, p. 10). This information is critical to analyzing the environmental effects of the Project including, but not limited to, visual impacts, air quality and health risk impacts, etc. On page 26 in the Aesthetics analysis, the Draft EIR concludes that the proposed roadway extension itself would result in a significant visual impact. The mitigation presented requires construction of a six-foot high noise barrier to include aesthetic treatment. It's not clear how placement of a six-foot high noise barrier reduces the visual impacts of the new road alignment to a less than significant level. Typically, noise barriers are considered by the City of San Jose and others to be an adverse visual impact. (Envision San Jose 2040 General Plan 2040 Policy CD-4.11.)

The Draft EIR should be revised to correct the Project description, to identify clearly the height of the proposed retaining walls along the school property, and to evaluate the visual impact associated with the retaining walls.

9. The Draft EIR errs in finding the transportation impact to be of a less than significant Impact.

Traffic Engineer Keith Higgins identified significant impacts to traffic operations at the Orchard School in his peer review. (See Exhibit H.) The following are some of the major impacts identified in this review:

- The Project will result in substantial increases in traffic volumes and drop-off and pick-up activities at the School that have not been quantified in the Draft EIR. The analysis also improperly defers to the District the responsibility for correcting any operational problems.

- Impacts on the Silk Wood Lane neighborhood north of the roadway extension should be quantified, and a mitigation strategy should be developed and funded by the Project.

- Other impacts may be created such as on turning movements at arterial intersections that will receive increased traffic from the new area-wide travel patterns that will result from the Project.

- Further analysis of several design components of the roadway extension is also recommended.

- School area vehicular, bus, pedestrian, bike, and pick-up/drop-off operations and neighborhood traffic operations all have serious safety implications. The Project will require modifications to School access for all travel modes as well as its pick-up and drop-off facilities. These need to be analyzed in detail with appropriate mitigations identified and implemented.

- There is also concern regarding the proximity of existing buildings to the Project. A discussion should be included regarding clear zones and potential extension of the bridge guardrail or sound wall.

- There is no discussion of pedestrian facilities in the vicinity of the School.

- Certain intersections should be studied for additional times and pedestrian traffic.

- There is also concern regarding the queue on eastbound Charcot Avenue approach to Oakland Road and how it will extend past the Silk Wood Lane intersection under year 2025 conditions and will increase in year 2040. Analysis of how the HAWK light and raised median will function with the longer queues is needed.

- The Draft EIR's discussion of the installation of a new pedestrian only signal or HAWK light is inadequate. Additional analysis is needed regarding what type of control will be installed and when this decision will be made is of concern; how the control would function with a raised median along Charcot Avenue across the intersection; discussion of queuing, sight distance, and geometric elements should be provided for the Silk Wood Lane intersection assuming it is signalized or controlled by a HAWK.

- Sight distance is an issue on the westbound Charcot Avenue Extension approach to Paragon Drive due to the crest vertical curve across the I-880 overcrossing. Sight distance for the eastbound Charcot Avenue Extension should be discussed at the Silk Wood Lane intersection.

- Traffic volumes on Fox Lane will increase at least 50% due to the factors listed above. This additional traffic on Fox Lane, combined with the additional pick-up, drop-off and pedestrian activity will further complicate and exacerbate traffic operations at Orchard School. The Draft EIR should quantify these factors and the resulting traffic volumes and traffic operations on Fox Lane.

- The Draft EIR states that the Project does not include any substandard geometric design features or incompatible uses that might result in a substantial increase in hazards. It states

that the Project therefore has no impact. The above comments on the transportation analysis identify significant Project impacts on Orchard School traffic operations that have the potential to result in safety issues during student drop-off and pick-up. The Project also has the potential of increasing neighborhood traffic on Silk Wood Lane that will have safety effects. These are direct results of the geometric design features that eliminate Orchard School drop-off and pick-up operations on the existing Silk Wood Lane and on the barrier to school-age pedestrian traffic created by a high-volume arterial where no roadway currently exists.

- The Project's effects on drop-off and pick-up operations at Orchard School described above have the potential to impede emergency access to Orchard School, Fox Lane and the business park southwest of Orchard School.

Additionally, the District's review of the Transportation Analysis finds that the below areas are discussed inadequately and will need to be addressed in a recirculated Draft EIR.

a. Vehicle miles traveled analysis

The City considered the effect of the proposed Charcot Avenue Extension on all major roadways within a 1.5 mile radius, by conducting an evaluation of Vehicle Miles Traveled (VMT) as called for in CEQA Guideline section 15064.3. (Draft EIR, Table 3.17-4.) For purposes of roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. (CEQA Guidelines §15064.3(b)(2).) The evaluation shows that the Project would result in a 0.1% increase in VMT under existing, year 2025, and year 2040 conditions. Per the Draft EIR, these are the below the established 0.3% VMT thresholds for significance as set forth in the City of San Jose Transportation Handbook, April 2018, shown in Table 3.17-3. Thus, the Draft EIR states that coming in below the threshold will result in no impact.

Additionally, for this evaluation, the City arbitrarily chose to examine a 1.5 mile radius, without any substantial justification for selecting this distance. Further, the evaluation is brief and conclusory, with little explanation of the methodology. As with most of its analysis in the Draft EIR, the City fails to address the impact of an increase in vehicle miles traveled and how it affects the School and the safety of the students who will be in the vicinity of the Project.

b. Changes in traffic conditions on Fox Lane

According to the City's Transportation Analysis, "changes to the informal use of Silk Wood Lane for student drop-off/pick-up…will result in a greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas. (Draft EIR, Appendix K, p. 50.) Thus a greater use of the Oakland Road and Fox Lane drop-off/pick-up areas contradicts the Draft EIR's statement that those areas would not be affected. Particularly troubling is that the greater use contemplated on Page 50 of the Transportation Analysis, especially of Fox Lane, is not reflected in the Transportation Analysis' own quantitative analysis. The quantitative analysis measured the "plus project roadway segment traffic volumes" of various roadways in the vicinity of the project. With respect to the existing and plus project roadway segment traffic volumes on Fox Lane, Table 8 shows zero percent change from existing to plus project on AM, PM, and ADT. (Draft EIR, Appendix K, p. 34.) This is

inconsistent with the Transportation Analysis's findings of greater use of Fox Lane. Further evaluations of the Year 2025 and 2040 and their associated plus project volumes also find zero percent change in the usage of Fox Lane. (Draft EIR, Appendix K, p. 35-36.) This conclusion has no basis and is contradicted within the Draft EIR.

c. Increase in hazards due to design features or incompatible uses

Further, under Section 3.17.2.3 of the Draft EIR, the City concludes that "the project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses." (Draft EIR, p. 152.) However, the very nature of the overcrossing and where the cars exit the overcrossing would increase the hazards for schoolchildren who are crossing the street in order to access the School's gate. The City attempts to address this in Section 2.3.1, which states that a new pedestrian-only signal such as a HAWK beacon would be installed along Charcot Avenue at Silk Wood Lane. The HAWK light will be located approximately where the road expands from two to four lanes, which puts it in close proximity to the traffic light on Oakland Road. Thus, when the HAWK light is activated and there is a red light at Charcot Avenue and Oakland Road, cars will be trapped, which will lead to traffic jams in the area. Therefore, the geometric designs of the Project would only serve to increase these hazards for student pedestrians accessing the School.

d. Emergency access impacts

The Draft EIR concludes that the Project would not result in inadequate emergency access. (Draft EIR 3.17.2.4.) Per the Draft EIR, the extension "would be available for use by emergency vehicles that, depending on the location of call-for-assistance could reduce response times." (*Id.*) The Draft EIR's analysis is minimal and provides no real assurance that response times would improve. The Draft EIR does not address the impact caused by an additional east-west crossing and an increase in VMT on emergencies and emergency access. It is certainly possible that an increase in miles traveled and the additional roadway attributable to this project would create a higher potential for motor vehicle accidents. These conditions would also create a higher potential for longer emergency response times since there would be more cars traveling more miles due to the Project roadway. Additionally, emergency vehicles coming over Charcot Avenue will have to deal with additional obstacles, including having to safely maneuver around students at drop-off/pick-up areas. Emergency vehicles may also encounter challenges responding to calls during periods of heavy congestion on Fox Avenue during those hours, which will be exacerbated by the additional pick-up and drop-off traffic that will redirect from the back of the School to the front as a result of this Project. All of these very real possibilities were not analyzed. This possible negative impact is not addressed in the Draft EIR, again in violation of CEQA by not adequately informing the public about significant environmental effects.

e. Potential traffic calming measures

The City attempts to address Potential Traffic Calming Measures in the EIR. However these measures again result in another improper deferral. The Draft EIR concedes that "the effects of a roadway Project such as the proposed Charcot extension on surrounding residential streets like Silk Wood Lane are of concern." (Draft EIR, p. 169.) The Draft EIR considers extending curb extensions (bulb-outs), but then notes that these extensions result in a loss of on-street parking and

also impede emergency response vehicles and other trucks. (Draft EIR, p. 169.) This discussion is extremely vague and results in no solutions or proposed mitigation measures. Traffic calming measures (stop signs, stoplights, and crossing guards) involving the School site were not discussed adequately as well. The City's half-hearted discussion of Traffic Calming Measures runs afoul of CEQA as it fails to commit itself to mitigation and adopt specific performance standards that the mitigation will achieve. (CEQA Guidelines § 15126.4 (a)(1)(B).) The Draft EIR only mentions these potential calming measures, without committing to specific action or moving forward with standards.

The Draft EIR states that the impact on Transportation as a result of the Project will be less than significant. This finding is inconsistent with this section of the Draft EIR, which finds the Project effects to be of concern to residential streets like Silk Wood Lane such that it merited discussion of traffic calming. A recirculated Draft EIR should address the likely impacts of the Project on the surrounding residential streets and identify concrete enforceable mitigation measures to offset those impacts.

f. Changes in travel times due to the Project

The Draft EIR performed a quantitative evaluation of travel times with and without the proposed roadway extension in Section 3.17.3.5. The evaluation consists of travel times to and from major residential and employment destinations within a general two-mile radius of the Charcot Avenue Extension. The focus of the analysis is trips with origins and destinations that are located near Montague Expressway and Brokaw Road. Missing from this section is any analysis of the travel times to and from the Orchard School from its surrounding residential neighborhoods. This lack of meaningful analysis regarding a relevant site within this Project area is improper and unacceptable. Similarly, the discussion of effects of the Project on bicycle and pedestrian facilities suffers again from a lack of attention paid to the School. The Draft EIR focuses solely on the pedestrian routes crossing I-880 and again fails to analyze the Project's impact on bicycle and pedestrian traffic to and from the School site. The Draft EIR does not measure the current pedestrian and bicycle activity occurring in the vicinity of the Orchard School including students traveling to and from the School. (See Exhibit H, p. 2.) Nor does it measure the amount of students who access the School via Charcot Avenue and Silk Wood Lane. Therefore, no measurement of current or future activity is provided for use of the extension or crossing the extension to access the School, which fails to provide the public with information in a manner that is meaningful and useful.

g. Effect of project construction on traffic patterns near the school.

The Draft EIR fails to address the Project's impact on school pedestrians during the Project construction. In the Comments to the "NOP", comment 34.24 addressed the impact on walkways to School during construction especially for students coming from the north of the School. The City's response to 34.24 is that "a Construction Management Plan will be developed and implemented to ensure the safety of all persons that will be affected by the construction." The City again improperly defers this analysis to a later date and again fails to address the Orchard students directly. As there is no standard established for this Construction Management Plan, questions abound, including the staging of construction trucks and equipment and its potential effect on traffic, the School, and nearby residences. During construction, the flow of traffic and pedestrians will change, which is another area that the Draft EIR fails to examine. The Draft EIR does not

address the location of construction staging for the duration of the project. The District is concerned about the location of the staging and is concerned about the effects of construction staging on the safety of the children and traffic surrounding the School. Thus, the Draft EIR again violates CEQA by improperly deferring analysis and failing to provide the public with meaningful information on the significant environmental effects of the project.

h. Changes in vehicle hours traveled and speeds due to the project

The Draft EIR also analyzes Changes in Vehicle-Hours-Traveled and Speeds due to the Project. The results of the minimal analysis show that the project will very marginally reduce Vehicle Hours Traveled and increase average speeds. Specifically, Table 3.17-10 shows the changes in average speed between no project and project conditions:

Year	No Project	Project	Percent Change
Existing	25.22	25.28	0.2%
2025	17.49	17.62	0.8%
2040	14.35	14.49	1.0%

Here, under existing, 2025, and 2040 conditions, the average speed under Project conditions is only slightly faster than under no Project conditions. This is evidenced by the change percentages of 0.2%, 0.8%, and 1.0%. This section does not specify whether this data applies to the City as a whole or if it only applies to a certain radius around the Project site. As speeds will only gradually increase overall due to an increase in the number of vehicle-miles traveled, the difference in speeds from Project conditions to no Project conditions makes very little difference. In viewing the data above, these increases in speed are negligible and hardly speak to the efficiency boasted of throughout the Draft EIR. This Project will have significant impacts across the board for the trivial and conclusory gains described in this table.

i. Changes in truck volumes due to the project and changes in travel time due to the Project

The Draft EIR discusses changes in truck volumes to the Project in Section 3.17.3.4. According to the City, the use of the Project by large trucks will not be prohibited. The City fails to analyze the impact truck traffic may have on the safety of the students at Orchard School. It stands to reason that the increased hazards contemplated in 3.17.2.3 of the Draft EIR are exacerbated when it is truck traffic that is barreling down the overpass towards students attempting to cross the street to access the School. The Draft EIR evaluates changes in travel time due to the Project in Section 3.17.3.5. Included in the evaluation are travel times to and from major residential and employment destinations within a general two-mile radius of the project. The City again chooses an arbitrary two-mile radius and fails to explain the rationale for this decision. The City's analysis of travel times is incomplete as it once again omits any discussion of the School and projected travel times to and from the School, particularly for drop-off and pick-up. A School serving students at the epicenter of this Project must appropriately be considered a major destination within the vicinity of the Project, and must be studied for the Draft EIR's analysis to be adequate.

j. Conclusion regarding transportation analysis.

Based on the District's concerns which have been outlined in this section on Traffic and Transportation, the District strongly disagrees with the conclusion that the Project will have a less than significant impact and believes that the discussion of transportation is unsupported, inadequate, and in violation of CEQA. The District urges the City to conduct a more adequate analysis of the Project's impacts on traffic and transportation before schoolchildren are allowed to be harmed by the Project. Given these concerns and the lack of mitigation measures to address them adequately, the Draft EIR must be revised and supplemented to analyze the significant issues of traffic and safety as they relate to schools. Greater traffic analysis that **specifically takes the District and its students into consideration** is required. (See *Chawanakee Unified School Dist. v. County of Madera* (2011) 196 Cal.App.4th 1016, 1029.)

10. The Draft EIR errs in finding the air quality impact and greenhouse gas emissions impact to be of a less than significant impact.

The Draft EIR is inadequate in its discussion of air quality impacts, particularly as related to the School. Most importantly, while the Draft EIR references sensitive receptors, such as schools and children, and further details general air quality impacts and mitigation plans, it fails sufficiently to identify in any detail specific impacts related to sensitive receptors. These impacts will likely disrupt classes as well as prevent students from being outside during construction. The discussion of air quality impacts on the School is lacking, and the Draft EIR is not in compliance with CEQA in that it fails to be written in a manner that is meaningful and useful to decision makers and the public.

The District finds the analysis of the following air quality impacts to be deficient.

a. Construction criteria pollutant emissions.

The Draft EIR in Section 3.3.2.2 discusses the net increase in emissions of criteria air pollutants during the construction period. This evaluation is depicted in Table 3.3-3 which measures the emissions of reactive organic gases, nitrogen oxides, and particulate matter throughout the construction period, which is assumed to take place over 220 days. This of course is the best case scenario for the Project and does not take into account any potential delays. The Draft EIR deemed the projected construction criteria pollutant emissions to be below the Bay Area Air Quality Management District ("BAAQMD") thresholds and thus concluded that the Project would cause a less than significant impact.

However, the Draft EIR's usage of the BAAQMD's significance threshold is minimally explained. The Draft EIR attempts to use the BAAQMD's thresholds as a safe haven that exempts the City from discussing the impact of pollutant emissions on the surrounding community. The City fails to analyze the effect of such emissions on the surrounding area, especially on sensitive receptors at the School. This level of analysis fails to comply with CEQA Guideline section 15064.7(d), as it does not explain how the particular requirements of this environmental standard reduce project impacts, including cumulative impacts, to a level that is less significant, and why the environmental standard is relevant to the analysis of the project under consideration.

b. Construction dust emissions.

Section 3.3.2.2 of the Draft EIR expects Project construction dust emissions to be of a less than significant impact, again without examining its effects on sensitive receptors at the Orchard School. The Draft EIR fails to analyze these impacts and instead relies on contractors to implement standard BAAQMD BMPs ("Standard Conditions") during all phases of project construction to reduce dust emissions, which the City believes would result in no significant fugitive dust. This section does not discuss how the City would be able to enforce the Standard Conditions set forth in the Draft EIR and does not mention any mechanism that would require the contractors to adhere to these Standard Conditions. Further, the Draft EIR does not discuss oversight of these conditions nor penalties or consequences of violating these conditions. This inadequate discussion of enforcement is in violation of CEQA. (Public Resources Code § 21081.6 (b); CEQA Guidelines § 15126.4 (a)(2) (EIR must have mitigation measures that are enforceable through conditions of approval, contracts or other means that are legally binding).) The analysis simply asks the reader to blindly believe that the City will select a contractor that adheres to the conditions and that the contractor actually adheres to the conditions. This lack of enforcement power and lack of analysis of the actual impacts is unacceptable, particularly since the proposed Project is to be built adjacent to a school site and residential site.

c. Operational criteria emissions and greenhouse gas emissions.

Section 3.3.2.2 of the Draft EIR also covers the operational criteria pollutant emissions, which result from changes in traffic patterns and traffic conditions. The Draft EIR created a model to predict annual criteria air pollutant emissions and CO emissions under the proposed project for existing conditions, 2025, and 2040. According to the Draft EIR, "in most cases, as shown in Table 3.3-4, emissions under the Project Conditions would be slightly lower than under the No Project conditions because of the efficiencies in travel that would result from the Charcot Avenue Extension." (Draft EIR, p. 39-40.) The Draft EIR engages in unsupported puffery, as it makes a conclusory statement that efficiencies in travel will result from the Project. This fails to take into account the Draft EIR's Transportation Analysis' findings that only showed a negligible increase in speed. The highest increase in miles per hour due to the Project will be one percent, to be realized twenty years in the future. Will a one percent long-term increase in long-term traffic speeds have anything but a negligible effect? The Draft EIR states that "the Project would provide an additional east-west access point to/from the North San Jose area, which would benefit the network...for these reasons operation of the proposed project would not result in significant regional criteria pollutant emissions impact." (Draft EIR, p. 39-40.) Thus, the Draft EIR is asking the reader to believe an additional access point, which this Draft EIR has stated would lead to an **increase** in VMT, would somehow result in **lower** emissions. All these assertions are provided with minimal supporting detail, but with an unreasonably high degree of certainty.
The Draft EIR's analysis of emissions, especially with respect to the School site, is incomplete, conclusory, and unjustified. This analysis fails under CEQA as it also fails to be written in a manner that is meaningful and useful to the public.

The discussion of greenhouse gas emissions ("GHG") in 3.8.2.1 of the Draft EIR is similar to the pollutant emissions discussion. In a short and conclusory two paragraph section, the City determines that "the project would not generate GHG emissions that would have a significant effect on the environment." (Draft EIR, 3.8.2.1). Table 3.8-2 shows that the proposed project,

when compared to the No Project scenario, would decrease GHG emissions under existing, Year 2025, and Year 2040 conditions. The decrease would be "the result of the reductions in congestion and improvements in operations that are associated with the project." This conclusion did not take into account the Draft EIR's findings that there will be an increase in VMT under Project conditions. Further, any "improvement in operations" overlooks the Project's negligible increase in vehicle speeds. This of course, assumes that any improvements in operations will actually take place.

A review performed for the District by Ron Sissem of EMC Planning Group echoes these concerns. (See Exhibit I.) In short, neither the text in the Draft EIR GHG analysis nor the text in Appendix E of the draft EIR adequately "connect the dots" between results and evidence used to arrive at the results. Without a more complete evaluation of how this conclusion is reached in light of VMT increases, it is not clear that the project has a less-than-significant impact. The Draft EIR should be revised to include this information.

The City's methodology here is conclusory, and fails to examine all of the impacts on the Orchard School and the children it serves.

d. Exposure of sensitive receptors to substantial pollutant concentrations.

In discussing the Project's existing conditions, Section 3.3.1.2 of the Draft EIR states that the nearest existing sensitive receptors to the Project include residents on Silk Wood Lane and students at the Orchard School. Section 3.3.2-3 of the Draft EIR discusses the exposure of sensitive receptors to substantial pollutant concentrations. This section examines the maximum increased lifetime cancer risk, annual amount of toxic air contaminants, and hazard index for the maximally exposed individual. The maximally exposed individual for the purposes of this study was a child at the Orchard School. This study did not completely measure the effects on Orchard School staff as well as adult residents of the surrounding neighborhood.

Of particular concern is how the Project is close to exceeding the threshold for toxic air contaminant exposure to the School. The risk for exposure to $PM_{2.5}$ is identified as 2.6 μg/m3 with significance exceeding the threshold being 3.0 μg/m3 or greater. (Draft EIR, Table 3.3-5.) It is extremely troubling to see the amount of exposure the Orchard students will have to toxic air contaminants as a result of the Project. Though this section again conclusively determines that the risks are below the City's selected threshold and a less than significant impact would result, it again fails to analyze the effects that exposure to toxic air contaminants and fine particulate matter would have on sensitive receptors.

Though maximum increased lifetime cancer risk, annual amount of particulate matter and hazard index may all be useful measurements, there are likely other risks and ailments that would affect the schoolchildren in the proximity of the project. For example, this evaluation does not take into account those students suffering from asthma and other sensitive conditions. The Draft EIR again uses arbitrary thresholds as a shield from producing meaningful analysis. This is particularly troubling given that these students will be in school buildings twenty feet from the overpass, and exposed on School grounds during physical education and recess.

Given the proximity of construction of the Project to the School site, and the resultant unavoidable impacts to the School, it is unacceptable for the Draft EIR to present such minimal analysis of the air quality impacts and greenhouse gas emissions on the children who attend the school. The Draft EIR does not explain the air quality impacts on the sensitive receptors at the Orchard School during the construction and operational periods of the Project. Further, the Draft EIR only measures the effects of pollutants on sensitive receptors in three limited areas. The Draft EIR's limited analysis of the Project's air quality impact does not adequately inform the public of the significant environmental effect on a project leads to the failure of the Draft EIR as an informational document, which is in violation of CEQA.

11. The Draft EIR errs in finding the hazardous materials impact to be of a less than significant impact with mitigation.

The Draft EIR notes that the project could create a significant risk if hazardous materials in sufficient concentrations are present in soils and those materials are, in turn released into the environment during construction. (Draft EIR, 3.9.2.2.) The City offers mitigation in the form of MM HAZ-2.1, which provides for project sampling for pesticides prior to demolition, grading and excavation. The results of the samples will be provided to the Director of City Planning and the City's Environmental Compliance Officer. (Draft EIR, 3.9.2.2.) If contaminated soils are found in concentrations above regulatory thresholds, the project proponent shall obtain regulatory oversight from the SCCDEH or DTSC. (Draft EIR, 3.9.2.2.) These organizations would then determine next steps, including documents required for a Site Management Plan, Removal Action Plan, or equivalent document. (Draft EIR, 3.9.2.2.) The City again defers future plans to different public agencies and provides no meaningful analysis on the effects the contaminated soil would have on sensitive receptors at the School site. This lack of analysis and failure to provide additional data on mitigation measures to offset these impacts is unacceptable, particularly since the Project is proposed in such a densely populated area and ongoing construction will occur near an operating school site. Once again, the effects of such a large project on the School have been largely ignored by the Draft EIR, in violation of CEQA.

The District has additional concerns with respect to hazardous materials. The area is already beset by heavy duty truck traffic, from 6:30 A.M. through the entire school day. Fox Lane is already being used heavily by trucks as a cut-through route to the industrial businesses west of the School, with large trucks and fuel tankers coming from Brokaw Road, down Ridder Park Lane to Fox Lane. This creates an unfavorable mix of both school-related and truck traffic. School staff have observed numerous trucks carrying gas cutting through Fox Lane, immediately in front of the School. This already causes the District serious concerns about the safety of the children at the School, which has previously been raised to the City unrelated to this Project. Given the nature of the businesses west of the School (e.g. Kinder Morgan Oil Terminal, Univar) it is possible under the Project that trucks accessing the area via the roadway extension will carry hazardous materials close to classrooms. The potential for truck traffic on both Charcot Avenue and Fox Lane will only increase the risk of accidents involving hazardous materials in the immediate vicinity of the school. That risk, coupled with the risk of a release of hazardous materials other than air pollutant emissions during the construction period, could have a catastrophic impact on the School's children. The impact of such a potential accident on the School has not been evaluated, and again the Draft EIR does not provide meaningful and useful information to the public.

12. The City errs in finding the noise and vibration impact to be of a less than significant impact with mitigation.

This section of the Draft EIR suffers from a lack of analysis as to how the School, a particular sensitive receptor that will be in extremely close proximity to a construction site, will be affected by these noise and vibration impacts. It is likely that these impacts will disrupt classes, prevent students from being able to be outside due to overwhelming outside noise that would affect teachers' abilities to monitor and direct students because they cannot be heard, and further, could affect the school's classroom buildings. These impacts would be particularly felt when students are outdoors or when the windows are open. (Gary Hopkins, "*Have You Heard? Noise Can Affect Learning!*" (July 18, 1997) Education World (Noise can affect learning – several studies show that noise impacts reading ability and scores).)[2] Additionally, noise and vibrations could affect the classroom buildings in which the students are learning. With the best case scenario construction schedule of 220 days, students will lose all or most of a school year of outdoor education and recess. This matters deeply to a schoolchild, and should be of concern to the Draft EIR's analysis. The Draft EIR fails to address these substantial potential impacts and is therefore inadequate. Deficient areas in the Draft EIR's noise impact analysis are addressed below.

a. The Draft EIR applies improper noise standards for a school site.

According to a peer review performed for the District by WJV Acoustics, **the Draft EIR employs the wrong noise level standards for the outside School areas**. (See Exhibit J.) The Draft EIR applied Land Use Category 2, described as "*Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds*" to the exterior areas of the School campus. An exterior noise level of 65 dB is considered "normally acceptable" for Category 2 land uses. (Draft EIR, Table 3.13-6., see also Draft EIR, Appendix J, Table 5.) WJV correctly observes that the exterior areas of the School should fall under Land Use Category 3, described as "Schools, Libraries, Museums, Meeting Halls, and Churches." An exterior noise level of 60 dB is considered "normally acceptable" for Category 3 land uses. Thus, exterior noise levels at the School should have been evaluated based upon the Land Use Category 3 exterior noise level standard of 60 dB. (See Exhibit J.) The modeled receivers S1 and S5 (depicted in Draft EIR, Figure 3-13-2) are located on the School campus and are evaluated based on the incorrect Category 2 standard. Additionally, the noise barrier along the south side of Silk Wood Lane (adjacent to the School) should be recalculated to demonstrate compliance with the 60 dB exterior noise level standard.
The noise levels on Orchard School campus (indicators S1 and S5 depicted in Draft EIR Table 3.13-6) would be exposed to increases in traffic noise levels under Project conditions that would place them above the Normally Acceptable Levels. The Envision San Jose 2040 General Plan at EC1-2 considers significant noise impacts to occur if a project would cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where the noise levels would equal or exceed "Normally Acceptable." As S1 measured as 69 and S5 measured as 67 under Project conditions, both are in excess of the Normally Acceptable level of 60.

The fact that the Draft EIR addresses the School under standards applicable to a park and recreation area as part of its noise analysis, is also another telltale sign that the City refuses to

[2] https//www.educationworld.com/a_curr/curr011.shtml

acknowledge that there is a public school in place. In that regard, the noise analysis also fails to provide an accurate or adequate description of existing conditions.

b. The Draft EIR errs in failing to find significant noise impacts at School-based receivers.

With respect to receiver S2, which is also located on school grounds, the reported exterior noise levels of 61 dB (existing plus Project) and 63 dB (2040 Build Conditions) should be indicated as a significant impact as they exceed the 60 dB exterior noise level standard applicable to school land uses. (Draft EIR, Table 3.13-6.) The noise levels of modeled receiver S5 (with the construction of the stated six-foot sound barrier) state that an exterior noise level of 59 dB would be expected for 2040 No Build conditions, and an exterior noise level of 64 dB would be expected for 2040 Build conditions with the recommended six-foot barrier.

In regards to compliance with the interior noise level standard of 45 dB, it is the opinion of WJV that the analysis does not adequately address interior noise levels that could result from the Project within the buildings closest to the proposed roadway alignment. Exterior noise levels should be modeled at the northern façade of the building closest to the proposed roadway alignment in the vicinity of the modeled receiver. An interior noise analysis should be prepared based upon the exterior façade noise levels along the north facing façade(s) of these three buildings.

Additionally, the Draft EIR states that an existing five-foot sound barrier provides acoustic shielding for single family residences located adjacent to Silk Wood Lane. (Draft EIR, Appendix J, p. 21.) However, Google Earth images dated March 2019 only show existing wooden fences and not a sound barrier. (See Exhibit J.) This warrants a review of the modeled noise levels.

c. Noise impacts of the Project.

Table 3.13-3 of the Draft EIR measured the existing day/night sound levels of areas surrounding the Project, including the School site. The Draft EIR has found the noise increases in the School's outdoor field due to the project to be of a significant impact and its mitigation measure is to erect a six-foot noise barrier. Inexplicably, the residents of Silk Wood Lane will receive a ten-foot noise barrier, with some areas receiving an eight-foot noise barrier. MMNOI-1.2 explains that a ten-foot barrier, per FHWA's Traffic Noise Model, will reduce noise levels at these residences to acceptable levels of 60 dBA DNL or less. The Traffic Noise Model was referenced again in stating the School's barrier would reduce noise levels on the outdoor field area and playground to 65 dBA DNL and exterior levels at the primary classrooms to 60 dBA DNL. No explanation was given for this disparate treatment of similarly situated properties. MMNOI-1.1 and MMNOI-1.2 both state that their taller barriers will reduce noise levels to 60 dBA DNL or less and no explanation is given for why the School's barrier is shorter than the others and why a higher decibel level was deemed acceptable at the School site, which should actually be subject to a more stringent standard. Nevertheless, the Draft EIR found that a ten-foot barrier is a feasible mitigation measure for the areas surrounding Silk Wood Lane affected by the Project.

In analyzing mitigation measures, CEQA focuses on feasibility. "One of the fundamental objectives of CEQA is to facilitate the identification of 'feasible alternatives or feasible mitigation measures which will avoid or substantially lessen significant environmental effects." (Public

Resources Code § 21002; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376, modified (Apr. 27, 1992.) CEQA's concern is with *feasible* means of reducing environmental effects. (*Id.* at 376.) Feasible is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (*Id.* at 376.)

The Draft EIR has demonstrated that a ten-foot barrier is a feasible mitigation measure for this Project. This mitigation measure will be applied to the residents of Silk Wood Lane. The school's barrier is limited to six feet and noise levels would be reduced to 65 dBA as opposed to the 60 dBA that is possible for the ten foot barrier. The Draft EIR has established that a ten-foot barrier that limits noise levels to 60 dBA is capable of being accomplished in a successful manner, otherwise it would not be offered as a mitigation. What is not addressed is why this cannot be accomplished for the School. The City relies on the FHWA Traffic Noise Model to provide its thresholds of significance, however the residence noise levels and noise levels outside the School are subject to a five decibel difference. As the School is subject to an inferior mitigation measure, this does not promote the consistency that is contemplated under CEQA. The School is provided with inferior mitigation measures, when a superior measure is readily available and will be applied to another area of the project. (Draft EIR, p. 116.) This is particularly a concern because of the sensitive nature of the School.

As stated above in the discussion of the peer review letter, the Draft EIR misapplies the noise level threshold for the School. An exterior noise level of 65 dBA is considered by the Draft EIR to be "normally acceptable" for the School. (Draft EIR, p. 116.) The peer review established the correct "normally acceptable" dBA to be 60 dBA. The ten-foot noise barriers will reduce noise levels for the residences on Silk Wood Lane to 60 dBA or less. The Draft EIR should propose the ten-foot barrier as the appropriate mitigation measure for the School, as it will reduce the noise levels to the correct "normally acceptable" level. The visual and other effects of the ten-foot barrier should then also be analyzed.

d. Existing noise conditions of the School site.

The Draft EIR states that the classrooms at Orchard School were constructed with double-paned windows, insulation, and forced-air mechanical ventilation (Thorburn Associates, 1996), resulting in interior noise levels that are 25 dBA or more below exterior levels. (Draft EIR, 3.13.1.4.) According to the Draft EIR, the School's multi-purpose room has these features as well, and is also set back farther than the proposed alignment. (Draft EIR, 3.13.2.1.) The City reasons that these features in the School buildings will maintain interior noise levels at 45 dBA DNL and the impact of noise levels at the project would be less than significant. However, the Draft EIR's analysis is faulty in that the **Orchard School's classrooms currently only have single-paned glass.** The Draft EIR has also again failed accurately and adequately to describe existing conditions.

e. Vibration impacts of the project.

Additionally, 3.13.2.2 of the Draft EIR states that vibration during construction activities for the Project would be perceptible indoors when construction is located adjacent to structures and secondary vibration, such as a slight rattling of windows or doors, may be considered annoying at times. The Draft EIR comes to the determination that the Project would not result in generation of

excessive, groundbourne vibration or groundbourne noise levels, and a less than significant impact will occur. This section goes on to state, "based on the anticipated vibration levels that are projected at the closest buildings, architectural damages to adjacent residential buildings are not anticipated...construction will occur only during the daytime hours, reducing the potential for annoyance to residences during evening and night hours of rest and sleep." Noticeably absent from the preceding sentences is any mention of the annoyance or inconvenience to the School and its students as a result of the construction noise and resultant vibration. The exclusivity of the construction occurring during the daytime hours, which of course coincides with the traditional School schedule, again continues the City's pattern of understating impacts and avoiding analysis of the Project's effect on the School.

f. Staging of construction equipment and its noise-related impacts.

Of great concern to the District is the staging of construction equipment and its associated noise impacts, as referenced above in the analysis of the Transportation Impacts. The construction will have the potential effect on buildings 20 feet from the edge of the overpass, which presumably means that construction equipment will be extremely close to the school buildings. The Standard Conditions state that "construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction." (Draft EIR, p. 113.) The Draft EIR again engages in improper deferral in its discussion of these Standard Conditions. The Draft EIR does not designate acceptable distances nor does it determine the locations of these construction staging area. This lack of analysis is in violation of CEQA, as the construction will likely have an effect on the students of the Orchard School.

g. Construction-related noise impacts and its impact on sensitive receptors.

The Draft EIR's discussion of temporary construction-related noise impacts is flawed in that it fails to mention sensitive receptors. The "construction of the proposed roadway extension, including the I-880 overcrossing, would require the temporary use of heavy equipment that could generate high noise levels in the immediate vicinity. (EIR 3.13.2.1). Table 3.13-5 (Calculated Construction Noise Levels) shows maximum dBA's ranging from 67-85 dBA for various phases of construction. Section 3.13.2.1 states that construction of the project alignment, roadway improvement (130 days) and construction of the bridge (220 days) is anticipated to overlap, but the Draft EIR states that "even if construction were to occur sequentially, the project would occur over a total period of 350 days." "Prolonged interference" is defined by the Draft EIR as a noise level increase lasting more than one year.

The Draft EIR concludes that a less than significant impact will result based on the implementation of the standard conditions. This discussion is without assurances that the conditions will be followed and does not address any consequences for failing to follow the conditions.

Additionally, the Draft EIR states that because the Project will be constructed in less than a year, there will be no temporary construction noise impacts. This is a fallacious and flawed misrepresentation of the temporary construction noise impacts. This alleged one year of construction will end all outside activities at the school and interfere with classes. Students will lose a whole school year of uninterrupted and effective education.

While the District is sympathetic to the plight of its neighbors in relation to this imposing and disruptive project, it is difficult to explain the City's apparent general lack of concern and lack of meaningful analysis of the vibration impacts on the School.

Common sense dictates that the Project's noise impacts will disturb the School. The City proposes to build an overpass that abuts the School only twenty feet from classrooms. It is unreasonable to conclude that student learning in those classrooms will not be impacted by the heavy machinery and accompanying pounding, digging, and other construction activities occurring virtually on top of classrooms.

13. The Draft EIR does not adequately evaluate the visual character impacts of the Project.

Only a small sliver of the playground that borders the project is depicted in the Draft EIR. (Draft EIR, Figure 3.1-4.) The Draft EIR does not visually depict a finished project from the point of view of the school and its staff and child users. Additionally, the Draft EIR does not analyze the visual impacts that will occur during the construction of the Project, including its impacts on the School site and the actual students.

The proposed noise barrier will also provide a visual barrier between the proposed roadway extension and Orchard School outdoor areas. The visual barrier as depicted will be a solid color, thus children or adults will not be able to see intruders or hazards until the very last moments. The Draft EIR does not analyze the visual impacts of the sound barrier on the students using the outdoor recreation area at the School, safety issues, or possible impacts on access by students. In each of these regards, the Draft EIR's visual impact analysis is incomplete and inadequate.

14. If the Project is approved, the School's available acreage would no longer meet the state's site guidelines.

The current student population of the Orchard School is 875 and the School's current acreage is 16 acres. The student population by grade level is listed below.

Grade Level	Student Population
Preschool	12
TK	30
Kindergarten	100
First Grade	99
Second Grade	90
Third Grade	82
Fourth Grade	77
Fifth Grade	107
Sixth Grade	92
Seventh Grade	79
Eighth Grade	106

The California Department of Education ("CDE") sets site acreage guidelines for elementary and middle schools in its Guide to School Site Analysis & Development.[3] The required acreage for the grade levels and population counts served by the Orchard School is set forth below.

Grade Levels	Population	Required Acreage
Kindergarten	Two classrooms.	0.5
First-Third Grade	151-300	2.8
Fourth-Sixth Grade	151-300	5.9
Sixth-Eighth Grade	151-300	6.7
Total		15.9

The total acreage required, at minimum, for the School is 15.9 acres to accommodate the Orchard student population. As the School will lose 0.44 acres under Project conditions, it will be left with 15.56 acres, less than called for in the guidelines. Under Project conditions, the School site would no longer be in compliance with the Department of Education's site guidelines.

The Draft EIR should have considered the CDE guidelines as a threshold of significance. "A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (CEQA Guideline Section 15064.7(a).) If the CDE guidelines were applied as a threshold of significance, then the Draft EIR would determine that the Project's lack of compliance with the guidelines would lead to a significant environmental effect.

The significant environmental effect here would be an overcrowded school site, which could create potential impacts on student safety and learning. As a result, these impacts on traffic must be considered in the EIR. As the Draft EIR did not apply a threshold of significance to guide their analysis under CEQA, a potential impact has gone unconsidered.

15. Under Project conditions the School Site would not meet the state's site selection standards.

The District believes that under Project conditions, the School site as it is currently situated would no longer meet the School site selection standards of the State Department of Education. "Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251." (Education Code, §17211.) Under Project conditions, any evaluation of the School site would likely fail to meet the following site selection standards:

[3] https://www.cde.ca.gov/ls/fa/sf/guideschoolsite.asp

- A site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program. (Cal. Code Regs., tit. 5, §14010 (e).)

- The site shall not be on major arterial streets with a heavy traffic pattern as determined by site-related traffic studies including those that require student crossings unless mitigation of traffic hazards and a plan for the safe arrival and departure of students appropriate to the grade level has been provided by city, county or other public agency in accordance with the "School Area Pedestrian Safety" manual published by the California Department of Transportation, 1987 edition, incorporated into this section by reference, in toto. (*Id.* at CCR §14010 (l).)

- Existing or proposed zoning of the surrounding properties shall be compatible with schools in that it would not pose a potential health or safety risk to students or staff in accordance with Education Code Section 17213 and Government Code Section 65402 and available studies of traffic surrounding the site. (*Id.* at CCR §14010 (m).)

- The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process. (*Id.* at CCR §14010 (q).)

As shown above, traffic and sound impacts stemming from the Project will adversely affect the School's educational program. Safety issues stemming from student crossings against a heavy traffic pattern is of great concern to the District and the families it serves. The District built the School on this site over two decades ago and as stated above, the City voiced no objection. Taking into account the selection standards outlined above, it is likely that the School might not have been built if the proposed Project existed first. If the proposed Project moves forward, it could equal a taking of the entire School if it is no longer safe to operate the School there under standards applicable to public schools.

16. The Draft EIR fails to provide an adequate analysis of the Project's impact on existing parks & recreation conditions.

The City and District cooperated to provide recreational amenities to the community by entering into a June 1998 joint-use-agreement in which the City contributed $80,000.00 toward the total cost for the purchase and installation of playground climbing structures on the School's property. The City of San Jose *Greenprint* for Parks and Community Facilities (2000) indicated that 27 areas of the City were underserved by neighborhood/community parkland which the City considers to include recreation school grounds. The Project Area was identified as one of the 27 areas and the recommended action for the City was to coordinate to secure public access to park and recreation spaces. The 2009 *Greenprint* states that Orchard School was relocated to this area and addresses part of this underserved area. (City of San Jose, *2009 Greenprint,* Pg. 91, Draft EIR, 3.16.1.2.) In fact, when the City Council approved the Hawthorn Place Project adjacent to the school in 2004, the City Council directed that a "substantial part of the parkland dedication ordinance in-lieu fees shall be spent to make significant improvements to the property of Orchard School so that the community will have more park amenities and more opportunities for families to gather and those improvements will include new sports field (sic) and a landscaped picnic area." (Draft EIR, p. 132.)

It is likely that the City Council and *Greenprint* versions referenced herein did not contemplate taking 0.44 acres of recreational area from a School that also serves as a recreational area for an underserved community. The Draft EIR fails to explain the impact from eliminating a part of a recreational area. It is difficult to understand why a recreational area that the City expended money and resources on will now be eliminated by the City in order to make room for a roadway extension. This becomes more glaring in light of the discussion above in which the City had opportunities in 1995 and 2004 to coordinate the Project with the construction of the school and residences, but failed to do so.

In 3.16.2.3, the Draft EIR finds that no cumulative recreation impact within the geographic study area would occur. The geographic study area for cumulative impacts to recreational facilities is defined as a 0.75 mile radius around the recreational facilities at Orchard School. Within the study area there is only one other recreational facility, the Gran Paradiso Park on the corner of McCay Drive and Avenida Elisa. There are no plans to reduce the size or facilities at Gran Paradiso Park. However, the City ignores the Orchard School recreation area in its examination of the recreation impact. As stated above, the School will lose the following portions of its baseball field: the north bench area, backstop area, and northeast corner of the field. Further, the School will also lose the north spectator bleacher areas from the field. This will cause a domino effect in the restructuring of the School's facilities, as discussed above.

As the Project will result in a loss of recreational land, it is a significant environmental effect. This loss of land will affect the District as well as individuals who wish to take advantage of the District's recreational facilities. It is inconsistent for the Draft EIR to find no cumulative recreation impact when the School's recreational facilities will face major reconstruction. By ignoring this fact, the Draft EIR does not inform the public generally of this potential significant environmental effect, in violation of CEQA Guideline section 15121. As this will result in less recreational space within the radius, it is disingenuous and unsupported for the City to determine that there will be no cumulative recreation impact within the study area.

17. Feasible Project Alternatives.

Section 7.0 of the Draft EIR includes an analysis of Project Alternatives with the No Project Alternative designated as Alternative D. As the No Project Alternative would avoid all the identified significant impacts of the Project, namely aesthetics/visual, biological, cultural (archaeological), hazardous materials, noise and recreational. (Draft EIR, Section 7.4.1.) The Draft EIR concluded that Alternative D was the environmentally superior alternative. (Draft EIR, 7.5.) Per CEQA Guidelines section 15126.6 (e)(2), if the No Project alternative is deemed the environmentally superior alternative, the EIR shall also identify an environmentally superior alternative among the remaining alternatives. There are numerous flaws in the Draft EIR's analysis of feasible alternatives, which are discussed below.

a. Alternative H.

Alternative H would be the same as the proposed Project except that it would 1) eliminate one of two proposed left-turn lanes from northbound Oakland Road to Westbound Charcot Avenue and 2)

would eliminate the exclusive left turn lane from eastbound Charcot Avenue to northbound Oakland Road. (Draft EIR, 7.4.5.) Under this alternative, the cross-section of Charcot Avenue at Oakland Road would be two lanes, as opposed to the four lanes contemplated under the project. (Draft EIR, 7.4.5.) Alternative H would have the smallest effect on the recreational land and facilities at the School amongst the other feasible alternatives. Alternative H would avoid the direct impact to the baseball field, paved playground area, most of the trees along the northerly planting strip, and most of the paved spectator areas and pathway. Alternative H would result in lower noise and air quality impacts and would meet all five project objectives. In taking those factors into consideration, the Draft EIR concludes that Alternative H is the environmentally superior alternative other than the no Project alternative. (Draft EIR, Pg. 200.)

The City maintains that the traffic operations for this Alternative at the Charcot Avenue/Oakland Road intersection would be less efficient due to the elimination of two turning lanes, however levels of service would remain at an acceptable LOS D. This alternative would also lead to the prohibition of left turns from northbound Oakland Road into the Orchard School Event Center Driveway, though access can be made via a U-Turn. (Draft EIR, 7.4.5.) The City will not commit to this alternative due to a loss of efficiency, even though the levels of service would still be acceptable under the City's standards. The Draft provided a cursory discussion of how this alternative would result in the loss of efficiency.

However, "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." (Public Resources Code §21002.) Feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Public Resources Code §21061.1.) CEQA contains a "substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.)

The Draft EIR finds Alternative H to be feasible and environmentally superior. It lessens the environmental effects of the proposed Project and also has the smallest effect on the recreational land and facilities at the School. The Draft EIR's main argument against Alternative H is a loss of efficiency. According to the Level of Service goals set forth in the City of San Jose Traffic Impact Analysis Handbook – Volume II, the level of service goal for transportation is Level D. (p. 88-89.) The Draft EIR acknowledges that Alternative H would remain at an acceptable Level of Service D. (Draft EIR, 7.4.5.) One advantage of Alternative H (and alternative F) that is not mentioned in the Draft EIR, is the reduction of lanes at Silk Wood Lane, where the crosswalk would connect the residential neighborhood to the School. These alternatives increase student safety by reducing the crossing distance and potential for automobile-pedestrian collisions. No longer would students have to dodge cars where they spill out from two lanes onto four.

Another issue that goes unaddressed is the feasibility of adopting Alternative H in light of a potential eminent domain action. Under the proposed Project design, a right-of-way acquisition of 19,410 square feet at Orchard School is required. Under Alternative H, the right-of-way

acquisition would only be 5,590 square feet. This would make Alternative H even more feasible as a much smaller right-of-way would require less compensation than the proposed Project design. Alternatives F and G would also require smaller right-of-ways and would be more feasible to acquire. This greater feasibility is all the more relevant because the District will vigorously oppose any effort to take its land for an overpass.

The Draft EIR articulates no reason for its failure to adopt Alternative H, other than citing to a loss of efficiency, which it concedes is still within the City's acceptable level. Nor does the Draft EIR describe any conditions which make Alternative H infeasible. Taking the above information into consideration, it would be against state policy and express statutory requirements for the proposed Project to be approved.

b. Alternative A: Fox Lane Alignment.

Under Alternative A, the alignment for the Project on the east side of I-880 would utilize Fox Lane instead of Silk Wood Lane. (Draft EIR, 7.3.1.) This section states, "the use of Fox Lane for the Charcot Avenue Extension would result in increased traffic volumes along the Orchard School frontage, which provides access to the school's designated student drop-off/pick-up area." It further states that this alternative would not be feasible because, "from an environmental perspective, there would be substantial impacts to Orchard School's designated student drop-off/pick-up area on Fox Lane." However, no evidence is presented to substantiate these comments; i.e. no traffic volumes on Fox Lane along the Orchard School frontage are provided and no environmental impacts to the school's designated student drop-off/pick-up area on Fox Lane are provided.

c. Alternative B: Widen Montague Expressway and/or Brokaw Road.

Alternative B would widen Montague Expressway and/or Brokaw Road to improve east-west connectivity across I-880. These alternatives were rejected due to significant right-of-way costs; however, no acreage of land is provided in order to compare either of them with the right-of-way necessary for the proposed project. These alternatives should be evaluated to determine what the environmental impacts would be and if this alternative would be environmentally superior to the proposed project.

d. Alternative E: New Overcrossing for Bicycles and Pedestrians only.

The draft EIR states that Alternative E (bike and pedestrian crossing) would not meet four of the project objectives. (Draft EIR, p. 189 & 200.) In fact, this alternative would partially meet at least two additional objectives, improving connectivity and increasing capacity across the I-880 corridor. This alternative would eliminate air quality impacts from the project. This alternative should have been identified as at least one environmentally superior alternative.

e. Alternatives F, G, and H meet project objectives.

Three alternatives (Alternatives F, G, and H) are studied that would reduce the number of lanes on Oakland Road and/or the extension of Charcot Avenue. All of the alternatives result in slight

reductions to toxic air contaminant emissions at the residences and/or the School. All of these alternatives fully meet all five project objectives.

18. The Draft EIR fails to discuss conflicts with City plans.

The CEQA Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. (CEQA Guidelines §15125(d).) An "applicable" plan is one that has already been adopted and thus legally applies to the project. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145.) The purpose of the required analysis is to identify inconsistencies that the lead agency should address. By doing so, the lead agency may be able to modify the project to avoid any such inconsistencies. (See *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169.) The Draft EIR fails to satisfy these requirements because it fails adequately to consider Project consistency with the Envision City of San Jose 2040 General Plan ("General Plan").

a. The Draft EIR conflicts with the City's plans regarding safe connections to school facilities.

The General Plan's Policy TR-2.10 states that the City shall "coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José." This Project will have the exact opposite effect and is in direct conflict with the City's General Plan. The Draft EIR makes no mention of any coordination or collaboration with the District, other than to defer mitigation measures to a later date. A roadway extension that slopes downward in the immediate vicinity of the School will only serve to make bicycle and pedestrian connections to the School less safe. The District's safety and traffic concerns are outlined above.

b The Draft EIR conflicts with City Plan's vehicle miles traveled goals.

The Envision San José 2040 General Plan Goal TR-1.1 states that it is a goal of the City to "Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT)." The Draft EIR at Table 3.17-4 shows that the Project conditions will **increase** VMT across the Board:

Scenario	Existing	2025	2040
No Project VMT	1,263,080	1,821,479	2,659,078
Project VMT	1,264,478	1,823,272	2,661,463

The Draft EIR's analysis shows that VMT's under project conditions will exceed the no Project conditions. As this clearly is not a reduction in VMT's, the Project is in violation of the General Plan and the conflict is not addressed in the Draft EIR.

Further, the increase discussed above of VMT's also conflicts with the "Climate Smart San Jose" plan. Per a City memorandum, "Climate Smart San Jose builds on and furthers the General Plan's

vision."[4] Climate Smart San Jose lists the VMT metric for progress as "vehicle miles traveled per capita per day reduction." By increasing VMT per capita, the Project conflicts with the Climate Smart San Jose plan.

c. The Draft EIR's noise measurements and mitigation measures conflict with City Plans.

As discussed above, the Draft EIR's analysis of noise levels conflicts with Envision San Jose 2040's General Plan. The noise levels on Orchard School campus (indicators S1 and S5 depicted Draft EIR Table 3.13-6) would be exposed to increases in traffic noise levels under Project conditions that would place them above the Normally Acceptable Levels. The "Normally Acceptable Noise Level" for these locations is listed as 65 dBA DNL (Draft EIR Table 3.13-6), yet as stated in Exhibit J, the wrong City noise level standard was applied in the Draft EIR. Under the proper noise level standards, an exterior noise level of 60 dBA DNL is considered normally acceptable for schools. Yet the General Plan at EC1-2 considers significant noise impacts to occur if a project would cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where the noise levels would equal or exceed "Normally Acceptable." As S1 measured as 69 and S5 measured as 67 under Project conditions, both are in excess of the Normally Acceptable level of 60. The Draft EIR nevertheless considers these noise impacts less than significant, which is in conflict with the City's General Plan.

Noise walls along City streets are to be avoided according to General Plan policy. CD-4.11 includes as a focus to: "accomplish sound attenuation for development along City streets through the use of setbacks and building design rather than sound attenuation walls. When sound attenuation walls are located adjacent to expressways or freeways, or railroad lines, landscaping, public art, and/or an aesthetically pleasing and visually interesting design should be used to minimize visual impacts." With respect to the Orchard School site, the Draft EIR proposes six-foot solidly colored sound barriers and eight-foot and ten-foot sounds walls to the School's neighbors across the street. The General Plan contemplates more preferable alternatives than what the Project promises in the form of setbacks and building design. Further, the lack of uniformity in sound barrier heights conflicts with CD-4.4 of the General Plan. Per CD-4.4, it is a City policy to "promote consistent development patterns along streets, particularly in how buildings relate to the street, to promote a sense of visual order, and to provide attractive streetscapes." The arbitrary usage of multiple different heights for sound barriers on opposing sides of the same road fails to accomplish this policy, and the Draft EIR fails to analyze the inconsistency between the Project and the City's adopted policy. The removal of trees along the roadside as part of the Project is also not assessed for inconsistency with this adopted policy.

d. The Draft EIR conflicts with the City Plan's hazardous materials goals.

The Draft EIR also conflicts with the General Plan in the potential for transportation of hazardous materials next to the School. Per EC-6.5 of the General Plan, the City shall designate transportation routes to and from hazardous waste facilities as part of the permitting process in order to minimize adverse impacts on surrounding land uses and to minimize travel distances along

[4] https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96

residential and other non-industrial frontages. EC-6.7 requires the City not to approve land uses and development that use hazardous materials that could impact existing residences, **schools**, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses. In Section 3.9.2.1 of the Draft EIR, the City mentions the possibility of hazardous materials being transported by commercial and/or private vehicles using the proposed extension. No such transport occurs now in the rear of the School. As addressed in the Transportation and Hazardous Materials sections of this letter, the District has existing concerns about the heavy truck usage in front of the School on Fox Lane, including fuel trucks. The Project's proposed extension will result in additional truck traffic. As the School will then be surrounded on multiple sides by trucks potentially carrying hazardous materials as a result of the Project, the Project is in conflict with the General Plan's object to not approve land uses that could impact existing schools, and the Draft EIR improperly fails identify this conflict.

19. The City has limited public participation in the Project approval process.

Public participation is an essential part of the CEQA process. (CEQA Guidelines §15201.) Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. (CEQA Guidelines §15201.)

As one commentator has noted, "the 'privileged position' that members of the public hold in the CEQA process ... is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making ...." (Selmi, *The Judicial Development of the California Environmental Quality Act* (1984) 18 U.C. Davis L.Rev. 197, 215-216.) "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process." (*County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185.) In short, a project must be open for public discussion and subject to agency modification during the CEQA process. (*Id.*) This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.)

The District believes that the City has violated the spirit of CEQA by limiting public participation in the Project approval process. Specifically, the District and its parents are frustrated with the City regarding the timing and location of community meetings regarding this Project. The City's initial community meeting about the Project took place on March 22, 2017, at the Orchard School Event Center Building[5], which led the District to believe that the School would be an appropriate meeting place for all future community meetings. Of the three meetings following the initial meeting, only the May 21, 2018, meeting was again held at the Orchard School Event Center

[5] https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/c13c6e5e-953a-4be2-83eb-6979fe344d37/20170322_Notice.pdf

Building.[6] The community meetings on May 17, 2018,[7] and September, 24 2019,[8] were held at the Berryessa Noble Library Branch, which is at least a 20 minute drive from the Orchard School, not accounting for traffic. Further, the September 24, 2019 community meeting was scheduled to conflict with Orchard School Board Meeting on the same day.[9]

The District was further frustrated by the City Staff's lack of transparency in community meetings, including its decision not to record public comments in the 2018 and 2019 meetings.[10] This meant that there was no opportunity for the District to learn of the comments of others for the meetings its staff and parents could not attend. The District wishes to work with the City to make all future meetings accessible to all interested parties and to ensure that all public comments are recorded.

20. Any statement of overriding considerations will have to outweigh the educational needs of School students.

The proposed Project cannot be approved unless the City either imposes mitigation measures adequate to mitigate identified unmitigated impacts to a level of less-than-significant or the City adopts an applicable statement of overriding consideration. (Pub. Resources Code § 21002; CEQA Guidelines §§ 15021 (a)(2), 15091(a), 15093 (b) &15096 (g); see *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41-42 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559) ("A public agency can approve a project with significant environmental impacts only if it finds such effects can be mitigated or concludes that unavoidable impacts are acceptable because of overriding concerns"). Public Resources Code Section 21002 states that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects…." This section also states that "in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects." Thus, before adopting an applicable statement of overriding considerations, the City must have identified and eliminated, based on specific economic, social or other conditions, all reasonably feasible alternatives.

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." (CEQA Guidelines §15093.)

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[6] https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/0dae736e-c9b4-4b0f-b051-3026f8b80575/20180521_Flyer.pdf

[7] https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/83272b33-6f06-472a-b9c7-db8eeeaf876c/20180517_Notice.pdf

[8] https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/f387b47e-96a1-4332-a214-7b9026764116/125091_1_CSJ_Community_Outreach_Postcard_2019_0823.pdf

[9] http://www.orchardsd.org/documents/Calendars/2019%20Board%20Calendar.pdf

[10] https://mailchi.mp/bkf.com/past_meetings

In this case, the City will have to balance the supposed benefits of the Project against its adverse environmental effects. According to the Draft EIR, the purpose of extending Charcot Avenue across I-880 is to provide a safe multi-modal facility, improve connectivity for vehicular, bicycle, and pedestrian travel routes, provide the opportunity to utilize alternative travel modes, and reduce travel time for the east-west travelers in the North San Jose area. (Draft EIR, 2.4.) This Project will cause two recognized significant unavoidable impacts as identified by the Draft EIR, the loss of acreage at the Orchard School (Impact REC-2) and the removal of 37 trees along Charcot Avenue (Impact AES-3.) As described above, the District believes that there are other significant impacts that are unmitigated and unavoidable that have yet to be assessed. The District is concerned with the Project's impacts on transportation, noise, and air quality, and its associated impacts on the safety of the children at the Orchard School. Also, as stated above, the Draft EIR has identified alternatives that would lessen the Project's environmental impacts and has offered minimal analysis to justify the elimination of these alternatives.

As stated above, the Project will increase VMT and will result in a negligible increase in automobile speeds. In any statement of overriding considerations, the City will have to show that the Project's purpose and these trivial advantages outweigh the educational needs and safety of the students of the Orchard School.

21. Unavailability of land for eminent domain.

The City will encounter challenges in acquiring the land necessary for the Project. The District is not a willing seller of its land. As such, the City would likely have to resort to eminent domain to move forward with the Project, as intimated in the Draft EIR which references basing acquisition costs on applicable law. (Draft EIR, MM REC – 2.1.) In order to be allowed to acquire the Property from the District by eminent domain, the City of San Jose would need to meet the following requirements:

- California Constitution article I, section 19, requires that a taking be for a public use;
- The property is necessary for the proposed project (Code Civ. Proc. § 1240.030); and
- The proposed public use of the Property is a "more necessary public use" than that to which the Property is currently put (Code Civ. Proc. §1240.660).

The City would encounter difficulty in establishing that its proposed use is a "more necessary public use" than that of the District. This would, in essence, require the court to perform a balancing test between the necessity of public uses proposed by the City and the current use in place with the District. The City would be at a disadvantage in this balancing test due to the rebuttable presumption contained in Code of Civil Procedure Section 1240.660, which provides that "where property has been appropriated to public use by a local public entity, the use thereof by the local public entity is presumed to be a more necessary use than any use to which such property might be put by any other local public entity." The City will be unable to rebut this presumption and demonstrate that its roadway extension is a more necessary public use of the property than education, particularly in light of the marginal gains the Project offers. The Project itself thus may be infeasible.

22. Conclusion

Recirculation is required when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (CEQA Guidelines, § 15162 (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (CEQA Guidelines, § 15162 (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (CEQA Guidelines §15162 (a)(3) (B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130, as modified on denial of reh'g (Feb. 24, 1994).)

In this case, recirculation is required under all four of the foregoing subsections:

1. Substantial air quality, noise, and transportation impacts will result from the Project that were not identified in the Draft EIR;

2. Impacts that are more severe than identified exist;

3. The Draft EIR has declined to adopt additional feasible Project alternatives that would lessen the Project's environmental impacts.

4. The Draft EIR is inadequate and conclusory, as discussed in the body of this letter.

The recirculated Draft EIR must adequately acknowledge and analyze the substantial environmental impacts that are pointed out above in this correspondence. The feasibility of Alternative H must also be meaningfully analyzed in the recirculated Draft EIR. The safety of its students is paramount to the District, and its safety concerns are not adequately addressed in the Draft EIR as currently constituted. Changes must be made to preserve the safety of the children and allow them to enjoy productive time at school, free from traffic, excessive noise, and pollution.

Sincerely,

LOZANO SMITH

Harold M. Freiman

HMF/

Enclosures:

(A) Orchard School District Notice of Completion

(B) Regular Meeting and Public Hearing of the Board of Trustees – Orchard School District, March 28, 1995

(C) Orchard School District Resolution No. 052504-02

(D) Agreement to Dedicate Road Easement between Orchard School District and Summerhill Homes

(E) Grant of Easement

(F) Google Maps image of Orchard School

(G) Photograph of Silk Wood Lane taken at School dismissal time

(H) Transportation Analysis Peer Review by Keith Higgins

(I) Greenhouse Gas Emissions Technical Review and Comments by Ron Sissem

(J) Noise Study Peer Review by Walter J. Van Groningen

cc: Dr. Wendy Gudalewicz, Superintendent, Orchard School District
Honorable Mayor Sam Liccardo and City Council Members (without enclosures.)

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit A: **Orchard School District Notice of Completion**

NOTICE OF COMPLETION

State of California
Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Title

New Elementary School

Project Location - Specific

The project is to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

Project Location - City | Project Location County

City of San Jose, Santa Clara County

Description of Nature, Purpose, and Beneficiaries of Project

Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students. The beneficiaries of this project will be the children and other residents of the Orchard School District.

Lead Agency | Division

Orchard School District

Address Where Copy of EIR is Available

711 Gish Road
San Jose, CA 95112

Review Period

February 18, 1995 through March 17, 1995

Contact Person | Area Code/Phone/Extension

Donna Elder, Ed.D., Superintendent, Orchard School District
Telephone 408-998-2889

Revised August 1987

NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL FORM

Mail to: State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, CA 95814 — 916/445-0613

NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL FORM

See NOTE below

SCH # _____

1. Project Title: New Elementary School
2. Lead Agency: Orchard School District 3. Contact Person: Donna Elder
3a. Street Address: 711 Gish Road 3b. City: San Jose, CA 95112
3c. County: Santa Clara 3d. Zip: 95112 3e. Phone: (408) 998-2889

PROJECT LOCATION 4. County: Santa Clara 4a. City/Community: San Jose
4b. Assessor's Parcel No. 237-15-186+187 4c. Section _____ Twp. _____ Range _____
5a. Cross Streets: Fox Lane & Old Oakland Rd 5b. For Rural, Nearest Community: _____

6. Within 2 miles: a. State Hwy # 880 101 b. Airports _____ c. Railways So.Pacific d. Waterways _____

7. DOCUMENT TYPE

CEQA
01. ___ NOP
02. ___ Early Cons
03. XX Neg Dec
04. ___ Draft EIR
05. ___ Supplement/Subsequent EIR (Prior SCH No.: _____)
06. ___ NOE
07. ___ NOC
08. ___ NOD

NEPA
09. ___ NOI
10. ___ FONSI
11. ___ Draft EIS
12. ___ EA

OTHER
13. ___ Joint Document
14. ___ Final Document
15. ___ Other _____

8. LOCAL ACTION TYPE
01. ___ General Plan Update
02. ___ New Element
03. ___ General Plan Amendment
04. ___ Master Plan
05. ___ Annexation
06. ___ Specific Plan
07. ___ Community Plan
08. ___ Redevelopment
09. ___ Rezone
10. ___ Land Division (Subdivision, Parcel Map, Tract Map, etc.)
11. ___ Use Permit
12. ___ Waste Mgmt Plan
13. ___ Cancel Ag Preserve
14. XX Other Elementary School

9. DEVELOPMENT TYPE
01. ___ Residential: Units _____ Acres _____
02. ___ Office: Sq. Ft. _____ Acres _____ Employees _____
03. ___ Shopping/Commercial: Sq. Ft. _____ Acres _____ Employees _____
04. ___ Industrial: Sq. Ft. _____ Acres _____ Employees _____
05. ___ Water Facilities: MGD _____
06. ___ Transportation: Type _____
07. ___ Mining: Mineral _____
08. ___ Power: Type _____ Watts _____
09. ___ Waste Treatment: Type _____
10. ___ OCS Related
11. XX Other: Public Elementary School

10. TOTAL ACRES: 16 11. TOTAL JOBS CREATED: 0

12. PROJECT ISSUES DISCUSSED IN DOCUMENT

01. ___ Aesthetic/Visual
02. X Agricultural Land
03. X Air Quality
04. X Archaeological/Historical
05. ___ Coastal Zone
06. ___ Economic
07. ___ Fire Hazard
08. X Flooding/Drainage
09. X Geologic/Seismic
10. ___ Jobs/Housing Balance
11. ___ Minerals
12. X Noise
13. X Public Services
14. X Schools
15. ___ Septic Systems
16. ___ Sewer Capacity
17. ___ Social
18. ___ Soil Erosion
19. ___ Solid Waste
20. ___ Toxic/Hazardous
21. X Traffic/Circulation
22. ___ Vegetation
23. ___ Water Quality
24. ___ Water Supply
25. ___ Wetland/Riparian
26. ___ Wildlife
27. ___ Growth Inducing
28. ___ Incompatible Landuse
29. ___ Cumulative Effects
30. ___ Other _____

13. FUNDING (approx) Federal $ _____ State $ _____ Total $ _____

14. PRESENT LAND USE AND ZONING:

Agricultural / Heavy Industrial

15. PROJECT DESCRIPTION:

Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students. The beneficiaries of this project will be the children and other residents of the Orchard School District.

16. SIGNATURE OF LEAD AGENCY REPRESENTATIVE: _____ DATE: _____

NOTE: Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. from a Notice of Preparation or previous draft document) please fill it in.

REVIEWING AGENCIES

____ Resources Agency
____ Boating and Waterways
____ Conservation
____ Fish and Game
____ Forestry
____ Dept. of Water Resources
____ Reclamation Board
____ Parks & Recreation
____ Office of Historic Preservation
____ Native American Heritage Commission
____ S.F. Bay Cons. & Dev't Commission
____ Coastal Commission
____ Energy Commission
____ State Lands Commission
____ Air Resources Board
____ Solid Waste Mgmt Board
SWRCB (Sacto Hq):
____ Water Quality
____ Water Rights
____ Clean Water Grants

____ Regl WQCB#____ ( )
____ Caltrans District # _____
____ Dept. of Transportation Planning
____ Aeronautics
____ CA Highway Patrol
____ Housing & Community Development
____ Health Services
____ Food & Agriculture
____ Public Utilities Commission
____ Public Works Board
____ Corrections
____ General Services
____ OLA (Schools)
____ Santa Monica Mtns Conservancy
____ Colorado River Board
____ Tahoe Regional Planning Agency
____ Coastal Conservancy
____ OPR - OLGA
____ ORP - Coastal
_X_ Other California Department of Education School Facilities Planning Division
____ Other

FOR SCH USE ONLY

Date Received at SCH _____ Catalog Number _____
Date Review Starts _____ Applicant _____
Date to Agencies _____ Consultant _____
Date to SCH _____ Contact _____ Phone _____
Clearance Date _____ Address _____
Notes: _____

SECTION I. ENVIRONMENTAL CHECKLIST

This checklist was used to identify environmental impacts which could occur if the proposed project is implemented. Sources of information and discussions of the basis for each answer except "No Impact" are found the Initial Study, Discussion of Envorinmental Evaluation. A monitoring plan to insure implementation of mitigation measures is found in Section II.

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially Significant Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
I. LAND USE AND PLANNING Would the proposal:					
a) Conflict with general plan designation or zoning?	☐	☐	☐	☐	■
b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project?	■	☐	☐	☐	☐
c) Be incompatible with existing land use in the vicinity?	☐	☐	☐	☐	■
d) Affect agricultural resources or operations (e.g. impacts to soils or farmlands, or impacts from incompatible land uses)?	■	☐	☐	☐	☐
e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)?	■	☐	☐	☐	☐
II. POPULATION AND HOUSING Would the proposal:					
a) Cumulatively exceed official regional or local population projections?	■	☐	☐	☐	☐
b) Induce substantial growth in an area either directly or indirectly (e.g. through projects in an undeveloped area or extension of major infrastructure)?	■	☐	☐	☐	☐
c) Displace existing housing, especially affordable housing?	■	☐	☐	☐	☐

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially Significant Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
III. GEOLOGIC PROBLEMS Would the proposal result in or expose people to potential impacts involving:					
a) *Fault rupture?*	■	□	□	□	□
b) Seismic ground shaking?	□	□	■	□	□
c) Seismic ground failure, including liquefaction?	□	□	□	■	□
d) Seiche, tsunami, or volcanic hazard?	■	□	□	□	□
e) Landslides or mudflows?	■	□	□	□	□
f) Erosion, changes in topography or unstable soil conditions from excavation, grading, or fill?	■	□	□	□	□
g) Subsidence of the land?	■	□	□	□	□
h) Expansive soils?	□	□	■	□	□
i) Unique geologic or physical features?	■	□	□	□	□
IV. WATER Would the proposal result in:					
a) Changes in the absorption rates, drainage patterns, or the rate and amount of surface runoff?	□	□	□	■	□
b) Exposure of people or property to water related hazards such as flooding?	■	□	□	□	□
c) Discharge into surface waters or other alteration of surface water quality (e.g. temperature, dissolved oxygen or turbidity)?	□	□	□	■	□
d) Changes in the amount of surface water in any water body?	■	□	□	□	□
e) Changes in currents, or the course or direction of water movements?	■	□	□	□	□
f) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations or through substantial loss of groundwater recharge capability?	■	□	□	□	□
g) Altered direction or rate of flow of groundwater?	■	□	□	□	□

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially Significant Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
h) Impacts to groundwater quality?	■	□	□	□	□
i) *Substantial reduction in the amount of* groundwater otherwise available for public water supplies?	■	□	□	□	□
V. AIR QUALITY Would the proposal:					
a) Violate any air quality standard or contribute to an existing or projected air quality violation?	■	□	□	□	□
b) Expose sensitive receptors to pollutants?	□	□	□	■	□
c) Alter air movement, moisture, or temperature or cause any change in climate?	■	□	□	□	□
d) Create objectionable odors?	■	□	□	□	□
VI. TRANSPORTATION/CIRCULATION Would the proposal result in:					
a) Increased vehicle trips or traffic congestion?	□	□	□	□	■
b) Hazards to safety from design features (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?	□	□	■	□	□
c) Inadequate emergency access or access to nearby uses?	■	□	□	□	□
d) Insufficient parking capacity on-site or off-site?	□	□	■	□	□
e) Hazards or barriers for pedestrians or bicyclists?	□	□	□	■	□
f) Conflicts with adopted policies supporting alternative transportation (e.g. bus turnouts, bicycle racks)?	■	□	□	□	□
g) Rail, waterborne, or air traffic impacts?	■	□	□	□	□
VII. BIOLOGICAL RESOURCES Would the proposal result in impacts to:					
a) Endangered, threatened or rare species or their habitats (including but not limited to plants, fish, insects, animals and birds)?	□	□	□	■	□

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially *Significant* Adverse Impact Unless Mitigated	*Less* Than Significant Adverse Impact	Beneficial Impact
b) Locally designated species (e.g. heritage trees)?	☐	☐	☐	■	☐
c) Locally designated natural communities (e.g. oak forest, coastal habitat etc.)?	■	☐	☐	☐	☐
d) Wetland habitat (e.g. marsh, riparian and vernal pool)?	■	☐	☐	☐	☐
e) Wildlife dispersal or migration corridors?	■	☐	☐	☐	☐
VIII. ENERGY AND MINERAL RESOURCES Would the proposal:					
a) Conflict with adopted energy conservation plans?	■	☐	☐	☐	☐
b) Use non-renewable resources in a wasteful and inefficient way?	■	☐	☐	☐	☐
c) Result in the loss of availability of a known mineral resource that would be of future value to the region & residents of the state?	■	☐	☐	☐	☐
IX. HAZARDS Would the proposal involve:					
a) A risk of accidental explosion or release of hazardous substances (including, but not limited to: oil, pesticides, chemicals, or radiation)?	■	☐	☐	☐	☐
b) Possible interference with an emergency response plan or emergency evacuation plan?	■	☐	☐	☐	☐
c) The creation of any health hazard or potential health hazard?	■	☐	☐	☐	☐
d) Exposure of people to existing sources of potential health hazards?	☐	☐	■	☐	☐
e) Increased fire hazard in areas with flammable brush, grass or trees?	■	☐	☐	☐	☐
X. NOISE Would the proposal result in:					
a) Increases in existing noise levels?	☐	☐	☐	■	☐

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially Significant Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
b) Exposure of people to severe noise levels?	☐	☐	■	☐	☐
XI. PUBLIC SERVICES Would the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
a) Fire protection?	☐	☐	☐	■	☐
b) Police protection?	☐	☐	☐	■	☐
c) Schools?	☐	☐	☐	☐	■
d) Maintenance of public facilities, including roads?	■	☐	☐	☐	☐
e) Other governmental services?	■	☐	☐	☐	☐
XII. UTILITIES & SERVICE SYSTEMS Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities:					
a) Power or natural gas?	■	☐	☐	☐	☐
b) Communications systems?	■	☐	☐	☐	☐
c) Local or regional water treatment or distribution facilities?	■	☐	☐	☐	☐
d) Sewer or septic tanks?	■	☐	☐	☐	☐
e) Storm water drainage?	■	☐	☐	☐	☐
f) Solid waste disposal?	■	☐	☐	☐	☐
g) Local or regional water supplies?	■	☐	☐	☐	☐
XIII. AESTHETICS Would the proposal:					
a) Affect a scenic vista or scenic highway?	■	☐	☐	☐	☐
b) Have a demonstrable negative aesthetic effect?	■	☐	☐	☐	☐
c) Create light or glare?	■	☐	☐	☐	☐

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially *Significant* Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
XIV. CULTURAL RESOURCES Would the proposal:					
a) Disturb paleontological resources?	■	□	□	□	□
b) Disturb archaeological resources?	□	□	■	□	□
c) Affect historical resources?	□	□	□	■	□
d) Have the potential to cause a physical change which would affect unique ethnic cultural values?	■	□	□	□	□
e) Restrict existing religious or sacred uses within a potential impact area?	■	□	□	□	□
XV. RECREATION Would the proposal:					
a) Increase the demand for neighborhood or regional parks or other recreational facilities?	■	□	□	□	□
b) Affect existing recreational opportunities?	□	□	□	□	■
XVI. MANDATORY FINDINGS OF SIGNIFICANCE					
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animals community, reduce the number or range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	■	□	□	□	□
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term environmental goals?	■	□	□	□	□

ENVIRONMENTAL CHECKLIST	No Impact	Potentially Significant Adverse Impact	Potentially Significant Adverse Impact Unless Mitigated	Less Than Significant Adverse Impact	Beneficial Impact
c) Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)	■	□	□	□	□
d) Does the project have environmental effects which will cause substantial adverse effects on humans, either directly or indirectly?	□	□	■	□	□

SECTION II MONITORING PLAN

A licensed architect has been retained to create plans for school buildings and other structures on the site. These plans will be reviewed by the State of California, Office of the State Architect for compliance with Field Act and other applicable standards. Construction inspectors of the architect and/or Orchard School District will frequently monitor construction to insure compliance with plans and applicable state codes. Construction not in compliance will be rejected and reworked.

Construction of road improvements will be inspected by the construction inspectors of the architect and/or Orchard School District for proper compliance with plans and local road standards. Inspectors from the City of San Jose will be encouraged to also monitor compliance. Work improperly performed or not in compliance with appropriate codes or standards will be rejected and reworked.

Construction of on-site parking and bicycle access will be inspected by the construction inspectors of the architect and/or Orchard School District for proper compliance with plans and local road standards. Inspectors from the City of San Jose will be encouraged to also monitor compliance. Work improperly performed or not in compliance with appropriate codes or standards will be rejected and reworked.

Construction of building foundations and other structures will be monitored by inspectors to discover any American Indian artifacts and/or remains that are accidentally unearthed. An archeological specialist in the relocation of unearthed artifacts and/or remains will be employed to ensure that proper care is given to artifacts and/or remains that are unearthed.

Construction progress and status of mitigation measures will be reported to the Orchard School District board of Trustees on a regular basis. This monitoring plan shall serve as the necessary monitoring effort of the Orchard School District for compliance with the California Environmental Quality Act and other laws, regulations, rules and codes that may apply.

Initial Study

DISCUSSION OF ENVIRONMENTAL EVALUATION

The factors discussed below may be potentially affected by this project. Potential impacts and possible mitigations, that would reduce or eliminate these impacts, are described. Environmental impacts that are clearly not involved are not discussed.

Background/ Environmental Setting

The Orchard School District is a school district with only one school. The current school that serves the territory of the City of San Jose within the Orchard School District is undersized for the number of students that are to be expected to attend this school from existing, approved and planned residential development. Construction of a new replacement elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students that is located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California is forecast to be adequate to serve the current and future Orchard School District's student population that may reasonably be expected from the buildout of residential dwelling units in accordance with the current General Plan of the City of San Jose.

The vicinity of the proposed school site contains a mix of residential, commercial and industrial uses. A variety of potential school sites were examined. The subject site is one of the two most compatible sites for a public school when existing and future planned development within the Orchard School District's territory are considered.

Land Use / General Plan

The vicinity of the proposed school site contains a mix of residential, commercial and industrial uses. The two parcels that make up the proposed new replacement elementary school site have farmland and heavy industry land use designations. The subject site is one of the two most compatible sites for a public school when existing and future planned development within the Orchard School District's territory are considered. Siting a new school on the proposed location will best serve the needs of the community and provide an increase of recreational opportunities for Orchard School District residents.

Agricultural Land

Part of the proposed site (11 acres) is currently in an agricultural preserve and occasionally used for berry farming. Adequate farm acreage exists within the County of Santa Clara so that conversion of this land to an elementary school will have a less than significant impact.

Transportation and Traffic

The location of the current school site causes the need to transport almost all of the current student population. The proposed location for the new replacement elementary school will permit almost sixty percent of the current and future students to walk to school, thereby significantly reducing required vehicular trips during the morning peak period which may lead to reduced traffic congestion. In addition, most of the students who are not within walking distance (students from the southern part of the District) will be bussed to the new replacement school site.

The project will include the construction of road improvements and sidewalks along Oakland in compliance with standards set for such improvements by the City of San Jose. The project will include the design and construction of adequate on-site parking capacity for an elementary school of 800 to 1,200 as specified by the office of the state architect. Sidewalks and bicycle access will be constructed along Fox Lane and Oakland Road to conform with appropriate standards to mitigate any less than significant impacts.

Air Quality

The boundaries of the Orchard School District include industrial areas within the City of San Jose. These industrial areas house various commercial and industrial facilities, including some which emit identified quantities of air contaminants. The District has identified all those facilities within the District. The Bay Area Air Quality Management District (BAAQMD) has assisted the District in this review, and has identified only one facility within a 1/4 mile radius of the proposed school site which emits identified quantities of air contaminants. The identified facility emits small quantities of contaminants, none of which are toxic or are on the list of acutely hazardous materials. The BAAQMD concluded that the identified facility does not pose an air quality problem for the proposed project.

Soils/Seismic

The land within the San Francisco Bay Area has been subject to, and is projected to continue to be subject to ground shaking from earth fault ruptures and slipping also known as earthquakes. This school site is located east of the San Andreas Fault and near the southern most region Hayward Fault. These fault zones may cause occasional earthquakes. Mitigation for this hazard will be compliance with provisions of the Education Code, Article 2 Sections 39110 et. seq., part of which is known as the Field Act, and other applicable state codes for the construction of school facilities. Facilities plans will be reviewed by the State of California, Department of Education and the Office of the State Architect for compliance with applicable codes before construction commences. Appropriate soil analyses have been and additional soils analyses will be completed that will ensure reasonably safe conditions for placement and construction of planned school buildings on the proposed new site.

The 11+ acre portion of the site (1917 Oakland Road) that has been used for agriculture has an underground fuel storage tank that has not been used for several years. Before construction commences, the tank will be removed in accordance with the requirements of the San Jose Fire Department and the surrounding soil will be tested. Any contaminated soil will be removed or remediated to a level of less than significant impact.

The 4+ acre portion of the site (1937 Oakland Road) has been used as a motor vehicle dismantling area. Extensive clean up activities have been performed by the current owner of the site. Soil tests have shown that Total Petroleum Hydrocarbons on the site are at levels that are likely to be naturally occurring. However, piles of contaminated soil remain on the site and low levels of freon have been detected in the ground water. Before construction begins, all contaminated soil will be removed or remediated to a level of less than significant impact. All ground water contamination will be remediated as required by standards set by local and regional agencies who have authority over ground water under this site.

Examination of the preliminary title reports for both portions of the site and examination by Kleinfelder, Inc., the Orchard School District's soils environmental consultant, have shown that no easements exist for pipelines that carry hazardous substances, materials or wastes. And no such pipelines have been observed on the site. A study by Kleinfelder, Inc. also revealed that for the above sites conditions of Education Code Sections 39003(a)(1, 2, and 3) have been met.

Water Runoff

Buildings and hardtop surface added to undeveloped farmland will change the rates of absorption and runoff. The project will include the installation of storm drainage systems and channeling of surface water to appropriate City of San Jose storm drains to provide adequate control of runoff. Plans for these systems will be submitted to appropriate state agencies and the City of San Jose for approval prior to construction.

Safety / Health

The boundaries of the Orchard School District include industrial areas within the City of San Jose. These industrial areas house various commercial and industrial facilities, including some which may handle acutely hazardous materials or waste. With the assistance of the Bay Area Air Quality Management District (BAAQMD) and with data collected from the Santa Clara County Department of Environmental Health, the District has determined that there are no such facilities within a 1/4 mile radius of the proposed site. A study conducted by Environ of Emeryville, California revealed that there were no sites within 1/4 mile of the new replacement elementary school site that store or use acutely hazardous materials or have Risk Management and Prevention Programs for acutely hazardous materials storage and use.

To the extent such facilities may exist outside the 1/4 mile radius or attempt to locate near the site in the future there are other agencies and jurisdictions that administer programs that will prevent a potential endangerment of public health by such facilities. Those programs include:

1. Santa Clara County's Risk Management and Prevention Program under Health and Safety Code Sections 25531, et seq. and 42301.7.
2. San Jose's Toxic Gas Ordinance
3. San Jose Hazardous Materials Ordinance
4. BAAQMD permitting requirements under Health and Safety Code Sections 42301.6 and 42301.7.
5. San Jose's EIR processing requirements under CEQA in general and Public Resources Code Section 21151.4 in specific.
6. Proposition 65's notice requirements and discharge prohibitions.

Noise

Children playing on the site before and after school and during the school day may create levels of noise that have a less than significant impact. It is also expected that the noise created by children playing may be less than the noise generated by farm machinery that currently occupies the site.

It is expected that children could be exposed to noise levels caused by trains operating on the Southern Pacific Railroad right-of-way located east of the proposed new replacement elementary school site and by peak hour commercial and/or industrial vehicular traffic along Oakland Road that may have a potentially significant impact unless mitigated. Sound reduction materials to be used in the construction of school buildings and the location of play fields in areas that have reduced noise levels will mitigate impacts to less than significant.

Species and Habitat

Burrowing Owls have been observed within the region of the Orchard School District. Because the site has been used for agriculture and industry for many years, it is unlikely that there is any such habitat on this site. A study of potential Burrowing Owl locations on the site will be conducted before plans are drawn to locate school buildings.

Some sycamore trees exist along the former creek area that transverses the north east portion of this site. These sycamore trees will be maintained as much as possible. If removal of one or more of the sycamore trees becomes necessary for the completion of the project, appropriate tree replacement will be considered at a more suitable location of the site.

Fire And Police Protection

The construction of a school may have a less than significant impact on the need for fire and police protection. Site planning and will include the installation of access roads and fire hydrants to serve the site in accordance with appropriate state and local fire protection service standards.

Archeological Artifacts and Remains

A preliminary study has indicated that there may be American Indian artifacts and/or remains that may be buried in the surface soil of portion of the proposed new replacement elementary school site (along the former creek site). These artifacts and/or remains could be unearthed during the construction of school buildings and other structures. The project will include the employment of an archeological specialist to examine the soil area surrounding the proposed location of school buildings and hardtop areas, and recommend the proper care of artifacts and remains in accordance with appropriate state and local standards if any artifacts and/or remains are unearthed.

Recreation

The existence of open playfields on the school site will create beneficial recreational opportunities for area residences.

INFORMATION SOURCES

Copies of all information sources are available for review at the Orchard School District, 711 Gish Road, San Jose, CA 95112, telephone 408-998-2889

1. Professional judgment and expertise of the environmental specialist preparing this assessment, based upon a review of the site and surrounding conditions.

2. Professional judgment and expertise of the geological specialist preparing this assessment, based upon a review of the site and surrounding conditions.

3. Consultation with the Bay Area Air Quality Management District. Letter from Milton Feldstein, Air Pollution Control Officer, Jan. 26, 1995.

4. Professional judgment and expertise of the archeological specialist preparing this assessment, based upon a review of the site and surrounding conditions.

5. Analyses of Orchard School District pupil population data, 1990 U.S. Census data, Information from the California Department of Education and the California Office of Public School Construction.

6. Consultation with staff of the Planning Department of the City of San Jose.

7. "Fatal Flaw Report for the Orchard School Site", Old Oakland Road and Fox Lane, San Jose California, David J. Powers & Associates, Inc. 1995

8. "Evaluation Of The Potential For Operational Or Emergency Releases Of Hazardous Or Acutely Hazardous Materials Near Selected Potential Sites For The Construction Of A New School And Administration Facilities In The Orchard School District", Enivron Corporation, Emeryville, California. November 15, 1994, Project No. 03-4254A

9. Presentation to Orchard School District by VLSI Technology, Inc. August 23, 1994.

10. "Hazardous Material Report", October 11, 1994, Union Pacific Railroad Company.

11. "Archaeological Field Inspection Of The Proposed Orchard School Site", Old Oakland Road and Fox Lane, San Jose, Santa Clara County, California. Holman & Associates, December 22, 1994.

12. "Hydrocarbon Tank Removal Report". E2C, Inc. September 10, 1991.

13 "Air Quality Evaluation of A Proposed Orchard School Site Old Oakland Road & Fox Lane", San Jose. Donald Ballanti, Certified Consulting Meteorologist. January 1995.

14. "15 to 20 Acre Site Analysis," Jeffrey S. Black, 1995.

15. "Soil and Groundwater Investigation", E2C, Inc. July 8, 1992.

16. "Soil and Groundwater Investigation", E2C, Inc. March, 1994.

17. Quarterly Monitoring Report No. 4. E2C, Inc. November 7, 1994.

18. Summary of Conditions and Recommendations at 1917 and 1937 Oakland Road, San Jose, California, Kleinfelder, 1995

"DRAFT" NEGATIVE DECLARATION

Orchard School District

Project Name: New Elementary School

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Project Description:

Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

Name of Agency Undertaking Project:

Orchard School District

Contact Person: Donna Elder, Ed.D., Superintendent
Area Code: (408) Phone: 998-2889

The Board of Education of the Orchard School District School District, on March 28, 1995, took the following action concerning the above project:

1. Determined that the project will not have a significant effect on the environment or the effects can be mitigated so that no significant effect can occur; and

2. Adopted this Negative Declaration in accordance with the provisions of CEQA and the State EIR Guidelines.

Mitigation measures adopted to reduce the impacts of the project are in the Initial Study , Discussion of Envoronmental Evaluation on file at the offices of the Orchard School District.

Date:_____

_____
Donna Elder, Ed.D., Superintendent
Secretary, Board of Education

NOTICE OF DETERMINATION

TO: __X__ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

_____ County Clerk
County of Santa Clara
70 West Hedding Street, Room 14
San Jose, CA 95110

FROM: Orchard
School District
711 Gish Road
San Jose, CA 95112

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title: New Elementary School

SCH #	Donna Elder, Ed.D.	408-98-2889
State Clearinghouse Number	Lead Agency Contact Person	Telephone

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Project Description: Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

This is to advise that the Orchard School District has approved the above described project on March 28, 1995, and has made the following determinations regarding the above described project:

1. The project ___ will _X_ will not have a significant effect on the environment.

2._____ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

__X__A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

3. Mitigation measures _X_ were ___, were not made a condition of the approval of the project.

4.A statement of Overriding considerations was not adopted for this project.

5. Findings ___ were, _X_ were not made pursuant to the provisions of CEQA.

This is to certify that the final negative declaration with comments and responses and record of project approval is available to the General Public at the Orchard School District, 711 Gish Road, San Jose, California, 95112, telephone 408-998-2889.

Date Received for Filing and Posting at OPR

_____

Signature (Public Agency) Date Title

NOTICE OF PREPARATION OF NEGATIVE DECLARATION
Orchard School District

The Orchard School District is preparing a Negative Declaration for the project described below. A "Draft" Negative Declaration is on file at the District office and is available for public inspection.

A Negative Declaration will be considered for approval or disapproval by the Board of Education of the District at its meeting to be held March 28, 1995. The project consists of the following:

Project Name: New Elementary School

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Description of Nature, Purpose and Beneficiaries of Project:

The Orchard School District intends to Construct an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.. The beneficiaries will ultimately be the residents and landowners within the District service area.

Name of Agency Undertaking Project:

Orchard School District

Contact Person: Donna Elder, Ed.D., Superintendent
Area Code: (408) Phone: 998-2889

Mitigation measures to avoid potential significant effects: See Initial Study, Discussion of Environmental Evaluation on file at the offices of the Orchard School District.

_____ Date

_____
Donna Elder, Ed.D., Superintendent
Secretary, Board of Education

NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that the Board of Education of Orchard School District will, at its Special Meeting to be held on March 28, 1995, consider the adoption of Negative Declaration for the following:

> PROJECT: Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

LOCATION: Orchard School District
711 Gish Road
San Jose, CA 95112

PROPONENT: Orchard School District

Copies of the Initial Study, Environmental Checklist, Mitigation Measures, Monitoring Plan and appropriate background research are on file and available for inspection at the office of the proponent.

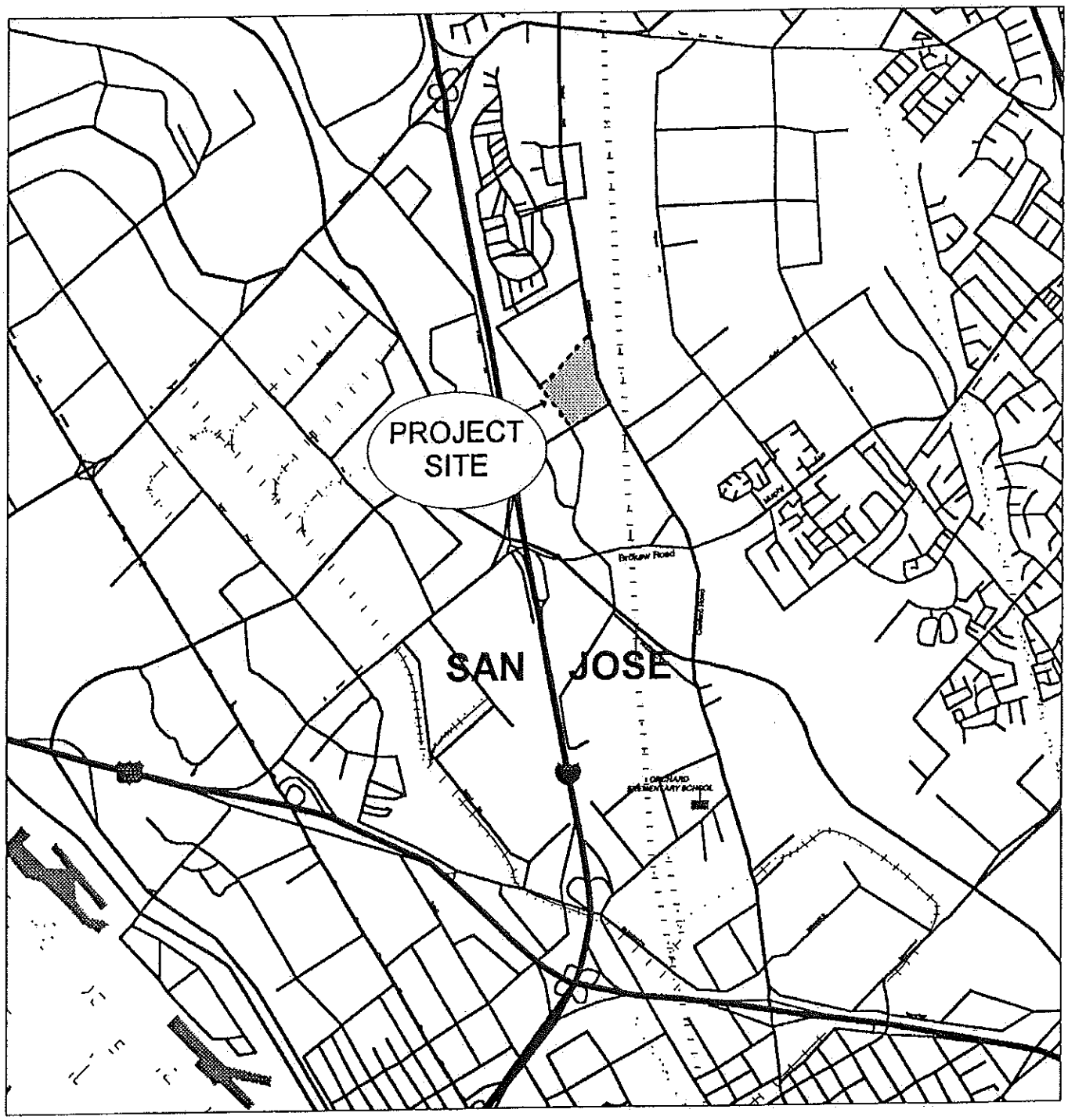
The March 28, 1995 Regular Meeting of the Board of Trustees of the Orchard School District will begin at 6:30 p.m. in the Board Meeting Room.

Questions and/or comments should be directed to the proponent on or before March 28, 1995.

DATED: February 17, 1995.

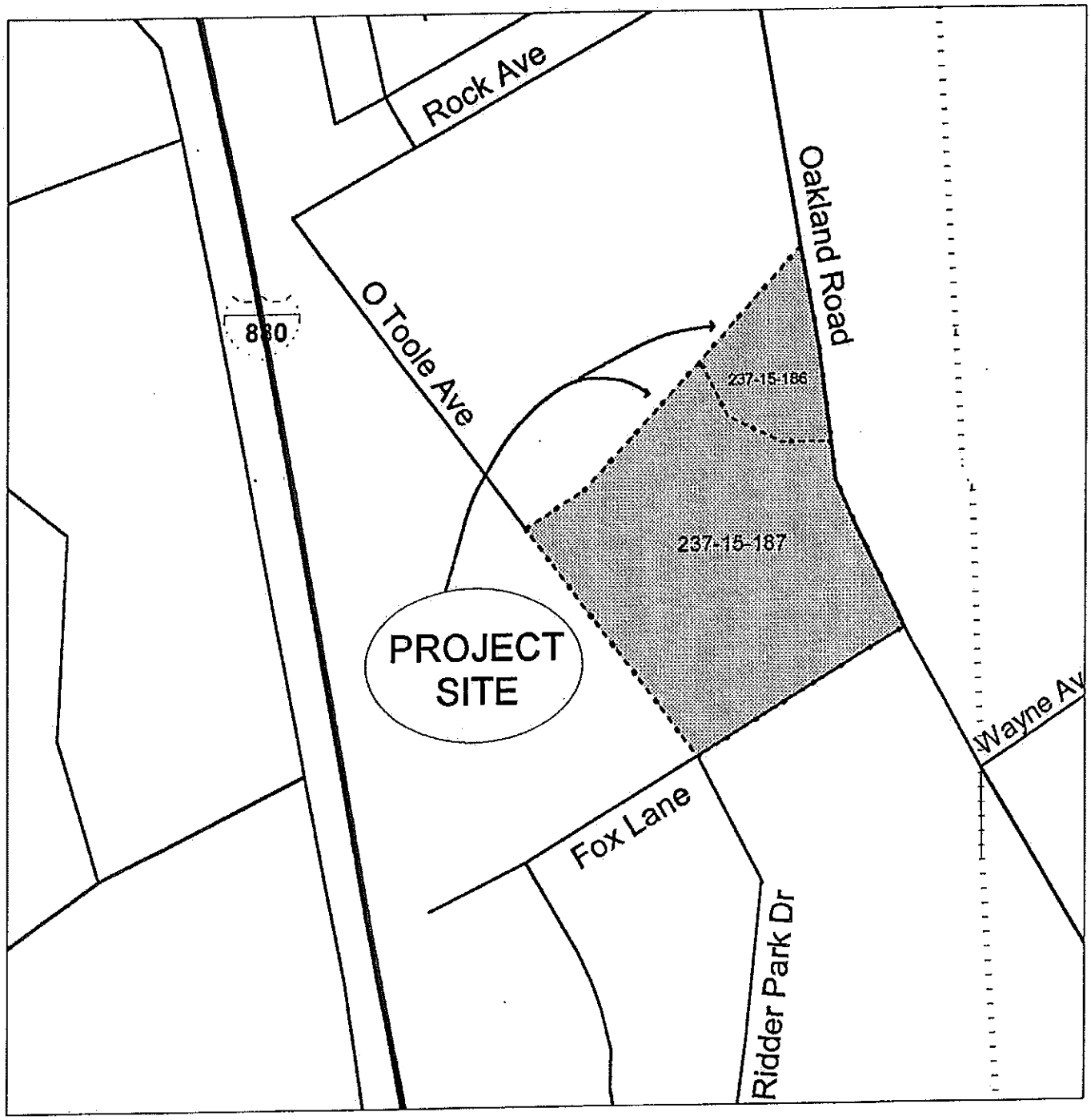
_____
Donna Elder, Ed. D., SUPERINTENDENT
Secretary, Board of Education

ORCHARD SITE ANALYSIS



ORCHARD SCHOOL DISTRICT
1995

ORCHARD SITE ANALYSIS



ORCHARD SCHOOL DISTRICT
1995

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit B: **Regular Meeting and Public Hearing of the Board of Trustees – Orchard School District, March 28, 1995**

REGULAR MEETING AND PUBLIC HEARING OF THE BOARD OF TRUSTEES
ORCHARD SCHOOL DISTRICT

MEDIA CENTER, TUESDAY, 28 MARCH 1995

CLOSED SESSION AT 6:30 PM, OPEN SESSION FOLLOWING

AGENDA

1. OPEN SESSION:

1.A Call to Order/Roll Call - Quorum/Adjourn to CLOSED SESSION

2. CLOSED SESSION:

2.A	Personnel:	Management Negotiations
2.B	Students:	Expulsions
2.C	Negotiations:	Meet with Negotiators re: *parcels #237-15-186 and 237-15-187*
2.D	Litigation:	

3. OPEN SESSION:

3.A Adoption of the Agenda

4. CONSENT CALENDAR:

These agenda items are considered routine and will be approved in one action. If a Board Member requests an item be removed from the CONSENT CALENDAR or a citizen wishes to speak to an item, the item will be considered under ACTION ITEMS.

CONSENT	4.A	Warrants: 2-27 to 3-23-95	**Attachment #1**
CONSENT	4.B	Purchase Requisitions: 2-27 to 3-23-95	**Attachment #2**
CONSENT	4.C	Board Minutes: 2-28-95	**Attachment #3**
CONSENT	4.D	Interdistrict Transfers	**Attachment #4**
CONSENT	4.E	Audit Agreement with Pai Accountancy Corporation	**Attachment #5**
CONSENT	4.F	Service Contract with Lyle Henrich Construction	**Attachment #6**

5. PUBLIC HEARING:

The Board will hear any public comments on the Negative Declaration regarding the use of parcels #237-15-186 and 237-15-187 as the site for the District's new school. The Board will respond to all comments in writing.

6. DISCUSSION ITEMS:

DISCUSS	6.A	County of Santa Clara Investments	**Attachment #7**
DISCUSS	6.B	Bond Presentations and Sales	**Attachment #8**

7. ACTIONS TAKEN IN CLOSED SESSION:

8. ACTION ITEMS:

ACTION	8.A	Accept Information from the Department of Fish and Game, and the State Clearinghouse. *The attached documents have been received in regards to parcels #237-15-186 and 237-15-187*	**Attachment #9**
ACTION	8.B	Adoption of the Final Negative Declaration and Notice of Determination *This is for the New Elementary School Project to be located at the corner of Oakland Road and Fox Lane in the City of San José, California. - State Clearinghouse #95023041.*	**Attachment #10**

9. INFORMATION ITEMS:

9.A Communications

9.A.1 Written Communications

9.A.2 Community

9.A.3 Board of Trustees

Anyone wishing to address the Board on a non-agenda item may do so at this time.

10. FUTURE MEETINGS AND UPCOMING EVENTS:

Next Meeting: 4-25-95

11. ADJOURNMENT

ATTACHMENT # _____

M/S Smith/Santoro to accept the information from the Department of Fish and Game and the State Clearinghouse. Brief explanation by Mr. Winters regarding the three comments made in the letter as being part of the project. On the vote, M/C Five ayes (Motion 03-95 8a)

Vicki Please Insert ⇒ Approve the Project

M/S Smith/Baker to adopt the final Negative Declaration and Notice of Determination on location for new school at the corner of Oakland Road and Fox Lane in San Jose. State Clearinghouse document #95023041. No questions, no discussion. On the motion, M/C Five ayes (Motion 03-95 8b)

There was no information shared at this meeting from staff, students or community. Board President announce the annual spring dinner of the County School Boards Association on April 26, 1995 which Mr. Baker, Ms. Smith, Mrs. D'Amelio and Mr. Chiono wish to attend. Equity 2000 report by Mrs. Smith; Mr. Chiono scheduled to attend a hispanic conference in Albuquerque, N.M. on April 28 through 30th.

Next regularly scheduled meeting: 4/25/95; Retreat to be scheduled at next meeting.

M/S Chiono/Baker to adjourn at 7:30 p.m. Five ayes (Motion 03-95 11)

Submitted by Vicky Riddle, Business Manager

Minutes approved by: _____
Gilbert Chiono, Clerk of the Board

Motion 03-95-03	Adopting Agenda
Motion 03-95-04	Approving Consent Calendar
Motion CS03-95-a	Approving 4% retroactive increase Management Positions: Daycare Director, Cafeteria Manager, Administrative Assistant
Motion CS03-95-b	Approving increase Substitute Teacher pay: $90 for regular and $100 for long term assignments
Motion 03-95-08a	Accepting Information from Dept. of Fish and Game.
Motion 03-95-08b	Adopting Negative Declaration
Motion 03-95-11	Adjournment

Caldwell Flores Winters, Inc.
2187 Newcastle Avenue, Suite 201, Cardiff, CA 92007-1848
Voice Communication 619-634-4239
Fax and Data Communication 619-436-7357

Fax Cover Summary

DATE: April

TO: Vicki Riddle

COMPANY: Oakland SD

FAX NUMBER 408 - 998 - 4316

PAGES FAXED: 1 COVER
1 LETTER SIZE
__ LEGAL SIZE
__ TOTAL PAGES

For CFW use only:		
Source:	BTO	BTC
☑ Cardiff		✓
☐ Corporate		
☐ Emeryville		

FROM:
- ☐ George Caldwell
- ☐ Don Bland
- ☐ Cris Regan
- ☐ Saul Susal
- ☑ Michael Winters
- ☐ _____

SUBJECT: AMMONDMENT TO MINUTES

COMMENTS:

faxfrm94.doc

#9

STATE OF CALIFORNIA - THE RESOURCES AGENCY

PETE WILSON, Governor

DEPARTMENT OF FISH AND GAME
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

March 15, 1995

Ms. Donna Elder
Orchard School District
711 Gish Avenue
San Jose, California 95112

Dear Ms. Elder:

New Elementary School Initial Study/Negative Declaration
Santa Clara County, SCH # 95023041

Department of Fish and Game personnel have reviewed the Initial Study/Negative Declaration (IS/ND) for the subject project. The school is proposed to be built on a 16-acre site, including 11 acres of agricultural land in central San Jose. We have the following comments.

1. Specific measures to mitigate potential impacts caused by water quality changes due to grading, increased storm water runoff, hydrocarbons and sediments, and parking lots need to be included in the IS. Installation and maintenance of oil/grease separators in the storm drain systems of parking areas for 40 or more cars should be required.

2. It is stated in the IS that burrowing owls (Athene cunicularia) are known to occur in the project region. This Department recommends that, where suitable habitat will be impacted, surveying for burrowing owls be conducted over at least four days between April 15 and July 15. Recommended survey and mitigation guidelines are enclosed. Surveying needs to be completed and appropriate mitigation determined prior to project approval. In addition, we recommend that preconstruction surveys for burrowing owls be conducted within 30 days of disturbance if suitable habitat is to be impacted. Preconstruction surveys will serve to preclude direct mortality of animals.

3. It is stated in the IS that a "former creek area" with sycamores transverses the northeast part of the site and removal of some of the sycamores may be necessary. The status of the creek needs to be explained.

We recommend impacts to creeks be avoided where possible. Impacts would include, but are not limited to, road crossings, culverts, channelization, and rip rap. The Department recommends a minimum 100-foot buffer, measured outward from the top of each creekbank, be established to protect the creek and its vegetation and provide a travel corridor for wildlife. No roads, buildings, yards, or turf should be permitted within the buffer.

#7.1

For impacts to riparian habitat that cannot be avoided, it is the Department's policy that projects result in no net loss of wetland acreage or habitat value. Revegetation plans should ensure replacement of each removed tree or shrub with at least one mature plant of the same species.

The Department has direct jurisdiction under Fish and Game Code sections 1601-03 in regard to any proposed activities that would divert or obstruct the natural flow or change the bed, channel, or bank of any stream. We recommend early consultation since modification of the proposed project may be required to avoid impacts to fish and wildlife resources. Formal notification under Fish and Game Code Section 1603 should be made after all other permits and certifications have been obtained. Work cannot be initiated until a streambed alteration agreement is executed. Unless otherwise specified in the streambed alteration agreement, any instream activities need to be avoided between October 15 and April 15.

The U. S. Army Corps of Engineers also has jurisdiction over the discharge of fill to streams and wetlands under Section 404 of the Clean Water Act. We recommend that the Corps be contacted to determine if they have jurisdiction and require a permit.

Thank you for the opportunity to review and comment on this project. If you have any questions, contact Martha Schauss, Wildlife Biologist, at (408) 623-4989; or Carl Wilcox, Environmental Serivces Supervisor, at (707) 944-5525.

Sincerely,

Cindy Catalano
Acting Regional Manager
Region 3

#9.2

State of California

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

1400 TENTH STREET
SACRAMENTO 95814

PETE WILSON
GOVERNOR

LEE GRISSOM
DIRECTOR

March 16, 1995

DONNA ELDER
ORCHARD SCHOOL DISTRICT
711 GISH ROAD
SAN JOSE, CA 95112

Subject: NEW ELEMENTARY SCHOOL - ORCHARD SCHOOL DISTRICT SCH #: 95023041

Dear DONNA ELDER:

The State Clearinghouse submitted the above named environmental document to selected state agencies for review. The review period is closed and none of the state agencies have comments. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call at (916) 445-0613 if you have any questions regarding the environmental review process. When contacting the Clearinghouse in this matter, please use the eight-digit State Clearinghouse number so that we may respond promptly.

Sincerely,

Michael Chiriatti, Jr.
Chief, State Clearinghouse

NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL FORM

#93

Mail to: State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, CA 95814 — 916/445-0613

NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL FORM

See NOTE below

SCH # 95023041

1. Project title: New Elementary School
2. Lead Agency: Orchard School District
3. Contact Person: Donna Elder
4a. Street Address: 711 Gish Road
4b. City: San Jose, CA 95112
4c. County: Santa Clara
4d. Zip: 95112
4e. Phone: (408) 998-2889

PROJECT LOCATION 4. County: Santa Clara
4a. City/Community: San Jose
4b. Assessor's Parcel No. 237-15-186+187
4c. Section ____ Twp. ____ Range ____
5a. Cross Streets: Fox Lane & Old Oakland Rd
5b. For Rural, Nearest Community: ____
6. Within 2 miles: a. State Hwy # 880 / 101 b. Airports ____ c. Railways So.Pacific d. Waterways ____

7. DOCUMENT TYPE

CEQA
01. ___ NOP
02. ___ Early Cons
03. XX Neg Dec
04. ___ Draft EIR
05. ___ Supplement/Subsequent EIR (Prior SCH No.: ____)

NEPA
09. ___ EIS
10. ___ FONSI
11. ___ Draft EIS
12. ___ EA

OTHER
13. ___ Joint Document
14. ___ Final Document
15. ___ Other ____

8. LOCAL ACTION TYPE
01. ___ General Plan Update
02. ___ New Element
03. ___ General Plan Amendment
04. ___ Master Plan
05. ___ Annexation
06. ___ Specific Plan
07. ___ Community Plan
08. ___ Redevelopment
09. ___ Rezone
10. ___ Land Division (Subdivision, Parcel Map, Tract Map, etc.)
11. ___ Use Permit
12. ___ Waste Mgmt Plan
13. ___ Cancel Ag Preserve
14. XX Other Elementary School

9. DEVELOPMENT TYPE
01. ___ Residential: Units ____ Acres ____
02. ___ Office: Sq. Ft. ____ Acres ____ Employees ____
03. ___ Shopping/Commercial: Sq. Ft. ____ Acres ____ Employees ____
04. XX Industrial: Sq. Ft. ____ Acres ____ Employees ____
05. ___ Water Facilities: MGD ____
06. ___ Transportation: Type ____
07. ___ Mining: Mineral ____
08. ___ Power: Type ____ Watts ____
09. ___ Waste Treatment: Type ____
10. ___ OCS Related
11. XX Other Public Elementary School

RECEIVED FEB 21 1995 STATE CLEARING HOUSE

10. TOTAL ACRES: 16
11. TOTAL JOBS CREATED: 0

12. PROJECT ISSUES DISCUSSED IN DOCUMENT

01. ___ Aesthetic/Visual
02. X Agricultural Land
03. X Air Quality
04. X Archaeological/Historical
05. ___ Coastal Zone
06. ___ Economic
07. ___ Fire Hazard
08. X Flooding/Drainage
09. X Geologic/Seismic
10. ___ Jobs/Housing Balance
11. ___ Minerals
12. X Noise
13. X Public Services
14. X Schools
15. ___ Septic Systems
16. ___ Sewer Capacity
17. ___ Social
18. ___ Soil Erosion
19. ___ Solid Waste
20. ___ Toxic/Hazardous
21. X Traffic/Circulation
22. ___ Vegetation
23. ___ Water Quality
24. ___ Water Supply
25. ___ Wetland/Riparian
26. ___ Wildlife
27. ___ Growth Inducing
28. ___ Incompatible Landuse
29. ___ Cumulative Effects
30. ___ Other ____

13. FUNDING (approx) Federal $ ____ State $ ____ Total $ ____
14. PROJECT LAND USE AND ZONING:

Agricultural / Heavy Industrial

15. PROJECT DESCRIPTION:

Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students. The beneficiaries of this project will be the children and other residents of the Orchard School District.

CLEARINGHOUSE CONTACT: Michael Chiriatti
(916) 445-0613

STATE REVIEW BEGAN: 2-22-95

DEPT REV TO AGENCY: 3-8

AGENCY REV TO SCH : 3-13

SCH COMPLIANCE : 3-15

SHORTENED REVIEW
21 - DAYS

PLEASE NOTE SCH NUMBER ON ALL COMMENTS

PLEASE FORWARD LATE COMMENTS DIRECTLY TO THE LEAD AGENCY ONLY

AQMD/APCD: 20/2 (Resources: 2/25)

("S" = sent by lead / "*" = sent by SCH)

CMT	SNT		CMT	SNT	
	X	Resources			State/Consumer Svcs
		[redacted]		X	OLA (Schools)
		[redacted]		X	ARB
	X	Fish & Game 3			[redacted]
	X	Parks & Rec/OHP			[redacted]
		BCDC		X	Reg. WQCB # 2
	X	DWR			[redacted]
		CHP			[redacted]
	X	Caltrans # 4		X	NAHC
		[redacted]		X	State Lands Comm

#10

FINAL NEGATIVE DECLARATION

Orchard School District

Project Name: New Elementary School

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Project Description:

Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

Name of Agency Undertaking Project:

Orchard School District

Contact Person: Donna Elder, Ed.D., Superintendent
Area Code: (408) Phone: 998-2889

The Board of Education of the Orchard School District School District, on March 28, 1995, took the following action concerning the above project:

1. Determined that the project will not have a significant effect on the environment or the effects can be mitigated so that no significant effect can occur; and

2. Adopted this Negative Declaration in accordance with the provisions of CEQA and the State EIR Guidelines.

Mitigation measures adopted to reduce the impacts of the project are in the Initial Study , Discussion of Envoronmental Evaluation on file at the offices of the Orchard School District.

Date:_____

_____
Donna Elder, Ed.D., Superintendent
Secretary, Board of Education

#10.1

NOTICE OF DETERMINATION

TO: __X__ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

_____ County Clerk
County of Santa Clara
70 West Hedding Street, Room 14
San Jose, CA 95110

FROM: Orchard
School District
711 Gish Road
San Jose, CA 95112

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title: New Elementary School

SCH 95023041	Donna Elder, Ed.D.	408-98-2889
State Clearinghouse Number	Lead Agency Contact Person	Telephone

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Project Description: Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

This is to advise that the Orchard School District has approved the above described project on March 28, 1995, and has made the following determinations regarding the above described project:

1. The project ___ will _X_ will not have a significant effect on the environment.

2. _____ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

__X__ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

3. Mitigation measures _X_ were ___, were not made a condition of the approval of the project.

4. A statement of Overriding considerations was not adopted for this project.

5. Findings ___ were, _X_ were not made pursuant to the provisions of CEQA.

This is to certify that the final negative declaration with comments and responses and record of project approval is available to the General Public at the Orchard School District, 711 Gish Road, San Jose, California, 95112, telephone 408-998-2889.

Date Received for Filing and Posting at OPR

_____

Signature (Public Agency) Date Title

#102

NOTICE OF DETERMINATION

TO: _____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: Orchard School District
711 Gish Road
San Jose, CA 95112

__X__ County Clerk
County of Santa Clara
70 West Hedding Street, Room 14
San Jose, CA 95110

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title: New Elementary School

SCH 95023041	Donna Elder, Ed.D.	408-98-2889
State Clearinghouse Number	Lead Agency Contact Person	Telephone

Project Location: A public school site in the northwest part of the City of San Jose in Santa Clara County.

Project Description: Construction of an elementary school designed to house approximately 800 students initially and to have a maximum capacity of 1,200 students; to be located on the northwest corner of Fox Lane and Oakland Road in the City of San Jose, California.

This is to advise that the Orchard School District has approved the above described project on March 28, 1995, and has made the following determinations regarding the above described project:

1. The project ___ will _X_ will not have a significant effect on the environment.

2. _____ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

__X__ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

3. Mitigation measures _X_ were ___, were not made a condition of the approval of the project.

4. A statement of Overriding considerations was not adopted for this project.

5. Findings ___ were, _X_ were not made pursuant to the provisions of CEQA.

This is to certify that the final negative declaration with comments and responses and record of project approval is available to the General Public at the Orchard School District, 711 Gish Road, San Jose, California, 95112, telephone 408-998-2889.

Date Received for Filing and Posting at OPR

_____

Signature (Public Agency) Date Title

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit C: **Orchard School District Resolution No. 052504-02**

ORCHARD SCHOOL DISTRICT
RESOLUTION NO. 052504-02

RESOLUTION OF INTENTION OF THE BOARD OF TRUSTEES OF THE ORCHARD SCHOOL DISTRICT TO CONVEY EASEMENT FOR ROAD PURPOSES TO THE CITY OF SAN JOSE AND CALLING PUBLIC HEARING IN CONNECTION THEREWITH

WHEREAS, pursuant to Education Code section 17556, the governing board of the Orchard School District ("District") may dedicate or convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district, either in fee or any lesser estate or interest therein, upon such terms and conditions as the parties thereto may agree ("Easement Provisions");

WHEREAS, Summerhill Homes ("Developer") has entered into an option agreement to purchase approximately 14 acres of property adjacent ("Adjacent Property") to the District's school located at 921 Fox Lane, San Jose, California. ("School") for residential development;

WHEREAS, as a condition to Developer's development of the adjacent property, the City of San Jose ("City") is requiring that a portion of the School consisting of approximately 12,000 square feet be dedicated to the City for road purposes;

WHEREAS, Developer has requested that District dedicate an easement for road purposes ("Easement") to the City;

WHEREAS, the proposed Easement consists of a portion of Santa Clara County Assessor Parcel Number 237-15-186 and is located upon a portion of the District's school (A legal description and a map depicting the location of the Easement area is attached hereto as Exhibit "A" and incorporated herein);

WHEREAS, in exchange for the District dedicating the Easement to the City, Developer has offered to compensate the District as set forth in Agreement to Dedicate Road Easement ("Agreement"). (The Agreement is attached hereto as Exhibit "B" and incorporated herein);

WHEREAS, the District desires to give notice of its intent to convey the Easement to the City pursuant to the terms and conditions of the Agreement and to call a public hearing in connection therewith.

NOW, THEREFORE, the Board of Trustees does hereby resolve as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. Intent to Convey Easement. The District declares its intent to convey the Easement to the City for road purposes pursuant to the terms and conditions of the Agreement.

Section 3. Public Hearing. The Superintendent or a designee thereof is hereby directed to give notice that on June 22, 2004 at 6:30 p.m. or as soon thereafter as practicable, in the Board room of the District Office, located at 921 Fox Lane, San Jose, CA 95131, the Board will hold a public hearing on the question of dedicating the Easement to the City in accordance with the terms and conditions of the Agreement. The public hearing will be held during a regular public meeting of the Board. Notice of the public hearing shall be given by posting copies of this resolution, signed by at least a two-thirds (2/3) majority of the Board, in three public places within the District, and by publishing the notice once in a newspaper of general circulation in the District, at least five (5) days prior to the hearing. At the time and place of the hearing, if no legal protest is entered, the Board may adopt a resolution by a two-thirds vote of all its members authorizing and directing the execution of the easement deed in accordance with the terms and conditions of the Agreement.

PASSED, ADOPTED, and APPROVED by the Board of Trustees of the Orchard School District this 25th day of May, 2004, by the following votes:

AYES:

NOES:

ABSENT:

By: _____
President, Board of Trustees

By: _____
Vice President, Board of Trustees

By: _____
Member, Board of Trustees

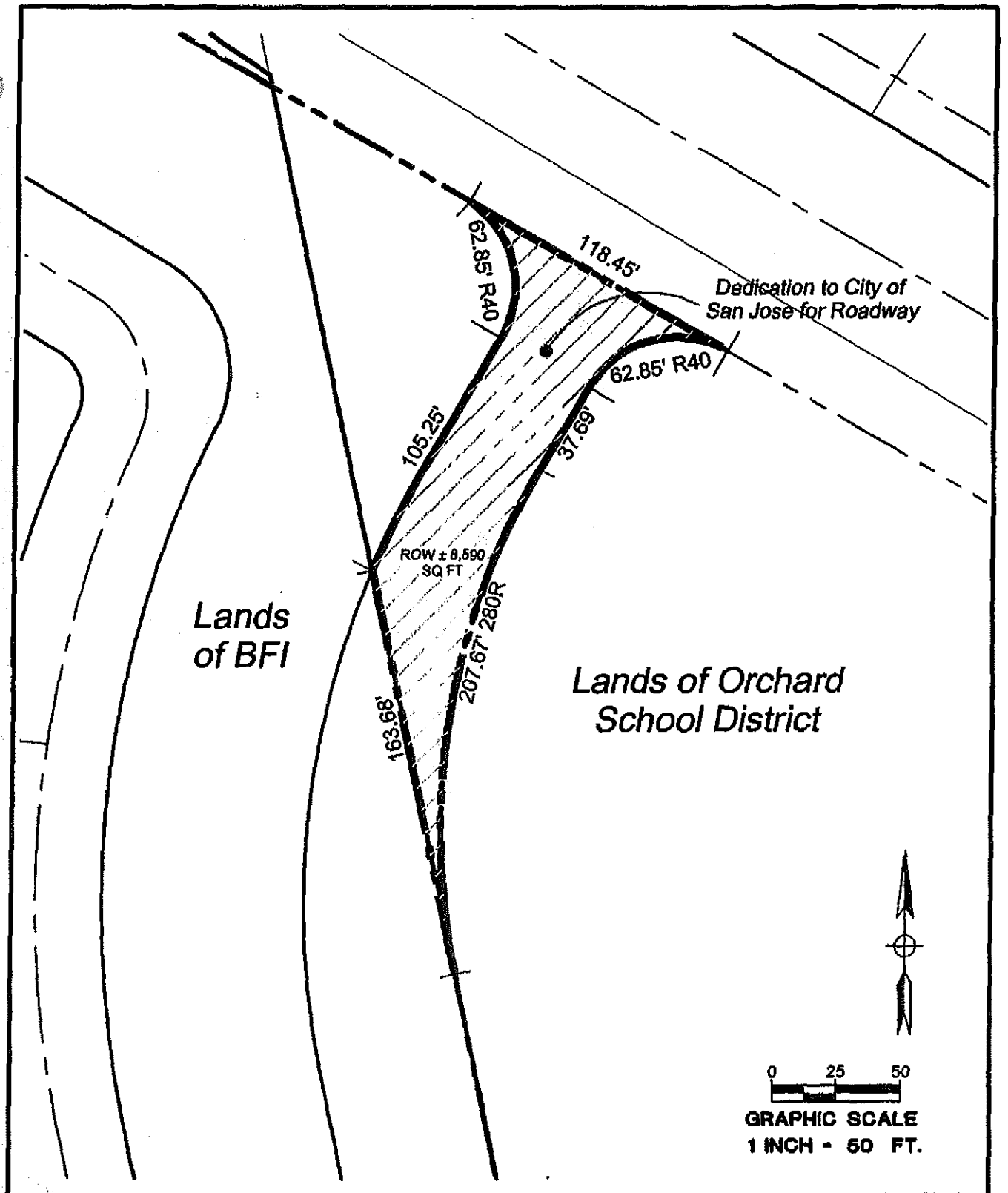
By: _____
Member, Board of Trustees

By: _____
Member, Board of Trustees

EXHIBIT "A"

<u>Easement Description</u>

RESOLUTION OF INTENT TO CONVEY EASEMENT



SHEET 1 OF 1

Date:	05-20-04
Scale:	1" = 50'
Designed:	—
Drawn:	WEB
Checked:	RTH
Proj. Engr.:	—
Dwg Name:	30955EXH25

HMH ENGINEERS

San Jose (408) 487-2200
Gilroy (408) 848-0707
www.hmh-engineers.com

PROPOSED PARCEL EXHIBIT FOR DEDICATION
TO CITY OF SAN JOSE FOR ROADWAY
±8,590 SF OF ORCHARD SCHOOL
DISTRICT PROPERTY

SANTA JOSE CALIFORNIA

20040520.1100

EXHIBIT "B"

Agreement

RESOLUTION OF INTENT TO CONVEY EASEMENT

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit D: **Agreement to Dedicate Road Easement between Orchard School District and Summerhill Homes**

AGREEMENT TO DEDICATE ROAD EASEMENT BETWEEN ORCHARD SCHOOL DISTRICT AND SUMMERHILL HOMES

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between ORCHARD SCHOOL DISTRICT ("District") and SUMMERHILL HOMES ("Developer");

WHEREAS, Developer has entered into an option agreement to purchase approximately 14 acres of property adjacent ("Adjacent Property") to the District's school located at 921 Fox Lane, San Jose, California. ("School") for residential development;

WHEREAS, as a condition to Developer's development of the adjacent property, the City of San Jose ("City") is requiring that a portion of the School, consisting of approximately 9,000 square feet, be dedicated for road purposes to the City ("Easement");

WHEREAS, Developer has requested that District dedicate the Easement to the City;

WHEREAS, the Easement is a portion of Santa Clara County Assessor Parcel Number 237-15-186 and is located upon a portion of the District's school (A legal description and a map depicting the location of the Easement area is attached hereto as Exhibit "A" and incorporated herein);

WHEREAS, after the dedication of the Easement, there will be a remnant of approximately 6,500 square feet which District intends to sell to Developer under a separate agreement ("Remnant");

WHEREAS, in exchange for the District dedicating the Easement to the City, Developer has offered to pay the District the higher amount of the following: 1) the same amount of money on a per square foot basis that Developer is paying the current owner of the Adjacent Property, or 2) the fair market value for the Easement area as determined in an appraisal by an MAI appraiser retained by the District and paid for by Developer ("Compensation");

WHEREAS, in valuing the fair market value of the Easement area, the appraiser shall appraise the Easement area as if it was a fee simple interest and assume that the area was not being used for road purposes ("Appraisal");

WHEREAS, in addition to the Compensation, Developer has agreed to pay the District's attorneys' fees attributable to the dedication of the Easement ("Attorneys' Fees") and the District's cost relative to the preparation and completion of a Master Plan (including consultant fees) that the District will utilize to formulate future joint use for recreational facilities with the City of San Jose that the purchasers of homes in Developer's project will use along with other

members of the public ("Master Plan Costs");

WHEREAS, pursuant to Education Code section 17556, the governing board of a school district may dedicate or convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district, either in fee or any lesser estate or interest therein, upon such terms and conditions as the parties thereto may agree ("Easement Provisions");

WHEREAS, in consideration of dedicating the Easement to the City, Developer will comply with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreement set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below:

Section 1. Dedication of Easement. After Developer's payment of the consideration (including Compensations and Other Costs) as set forth in Section 2 of this Agreement, District agrees to execute the Easement in the form attached hereto as Exhibit "B" and take any action necessary to dedicate the Easement to City in accordance with the Easement Provisions.

Section 2. Consideration. In consideration of the District's dedication of the Easement to the City, Developer agrees to the following:

a) Compensation:

i) Should the District desire to obtain an Appraisal, Developer shall pay directly to the MAI appraiser selected by the District the cost of the Appraisal in an amount not to exceed $75,000. In valuing the fair market value of the Easement area, the appraiser shall appraise the Easement area as if it was a fee simple interest and assume that the area was not being used for road purposes.

ii) The amount of the Compensation shall be $299,447.40 which is based upon $34.86 a square foot times 8,590 square feet, however, in the event that the Appraisal concludes a higher amount, the amount of the Compensation shall be the amount of the Appraisal.

iii) In the event that Developer pays the Compensation prior to completion of the Appraisal and the Appraisal concludes a higher amount, the difference between the two amounts shall be paid by Developer to the District, in the District's sole discretion, by either of the following methods: (1) Developer shall pay them amount within thirty (30) days of written demand by the District; or (2) the amount shall be added to any compensation that Developer pays District for the Remnant should the District sell the Remnant to Developer.

b) Other Costs:

In addition to the Compensation, Developer agrees to do the following:

i) Developer agrees to pay the Master Plan Costs by directly paying the amount of $60,000 to Steinberg Architects. Developer shall pay the Master Plan Costs prior to dedication of the Easement.

ii) Developer shall pay for District's attorneys' fees attributable to the dedication of the Easement in an amount not to exceed $15,000. Developer shall pay this "not to exceed" amount prior to dedication of the Easement, and if the District's actual legal costs are less, District will reimburse Developer the difference.

Section 3. Other Issues.

The Parties acknowledge that the issues in this Agreement are intended to deal only with the dedication of the Easement and shall not limit or be determinative with respect to any other issue, including without limitation Developer's obligation to make further contributions towards any costs associated with any joint use between the City and District as well as any issue regarding the Remnant except as specifically set forth herein.

Section 4. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day set
forth above.

Dated: _____, 2000	ORCHARD SCHOOL DISTRICT By: _____ Name: _____ Title: _____
Dated: _____, 2000	SUMMERHILL HOMES By: _____ Name: _____ Title: _____

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit E: **Grant of Easement**

RECORDED WITHOUT FEE UNDER SECTION 6103 GOVERNMENT CODE OF THE STATE OF CALIFORNIA

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of San Jose - Real Estate
84 West Santa Clara Street, Suite 460
San Jose, CA 95113-1815

File/Doc. No:
APN:

Space above this line for Recorder's use

GRANT OF EASEMENT

GRANTOR, does hereby GRANT to the CITY OF SAN JOSE, a municipal corporation of the State of California, GRANTEE, an easement for street purposes on, under, over, and through the real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Dated_____, _____, 20____

By _____ _____

By _____ _____

By _____ _____

ORCHARD SCHOOL DISTRICT
RESOLUTION NO. 052504-02

RESOLUTION OF INTENTION OF THE BOARD OF TRUSTEES OF THE ORCHARD SCHOOL DISTRICT TO CONVEY EASEMENT FOR ROAD PURPOSES TO THE CITY OF SAN JOSE AND CALLING PUBLIC HEARING IN CONNECTION THEREWITH

WHEREAS, pursuant to Education Code section 17556, the governing board of the Orchard School District ("District") may dedicate or convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district, either in fee or any lesser estate or interest therein, upon such terms and conditions as the parties thereto may agree ("Easement Provisions");

WHEREAS, Summerhill Homes ("Developer") has entered into an option agreement to purchase approximately 14 acres of property adjacent ("Adjacent Property") to the District's school located at 921 Fox Lane, San Jose, California. ("School") for residential development;

WHEREAS, as a condition to Developer's development of the adjacent property, the City of San Jose ("City") is requiring that a portion of the School consisting of approximately 12,000 square feet be dedicated to the City for road purposes;

WHEREAS, Developer has requested that District dedicate an easement for road purposes ("Easement") to the City;

WHEREAS, the proposed Easement consists of a portion of Santa Clara County Assessor Parcel Number 237-15-186 and is located upon a portion of the District's school (A legal description and a map depicting the location of the Easement area is attached hereto as Exhibit "A" and incorporated herein);

WHEREAS, in exchange for the District dedicating the Easement to the City, Developer has offered to compensate the District as set forth in Agreement to Dedicate Road Easement ("Agreement"). (The Agreement is attached hereto as Exhibit "B" and incorporated herein);

WHEREAS, the District desires to give notice of its intent to convey the Easement to the City pursuant to the terms and conditions of the Agreement and to call a public hearing in connection therewith.

NOW, THEREFORE, the Board of Trustees does hereby resolve as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. Intent to Convey Easement. The District declares its intent to convey the Easement to the City for road purposes pursuant to the terms and conditions of the Agreement.

Section 3. Public Hearing. The Superintendent or a designee thereof is hereby directed to give notice that on June 22, 2004 at 6:30 p.m. or as soon thereafter as practicable, in the Board room of the District Office, located at 921 Fox Lane, San Jose, CA 95131, the Board will hold a public hearing on the question of dedicating the Easement to the City in accordance with the terms and conditions of the Agreement. The public hearing will be held during a regular public meeting of the Board. Notice of the public hearing shall be given by posting copies of this resolution, signed by at least a two-thirds (2/3) majority of the Board, in three public places within the District, and by publishing the notice once in a newspaper of general circulation in the District, at least five (5) days prior to the hearing. At the time and place of the hearing, if no legal protest is entered, the Board may adopt a resolution by a two-thirds vote of all its members authorizing and directing the execution of the easement deed in accordance with the terms and conditions of the Agreement.

PASSED, ADOPTED, and APPROVED by the Board of Trustees of the Orchard School District this 25th day of May, 2004, by the following votes:

AYES:

NOES:

ABSENT:

By: _____
President, Board of Trustees

By: _____
Vice President, Board of Trustees

By: _____
Member, Board of Trustees

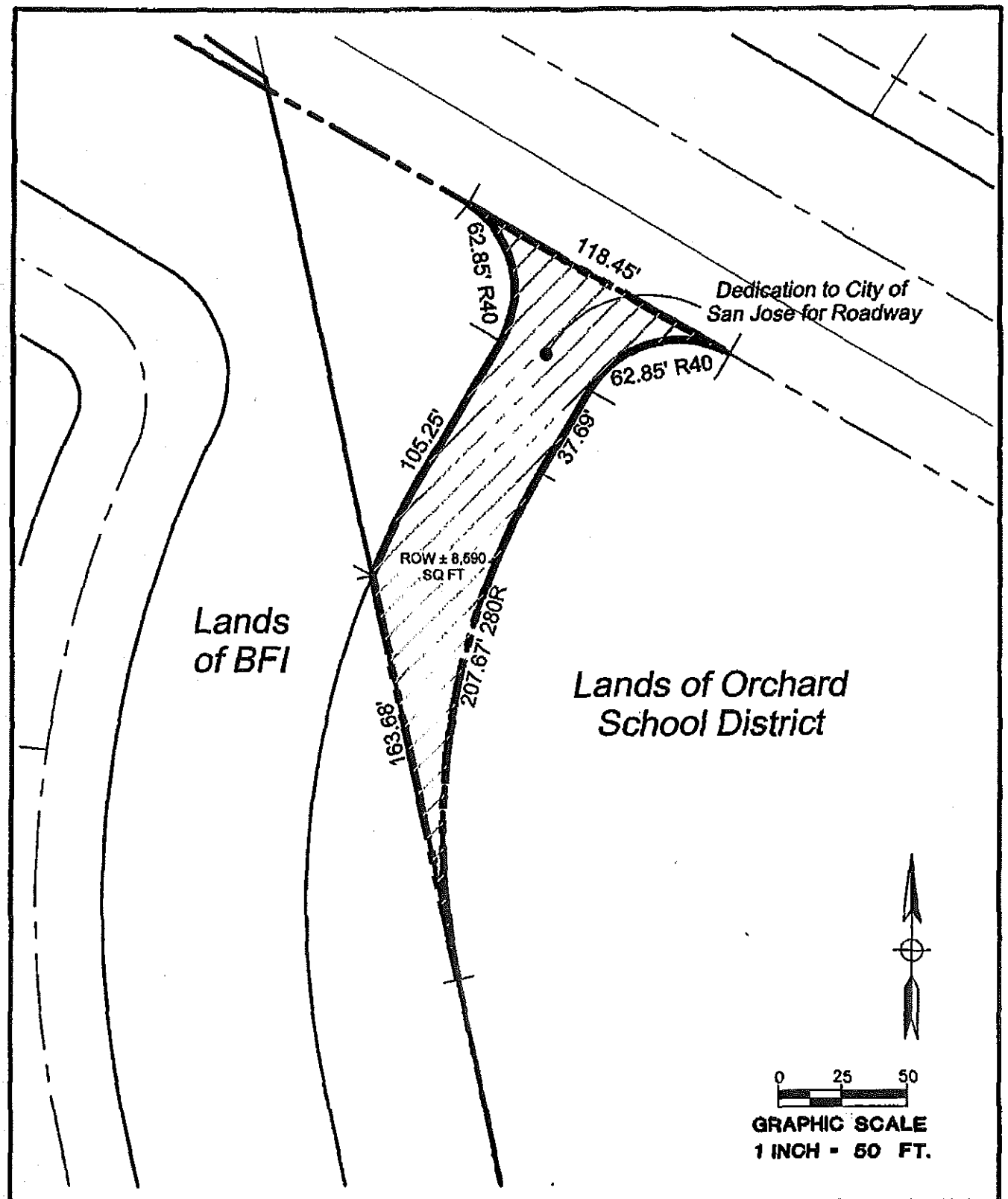
By: _____
Member, Board of Trustees

By: _____
Member, Board of Trustees

EXHIBIT "A"

Easement Description

RESOLUTION OF INTENT TO CONVEY EASEMENT



SHEET 1 OF 1

Date:	05-20-04
Scale:	1" = 50'
Designed:	—
Drawn:	WEB
Checked:	RTH
Proj. Engr.:	—
Dwg Name:	3085EXH25

HMH ENGINEERS

San Jose (408) 487-2200
Gilroy (408) 848-0707
www.hmh-engineers.com

PROPOSED PARCEL EXHIBIT FOR DEDICATION
TO CITY OF SAN JOSE FOR ROADWAY
±8,590 SF OF ORCHARD SCHOOL
DISTRICT PROPERTY

SANTA JOSE CALIFORNIA

20040520.1100

EXHIBIT "B"

<u>Agreement</u>

RESOLUTION OF INTENT TO CONVEY EASEMENT

AGREEMENT TO DEDICATE ROAD EASEMENT BETWEEN ORCHARD SCHOOL DISTRICT AND SUMMERHILL HOMES

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between ORCHARD SCHOOL DISTRICT ("District") and SUMMERHILL HOMES ("Developer");

WHEREAS, Developer has entered into an option agreement to purchase approximately 14 acres of property adjacent ("Adjacent Property") to the District's school located at 921 Fox Lane, San Jose, California. ("School") for residential development;

WHEREAS, as a condition to Developer's development of the adjacent property, the City of San Jose ("City") is requiring that a portion of the School, consisting of approximately 9,000 square feet, be dedicated for road purposes to the City ("Easement");

WHEREAS, Developer has requested that District dedicate the Easement to the City;

WHEREAS, the Easement is a portion of Santa Clara County Assessor Parcel Number 237-15-186 and is located upon a portion of the District's school (A legal description and a map depicting the location of the Easement area is attached hereto as Exhibit "A" and incorporated herein);

WHEREAS, after the dedication of the Easement, there will be a remnant of approximately 6,500 square feet which District intends to sell to Developer under a separate agreement ("Remnant");

WHEREAS, in exchange for the District dedicating the Easement to the City, Developer has offered to pay the District the higher amount of the following: 1) the same amount of money on a per square foot basis that Developer is paying the current owner of the Adjacent Property, or 2) the fair market value for the Easement area as determined in an appraisal by an MAI appraiser retained by the District and paid for by Developer ("Compensation");

WHEREAS, in valuing the fair market value of the Easement area, the appraiser shall appraise the Easement area as if it was a fee simple interest and assume that the area was not being used for road purposes ("Appraisal");

WHEREAS, in addition to the Compensation, Developer has agreed to pay the District's attorneys' fees attributable to the dedication of the Easement ("Attorneys' Fees") and the District's cost relative to the preparation and completion of a Master Plan (including consultant fees) that the District will utilize to formulate future joint use for recreational facilities with the

City of San Jose that the purchasers of homes in Developer's project will use along with other

members of the public ("Master Plan Costs");

WHEREAS, pursuant to Education Code section 17556, the governing board of a school district may dedicate or convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district, either in fee or any lesser estate or interest therein, upon such terms and conditions as the parties thereto may agree ("Easement Provisions");

WHEREAS, in consideration of dedicating the Easement to the City, Developer will comply with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreement set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below:

Section 1. Dedication of Easement. After Developer's payment of the consideration (including Compensations and Other Costs) as set forth in Section 2 of this Agreement, District agrees to execute the Easement in the form attached hereto as Exhibit "B" and take any action necessary to dedicate the Easement to City in accordance with the Easement Provisions.

Section 2. Consideration. In consideration of the District's dedication of the Easement to the City, Developer agrees to the following:

a) Compensation:

i) Should the District desire to obtain an Appraisal, Developer shall pay directly to the MAI appraiser selected by the District the cost of the Appraisal in an amount not to exceed $75,000. In valuing the fair market value of the Easement area, the appraiser shall appraise the Easement area as if it was a fee simple interest and assume that the area was not being used for road purposes.

ii) The amount of the Compensation shall be $299,447.40 which is based upon $34.86 a square foot times 8,590 square feet, however, in the event that the Appraisal concludes a higher amount, the amount of the Compensation shall be the amount of the Appraisal.

iii) In the event that Developer pays the Compensation prior to completion of the Appraisal and the Appraisal concludes a higher amount, the difference between the two amounts shall be paid by Developer to the District, in the District's sole discretion, by either of the following methods: (1) Developer shall pay them amount within thirty (30) days of written demand by the District; or (2) the amount shall be added to any compensation that Developer pays District for the Remnant should the District sell the Remnant to Developer.

b) Other Costs:

In addition to the Compensation, Developer agrees to do the following:

i) Developer agrees to pay the Master Plan Costs by directly paying the amount of $60,000 to Steinberg Architects. Developer shall pay the Master Plan Costs prior to dedication of the Easement.

ii) Developer shall pay for District's attorneys' fees attributable to the dedication of the Easement in an amount not to exceed $15,000. Developer shall pay this "not to exceed" amount prior to dedication of the Easement, and if the District's actual legal costs are less, District will reimburse Developer the difference.

Section 3. Other Issues.

The Parties acknowledge that the issues in this Agreement are intended to deal only with the dedication of the Easement and shall not limit or be determinative with respect to any other issue, including without limitation Developer's obligation to make further contributions towards any costs associated with any joint use between the City and District as well as any issue regarding the Remnant except as specifically set forth herein.

Section 4. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day set
forth above.

Dated: _____, 2000	ORCHARD SCHOOL DISTRICT By:_____ Name: _____ Title: _____
Dated: _____, 2000	SUMMERHILL HOMES By: _____ Name: _____ Title: _____

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit F: **Google Maps image of Orchard School**

Google Maps 921 Fox Ln

Imagery ©2019 Google, Imagery ©2019 CNES / Airbus, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 100 ft

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit G: **Photograph of Silk Wood Lane taken at School dismissal time**

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit H: **Transportation Analysis Peer Review by Keith Higgins**

Keith Higgins
Traffic Engineer

October 31, 2019

Stuart Poulter
EMC Planning Group
301 Lighthouse Avenue, Suite C
Monterey, CA 93940

Re: Charcot Avenue Extension Over I-880 Transportation Analysis Peer Review I, San Jose, CA

Dear Stuart,

Per your request, this letter provides comments from review of the "Charcot Avenue Extension Over I-880 Transportation Analysis," San Jose, California, prepared by Hexagon Transportation Consultants, Inc., April 8, 2019 (Transportation Analysis) as well as the Transportation section of the "Draft Environmental Impact Report for the Charcot Avenue Extension Project," David J. Powers, August 2019 (EIR).

The proposed extension of Charcot Avenue (Project) would begin in the vicinity of Paragon Drive, on the west side of I-880, extend over I-880, and connect to Oakland Road, east of I-880. The project area includes Charcot Avenue from its intersection with Paragon Drive on the west side of I-880 to its future intersection with Oakland Road on the east side of I-880. The extension is proposed to consist of a two-lane roadway, one travel lane in each direction with sidewalks and Class IV bike lanes on both sides of the roadway. The Project would travel along the northern boundary of Orchard School.

Based on this review, it is evident that the Charcot Avenue Extension will result in significant impacts to traffic operations at Orchard School. Major ones are as follows.

1. These are primarily associated with current inadequate drop-off and pick-up facilities on the school's Fox Lane driveways and frontage. The project will result in substantial increases in traffic volumes and drop-off and pick-up activities that have not been quantified in the analysis. In addition, the analysis assumes that Orchard School is responsible for correcting any operational problems, rather than the project that is creating the impact.
2. Impacts on the Silkwood Lane neighborhood north of the Charcot Avenue Extension are also qualitatively identified. These should be quantified, and a mitigation strategy developed and funded by the project, which is creating this impact.
3. Other impacts may be created such as on turning movements at arterial intersections on the routes that will receive increased traffic from the new area-wide travel patterns that will result from the project.
4. Further analysis of several design components of the Charcot Avenue Extension is also recommended.

The Transportation Analysis should be expanded with additional quantitative analysis. This more detailed analysis should then be recirculated for additional public review.

2060 ROCKROSE COURT, GILROY, CA 95020
T 408.201.2752 KEITH@KEITHHIGGINSTE.COM WWW.KEITHHIGGINSTE.COM

Stuart Poulter
October 31, 2019

Specific comments are as follows.

1. Pg. 5, first bullet –states "A new pedestrian only signal or High-Intensity Activated Crosswalk (HAWK) beacon will be installed along Charcot Avenue at Silkwood Lane. A median will be constructed along Charcot Avenue at Silkwood Lane to restrict turn-movements."
    a. Please indicate which type of control will be installed and/or when this decision will be made.
    b. Please indicate how each control would function with a raised median along Charcot Avenue across the intersection.
    c. Please analyze an alternative with left turns allowed to and from Silkwood Lane.
    d. Many school-age pedestrians currently cross the future Charcot Avenue right of way. As discussed in Comments 10 and 11, pedestrian volumes should be included in the level of service analysis. This will be the critical north - south traffic movement across Charcot Avenue at this location. The analysis should also include mid-afternoon to include school traffic after dismissal time.

2. Pg. 6, Intersection Operations Analysis – Intersection operations are only provided for 2025, which will only be a few years after Charcot Avenue is opened to traffic. Intersection operations should be analyzed for Year 2040 conditions, which is still less than 20-years after the project will be opened to traffic.

3. Pg. 8, Supplemental Operations Analysis – Analysis of the effects of the project on Orchard School operations and the neighborhood between Silkwood Lane and Rock Avenue are recognized as an important element of the Local Transportation Analysis (LTA). These are implied to not be part of the CEQA analysis. However, the "CEQA Guidelines Appendix G: Environmental Checklist Form, Section XVII.c. Transportation," states that the project could create a significant effect if it "Substantially increases hazards due to a geometric design feature or incompatible use." School area vehicular, bus, pedestrian, bike and pick-up/drop-off operations and neighborhood traffic operations all have serious safety implications. The Charcot Avenue project will require modifications to Orchard School access for all travel modes as well as its pick-up and drop-off facilities. These need to be analyzed in detail with appropriate mitigations identified and implemented.

   "Envision San Jose 2040 General Plan" Policy TR-2.10 states that the City shall "coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José."

4. Page 10, Existing Street Network – The study street network should be expanded to include Rock Avenue, Fox Lane and Ridder Park Drive as listed in the "Roadway Circulation Operations Evaluation on page 30. The descriptions of Fox Lane and Ridder Park Drive should include their function as pick-up and drop-off facilities for Orchard School.

5. Pg. 11, Existing Pedestrian, Bicycle and Transit Facilities – No discussion is provided of pedestrian facilities in the vicinity of Orchard School. These should be described, or it should be mentioned that they are described in the Orchard School Drop-Off and Pick-Up Operations section of the traffic study.

6. Pg. 11 – VTA Bus Service – VTA should be contacted to determine if bus routes will be modified to utilize the Charcot Avenue Extension. If so, the provision of bus turnouts should be reflected in the analysis and design of the project.

7. Pg. 12 – Figure 3 – Existing Pedestrian and Bicycle Facilities – This figure should include a sidewalk along the north side of Silkwood Lane across from the school's north property line.

8. Pg. 18, Local Transportation Analysis (Non-CEQA Informational Only) Introduction – As discussed in Comment 3, Orchard School traffic operations fall under the scope of CEQA due to pedestrian and bicycle safety.

9. Pg. 18, Study Intersections – Study intersections should include the following in the vicinity of Orchard School.
    a. Oakland Road and Rock Avenue
    b. Oakland Road and Fox Lane
    c. Fox Lane and Ridder Park Drive

10. Pg. 18 Study Intersections – The following intersections should be studied for the mid-afternoon time period when Orchard School dismisses in addition to the weekday morning and evening peak hours.
    a. Silkwood Lane and Charcot Avenue
    b. Oakland Road and Charcot Avenue
    c. Oakland Road and Rock Avenue
    d. Oakland Road and Fox Lane
    e. Fox Lane and Ridder Park Drive

11. Pg. 18, Study Intersections – Given the high pedestrian volumes at some locations, all study intersections listed in Comment 10 should be analyzed with a methodology that accounts for pedestrian traffic.

12. Pg. 18, Study Intersections – The following intersection should be studied for the effect of the Charcot Avenue Extension on overall level of service and queuing on movements that will experience increases in traffic. These may be CEQA issues because of the effect on traffic safety from potential queue spillover into through lanes.
    a. Trimble Avenue and Junction Road – especially northbound Junction Avenue left turn queue
    b. Montague Expressway and Oakland Road – especially the westbound Montaque Expressway left turn queue.
    c. First Street and Charcot Avenue – especially southbound First and westbound Charcot left turn queues.
    d. Junction Road and Charcot Avenue – Especially southbound Junction left turn queue.
    e. Brokaw Road and Oakland Road – Especially southbound Oakland Road left turn and westbound Brokaw right turn queues.

13. Pg. 20 Study Scenarios – Year 2040 with and without the Project should be studied, as discussed in Comment 2.

14. Pg. 20 – Level of Service Standards and Analysis Methodologies – TRAFFIX software is used for the level of service calculations, which is appropriate for the major arterial intersections. Synchro or a similar software should be used in the immediate vicinity of Orchard School in order to account for the impact of large pedestrian volumes. This is also discussed in Comments 1.d and Comment 11.

15. Page 21, Intersection Traffic Operations Analysis and Recommendations –
    a. Discussions are provided of queuing, sight distance and geometric elements at the Charcot Avenue Extension intersections with Paragon Drive, O'Toole Avenue and Oakland Road. A similar discussion should be provided for the Silkwood Lane intersection assuming it is signalized or controlled by a HAWK.
    b. Sight distance is apparently an issue on the westbound Charcot Avenue Extension approach to Paragon Drive due to the crest vertical curve across the I-880 overcrossing. Eastbound Charcot Avenue Extension sight distance should be discussed at the Silkwood Lane intersection.
    c. A two-lane to one-lane merge is proposed on westbound Charcot Avenue Extension just west of Silkwood Lane. The adequacy of the spacing of the start of the merge from Silkwood Lane should be discussed as it relates to driver distraction across a HAWK-controlled crosswalk. The adequacy of the length of the merge should also be discussed.

16. Existing buildings will be very close to the Charcot Avenue Extension. A discussion should be included regarding clear zones for this type of roadway and the appropriateness of extending the bridge guardrail or sound wall along the Orchard School frontage west of the Silkwood Lane intersection.

17. Pg. 23, Table 5 - Intersection Levels of Service Under Project Conditions – Comments 9, 10 and 11 apply to this table.

18. Pages 28 and 29, Oakland Road and Charcot Avenue – The queue on the eastbound Charcot Avenue approach to Oakland Road will extend past the Silkwood Lane intersection under Year 2025 Plus Project conditions. It is anticipated that the queue will be even longer by 2040 and continue to increase beyond 2040. Please describe how a HAWK or Pedestrian Only Traffic Signal with a raised median on Charcot Avenue would function with queues extending over the crosswalk at Silkwood Lane.

19. Pages 34-36, Tables 8-10 – Roadway Segment Volumes –
    a. Ridder Park Drive should be labelled north of Brokaw Road rather than Oakland Road.

    b. Traffic volumes on Fox Lane are expected to increase from the existing 6,000 ADT to about 7,800 ADT by 2040. This is a 30% increase that will affect pick-up, drop-off and pedestrian activity at Orchard School.

    c. Traffic volumes are assumed to be the same on Ridder Park Drive north of Brokaw Road and on Fox Lane west of Oakland Road. However, traffic volumes on Brokaw Road west of Oakland Road will decrease by about 10% (5,000 vehicles per day) with a corresponding increase in traffic on Oakland Road between the Charcot Avenue extension and Brokaw Road. Some traffic that

would enter and exit the industrial area southwest of Orchard School that is served by Fox Lane and Ridder Park Drive will travel to and from this area via Charcot Avenue extension rather than Brokaw Road. This would result in a decrease in traffic on Ridder Park Drive north of Brokaw Road and a corresponding increase in traffic on Fox Lane west of Oakland Road. If there is a 10% redistribution in Ridder Park Drive traffic to Fox Lane, Fox Lane traffic volumes would increase from 7,800 to 8,660, which is 44% above existing volumes. The redistribution could be more than 10% and should be determined as a part of the traffic analysis.

d. Traffic volumes will also increase on Fox Lane from existing school age pedestrians that currently cross the Charcot Avenue Extension right of way being discouraged from crossing an arterial and instead is driven to and from school.

e. Pick-up and drop-off activity that will prohibited from taking place along both sides of the existing Silkwood Lane west of Oakland Road will also be relocated to Fox Lane due to its elimination from Silkwood Lane. It is understood that the pick-up and drop-off activity on the south side of Silkwood Lane is illegal. However, it currently occurs and its elimination will add to traffic volumes on Fox Lane.

f. Traffic volumes on Fox Lane will increase at least 50% due to the factors listed above. This additional traffic on Fox Lane, combined with the additional pick-up, drop-off and pedestrian activity will further complicate and exacerbate traffic operations at Orchard School.

g. The traffic study should quantify these factors and the resulting traffic volumes and traffic operations on Fox Lane.

20. Pages 44 - 50, Orchard School Drop-Off and Pick-Up Operations, Current School Site Access and Drop-Off/Pick-Up Activities – Observations of drop-off and pick-up operations are described in this section and indicate the following.
    a. Page 44, First paragraph – It is stated that "it is not anticipated that the proposed Charcot Avenue extension would have an adverse effect on the school's access." However, the report goes on to state that, "Although parking or stopping is prohibited along the south side of Silkwood Lane, both the north and south sides of Silkwood Lane were "observed to be heavily used to drop off/pick-up students. During the school drop-off/pick-up periods parents were observed to park along the extent of Silkwood Lane, including illegally along the south side of Silkwood Lane, to walk children onto campus and/or wait for students to arrive for pick-up. Parents also were observed to double-park along Silkwood Lane while dropping-off and picking-up students. Drop-off and pick-up activity at the Orchard School Event Center was minimal compared to activities along Fox Lane and Silkwood Lane. Drop-off/pick-up activity along Oakland Road mostly consisted of parents entering the event center parking lot to drop-off/pick-up students, and a few students were dropped-off/picked-up along the curb on the west side of Oakland Road."

    Silkwood Lane is approximately 550 feet in length. This represents about 1,000 feet of pick-up drop-off length that will be lost with the project. This is approximately the amount of Orchard

School curb frontage along Fox Avenue including the on-site pickup and drop-off length provided on-site. In other words, Orchard School will lose about one-half of its current pick-up and drop-off curb length on the north side of the school due to the Charcot Avenue Extension. Also, Silkwood Lane is the most convenient drop-off/pick-up location for the parents who use this area. This will clearly have an adverse effect on the school's access.

In addition, this will nearly double the pick-up and drop-off activity along Fox Avenue and at the on-site pick-up and drop-off locations. The traffic study states, "The school parking lot on Fox lane, as well as curb-parking along the northside of Fox Lane, are heavily used during morning drop-offs and afternoon pick-ups...

The traffic study notes that "Parents also were observed to utilize adjacent private parking lots along Ridder Park Drive to park and walk children onto campus." Use of some of the private parking lots has apparently not been authorized.

Finally, the traffic study states that "Parking is not permitted along the south side of Fox Lane between Oakland Road and Ridder Park at any time during the day, however parents were observed to utilize the south side of Fox Lane to drop-off/pick-up students."

The above observations indicate that drop off-pick-up operations on the south side of Orchard School are already severely impacted. The increase in drop-off and pick-up activity combined with increases in vehicular traffic along Fox Avenue from parent traffic shifted from Silkwood Lane plus redistributed traffic between the Charcot Avenue Extension and the business park southwest of Orchard School has the potential to result in unmanageably severe congestion and confusion along the Orchard School Fox Avenue frontage.

By 2040, there will be an additional 30% increase in traffic on Fox Lane, which indicates that traffic problems along Fox Lane will degrade even further in the future.

b. The loss of drop-off and pick-up capacity along Silkwood Lane west of Oakland Road also has the potential to result in increased vehicular and pedestrian traffic as well as drop-off and pick-up activity on Silkwood Avenue north of the Charcot Avenue Extension. This has the potential to create a quality of life impact on that neighborhood.

21. Page 50, Proposed School Drop-Off/Pick-Up Adjustments –
    a. Second paragraph - The traffic study recognizes that there will be "greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas." However, the extent of this greater use is not quantified.
        i. The study needs to quantify the extent of drop-off and pick-up activity, including the amount of curb length required and where the overflow will occur.

b. Third paragraph - The traffic study recommends "that Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods.
   i. The study needs to identify the mitigations to this project impact.
   ii. Rather than put the burden of implementing mitigations to an impact created by the project, the project should be responsible for the cost of mitigations and be responsible for mitigation implementation. The mitigations need to at least result in traffic operations at the school that are comparable to what is currently experienced.

c. Fourth paragraph – It is mentioned that "it is likely that students will continue to cross Charcot Avenue/Silkwood Lane as they walk between the school and the neighborhood to the north." The existing pedestrian volumes should be counted, with the source such as the neighborhood to the north, north side of Silkwood Lane and south side of Silkwood Lane identified. This will help with determining the appropriate traffic control (i.e., HAWK or pedestrian signal) at the future Charcot Avenue Extension / Silkwood Lane intersection as well as quantify the amount of additional drop-off/pick-up activity that will be relocated to Fox Lane.

22. Page 51, Silkwood Lane Cut-Through and Rock Avenue Traffic Diversion, Trip Diversion Scenario #2 - Cut-through traffic from Oakland north of Rock Avenue to the Charcot Avenue Extension west of Silkwood Lane is estimated. However, cut-through traffic will also occur from the mobile home park north of Rock Avenue that currently uses Montague Expressway. This should be estimated and included in the forecast of post-project traffic volumes on Silkwood Lane north of the Charcot Avenue Extension. The analysis should account for some Orchard School drop-off/pick-up activity being relocated from Silkwood Lane west of Orchard Lane to Silkwood Lane north of the Charcot Avenue Extension.

23. Page 53, Potential Traffic Calming Measures – Traffic calming measures are recommended based on a traffic calming study for the area. The timing and scope of this study should be described in detail. This study and whatever traffic calming measures are determined to be implemented are the responsibility of the project. A preliminary study should be done as a part of the environmental document that estimates future traffic operations and provides a preliminary design and cost estimate of the improvements to be implemented. This would be followed up by a final study, design and construction one year after the opening of the Charcot Avenue Extension.

The Transportation section of the "Draft Environmental Impact Report for the Charcot Avenue Extension Project," David J. Powers, August 2019 (EIR), has also been reviewed, with the following additional comments.

1. Page 152, Section 3.17.2.3, Increase in Hazards due to Design Features of Incompatible Uses –
   a. The EIR states that the project does not include any substandard geometric design features or incompatible uses that might result in a substantial increase in hazards. It states that the project therefore has no impact. The above comments on the transportation analysis identify significant project impacts on Orchard School traffic operations that have the potential to result in safety issues during student drop-off and pick-up. The Project also has the potential of increasing neighborhood traffic on Silkwood Lane that have safety effects. These are direct results of the geometric design features that eliminate Orchard School drop-off and pick-up operations on the

existing Silkwood Lane and on the barrier to school-age pedestrian traffic created by a high-volume arterial where no roadway currently exists.

b. The effect of regional traffic redistribution on queues exceeding the left turn storage lengths at intersections discussed in Comment 18 on the transportation analysis is possible a CEQA issue due to the indirect effect on geometrics at these off-site locations.

2. Page 152, Section 3.17.2.4, Emergency Access Impacts – The Project's effects on drop-off and pick-up operations at Orchard School described above have the potential to impede emergency access to Orchard School, Fox Lane and the business park southwest of Orchard School. This should be discussed in the EIR.

If you have any questions, please do not hesitate to contact me at your convenience. Thank you for the opportunity to assist you with this review.

Respectfully submitted,

Keith Higgins

Keith B. Higgins, PE, TE

Keith Higgins

Traffic Engineer

RESUME - KEITH B. HIGGINS, PE, TE

Owner

PROFESSIONAL EXPERIENCE

Mr. Higgins has directed and performed numerous planning and design projects during his 44-year career. He also has extensive operational experience, including serving as a City Traffic Engineer for over 20 years. Specific experience includes traffic impact analyses, conceptual and final highway, street system and subdivision design, traffic signal, signing and striping design, traffic volume and speed surveys, safety analysis, capacity analysis, circulation studies, parking studies, parking facility design, conceptual interchange design, pedestrian and bicycle studies, transportation systems management, transportation demand management, community traffic committee organization, expert witnessing in personal injury and wrongful death litigation, railroad design coordination.

PROFESSIONAL REGISTRATION

Civil Engineer - California (No. 30489, 1979)
Traffic Engineer - California (No. 1385, 1981)

EDUCATION

1975 - B.S. Transportation Engineering (Honors), Cal Poly, San Luis Obispo, CA.

CURRENT AND PREVOUS PROFESSIONAL AFFILIATIONS

American Council of Engineering Companies (ACEC) – Past Monterey Bay Chapter President
American Planning Association (APA) – Past Member
American Public Works Association (APWA) – Past Board Member
American Society of Civil Engineers (ASCE) – Life Member
Association of Environmental Planners (AEP) – Past Member
California Public Parking Association (CPPA) – Past Member
California Society of Professional Engineers (CSPE) – Monterey Bay Chapter Past President
Institute of Transportation Engineers (ITE) – Current Member
International Municipal Signal Association (IMSA) – Past Member
National Parking Association (NPA) – Past Member
Tau Beta Pi, Engineering Honor Association - Current Member
Transportation Research Board (TRB) – Past Member

AWARDS

2007 CELSOC Engineering Excellence Award – Tour of California Traffic Management
2008 CELSOC Engineering Excellence Award – Soquel Elementary School Traffic Management

EMPLOYMENT HISTORY

2017 – Present	Owner, Keith Higgins Traffic Engineer, Gilroy, CA
2017 – Present	Senior Consultant, Mott MacDonald, Gilroy, CA
2008 – 2017	Vice President, Hatch Mott MacDonald/Mott MacDonald, Gilroy, CA
1982 – 2008	President, Higgins Associates, Gilroy, CA.
1980 – 1982	Associate Civil Engineer, William Dryden Consulting Engineer, Monterey, CA.
1978 – 1980	Assistant Civil Engineer, Ruth & Going, Inc., San Jose, CA.
1977 – 1978	Junior Civil Engineer, Design and Engineering Systems, Redwood City, CA.
1976 – 1977	Concept & Planning Analyst, Processing & Distribution Engineering Consultants, Inc., San Jose, CA

TECHNICAL COMMITTEES & PUBLICATIONS

ITE Technical Committee 5B-4, "Effectiveness of Median Storage and Acceleration Lanes for Left-Turning Vehicles."
ITE Technical Committee 5B-9, "Urban Intersection Redesign Standards - Curb Ramp."
ITE Technical Committee 4A-21, "Methods of Traffic Signal Optimization."

RELEVANT PROJECT EXPERIENCE

Major Arterial, Interchange and Intersection Planning and Design Projects

State College Boulevard Grade Separation, Anaheim, CA
Pinnacles Parkway Grade Separation and Arterial Concept Plan and Traffic Operations Analysis
Reservation Road Widening, Marina, CA
Madrone Parkway, Morgan Hill, CA
Pacific Coast Highway (SR 1), Torrance to El Segundo, CA
Highway 146 (Front St.) Traffic Signals and Corridor Improvements, Soledad, CA
Airport Blvd/Holohan Rd/Green Valley Rd Intersection/Signal Improvements, Santa Cruz County, CA
Front Street (SR 146) Improvements, Soledad, CA
Tennant Avenue Widening, Morgan Hill, CA
North Street Widening and Signal Modification, Hollister, CA
Del Monte Avenue Widening, Monterey, CA
Carmel Rancho Boulevard, Monterey County, CA
Dunne Avenue Widening, Morgan Hill, CA
San Benito St (SR 25) Traffic Signals & Intersection Improvements, Hollister, CA
Santa Teresa Boulevard Widening, Gilroy, CA
Leavesley Road (SR 152 West) Widening, Gilroy, CA
Fourth St (SR 156)/Westside Blvd Intersection and Traffic Signal, Hollister, CA
El Camino Real Median Installation, Atascadero, CA
Tenth Street Widening, Gilroy, CA
Front Street (SR 146) Improvements, Soledad, CA
Gonzales-River Rd RR Grade Xing and Traffic Signal, Gonzales, CA
General Jim Moore Blvd, Fort Ord, CA

US 101/S Front Street Interchange Concept Plan, Soledad, CA
State Route 1/Dolan Road Planning and Design, Moss Landing, CA
Salinas Valley Memorial Hospital Off-site Improvement Planning and Design, Salinas, CA
Pacific St/Soledad St Intersection Reconstruction and Signal, Monterey, CA
SR 152 East Widening, Gilroy, CA
SR 156/Castroville Blvd, Monterey County, CA
SR 17 Ramps/Scotts Valley Dr Intersection & Signal Mod., Scotts Valley, CA
Market St (SR 183)/ Monterey St-Salinas St Widening and Signal, Salinas, CA
Merritt Street (SR 183)/Blackie Road Widening and Signals, Castroville, CA
Various Signals and Intersection Modifications, Broad St (SR 227), San Luis Obispo, CA
Various Signals and Intersections, Monterey-Salinas Highway (SR 68), Monterey County, CA
US 101 Ramp/Cochrane Rd Intersection & Signal Modification, Morgan Hill, CA
Mission St (SR 238)/King St Intersection and Signal Modification, Fremont, CA
Arastadero/Termin Traffic Signal Modification, Palo Alto, CA
Barber/Bellow Traffic Signal, Milpitas, CA
Various Traffic Signals and Intersections, San Jose, CA
Airline Highway (SR 25), Hollister, CA
Capitol Expressway near Snell, San Jose, CA
Capitol Expressway near Tully, San Jose, CA

School Site Planning, Traffic Analysis and Design

Traffic analyses for new schools and remodels of existing schools have been conducted for over 200 schools throughout Santa Clara County and the Central California Coast. These include remediation of traffic operational deficiencies and have involved traffic operations analyses, site planning and final design of parking and drop-off/pick-up facilities. Work has been conducted at most, if not all, schools in the following districts.

Gilroy Unified School District
Hollister Unified School District
Monterey Peninsula Unified School District
Morgan Hill Unified School District
North Monterey County Unified School District
Pajaro Valley Unified School District
Salinas Elementary School and Union High School Districts
San Lorenzo Valley School District
Santa Cruz Unified School District
Soquel Unified School District

Work has also been conducted on various projects at Cabrillo College, Cal Poly (San Luis Obispo), CSUMB, Defense Language Institute, Monterey Peninsula College, Naval Postgraduate School, UCSC and numerous private schools.

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit I: **Greenhouse Gas Emissions Technical Review and Comments by Ron Sissem**

Planning for Success.

November 1, 2019

Dr. Wendy Gudalewicz, Superintendent
c/o Harold M. Freiman, Attorney at Law (Lozano Smith)
Orchard School District
921 Fox Lane
San Jose, CA 95131

Re: Greenhouse Gas Emissions (GHG) Technical Review and Comments on *Charcot Avenue Extension Project Draft Environmental Impact Report* on behalf of Orchard School District

Dear Dr. Gudalewicz,

I've reviewed the Greenhouse Gas Emissions (GHG) analysis (Section 3.8) found in the *Charcot Avenue Extensions Project Draft Environmental Impact Report* (draft EIR) and have the following comments:

1. EMFAC is used as the tool to estimate on-road GHG emissions. EMFAC uses changes in vehicle miles travelled (VMT) as an input to calculate changes in criteria and GHG emissions. Appendix E contains the Air Quality/GHG analysis. The operational GHG analysis reports the use of EMFAC as the modeling tool, but provides no specific information on the VMT inputs used to calculate GHG emissions. The draft EIR should be revised to include this information.

2. There are hundreds of pages of model results in Appendix E, with no indication provided in the text under Impact 4 on p. 30 as to where the results pertaining to GHGs are found within those model results. Thus, there is no reasonable way to further evaluate the summary of results provided in Table 8, CO2e Emissions in Metric Tons per Year on p. 31 against the model run results. The Table 8 results

show GHG emissions dropping with the project under existing, year 2025, and year 2040 conditions. The draft EIR should be revised to include this information.

3. Section 3.17 of the draft EIR, Transportation, includes analysis of changes in VMT with and without the project. See Table 3.17-4: VMT Evaluation. This table shows that VMT rises, albeit to a minor degree, under all three scenarios evaluated (existing, year 2025, and year 2040). If these are the VMT inputs to EMFAC used in Appendix E to calculate GHG emissions, it is unclear how increases in VMT under all three scenarios can result in reduced GHG emissions under these scenarios as reported in Table 8 of Appendix E. The draft EIR should be revised to include this information.

4. The GHG impact summary on p. 79 of the draft EIR includes the following statement:

   "As shown in Table 3.8-2, the proposed project, when compared to the No Project scenario, would decrease GHG emissions under existing, Year 2025, and Year 2040 conditions. This decrease is the result of the reductions in congestion and improvements in operations that are associated with the project. For a detailed discussion of the traffic effects of the project, please see Section 3.17, Transportation."

   The conclusion that "This decrease is the result of reductions in congestion and improvements in operations..." does not appear to be supported by the GHG information in Appendix E, which is VMT based, and VMT rises as described in item #4 above. If there are other variables considered other than VMT as a proxy for "reductions in congestion and improvements in operations" that are considered in the analysis, these should be discussed. The draft EIR should be revised to include this information.

5. In short, neither the text in the draft EIR GHG analysis nor the text in Appendix E of the draft EIR adequately "connect the dots" between results and evidence used to arrive at the results. Without a more complete evaluation of how this conclusion is reached in light of VMT increases, it is not clear that the project has a less-than-significant impact. The draft EIR should be revised to include this information.

Greenhouse Gas Emissions Analysis Conclusion. The greenhouse gas emissions analysis is incomplete based upon the above comments. The draft EIR should be revised to address the issues identified above.

Sincerely,

Ron Sissem, MRP
Principal

Encl.

Resume for Ron Sissem

Ron Sissem, MRP

PRINCIPAL

PROFESSIONAL EXPERIENCE

Mr. Sissem worked for EMC Planning Group for three years writing environmental impact reports in the 1980s before taking on international assignments with USAID and the World Bank. His international experience includes national resource and protected area management in Mongolia, environmental auditing/impact evaluation to address business development lending risks in Bosnia and Herzegovina, clean technology deployment in India to reduce greenhouse gas emissions, and environmental compliance for USAID-funded economic development projects.

In 2002, Mr. Sissem returned to EMC Planning Group and has been a principal since 2016. His primary responsibilities are to manage large land planning and environmental review projects. He assists public agencies with California Environmental Quality Act (CEQA) compliance for diverse, complex projects; manages preparation of specific plans and general plans; and manages planning and entitlement processes for private clients.

Mr. Sissem is the firm's climate change/greenhouse gas emissions specialist. He manages climate change impact analyses for CEQA documents, consults local agencies on integrating climate planning strategies/policy/emission reduction measures into advanced planning documents (e.g. general plans and specific plans), and consults developers on climate change mitigation project design.

EDUCATION

M.R.P. University of North Carolina at Chapel Hill, Urban and Regional Planning, 1995

B.S. University of California at Santa Barbara, Geography, 1982

B.A. University of California at Santa Barbara, Environmental Studies, 1982

PROFESSIONAL ACHIEVEMENTS

- Awards, *City of Salinas Economic Development Element*, 2014
  - Outstanding Planning Document-Association of Environmental Professional (2016)
  - Economic Planning and Development Award of Excellence-American Planning Association, California Chapter, Northern Section (2015)
  - Economic Planning and Development Award of Merit-American Planning Association California Chapter (2015)
- Presenter, Advanced CEQA Workshop, Association of Environmental Professionals (2009, 2010, 2013)
- Authored "A Guide to Maximizing Profits and Business Stability through Environmental Management," produced by the World Bank
- Federation of Bosnia, Ministry of Environment Achievement Award for advancement of environmental management in Bosnia

Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit J: **Noise Study Peer Review by Walter J. Van Groningen**

wjv acoustics

October 29, 2019

Mr. Stuart Poulter
Associate Planner
EMC PLANNING GROUP INC.
301 Lighthouse Avenue, Suite C
Monterey, California 93940

RE: NOISE STUDY PEER REVIEW, CHARCOT AVENUE EXTENSION NOISE AND VIBRATION ASSESSMENT, SAN JOSE, CALIFORNIA

Dear Mr. Poulter:

As requested, WJV Acoustics, Inc. (WJVA) has conducted a review of the Noise and Vibration Assessment (report) prepared by Illingworth & Rodkin, Inc. (dated June 14, 2019) for the proposed Charcot Avenue roadway extension project. WJVA provides the following comments regarding the report:

Application of Noise Exposure Criteria (Regulatory Background)

WJVA reviewed the determination of applicable noise level standards provided in the report. The report applies the City of San Jose noise level standards for the project, as provided in the City's General Plan and Code of Ordinances. Table EC-1 on page 9 of the report provides the City of San Jose exterior noise level standards applicable to the project. WJVA provides the following comments:

- The report applies Land Use Category 1, described as *"Residential, Hotels, Motels and Residential Care"* to potentially impacted single-family residences in the vicinity of the project. An exterior noise level standard of 60 dB L_{dn} is considered *"normally acceptable"* by the City of San Jose. The report accurately applies this standard.

- The report applies Land Use Category 2, described as *"Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds"* to the exterior areas of the Orchard School District school campus (school). An exterior noise level of 65 dB L_{dn} is considered *"normally acceptable"* for Category 2 land uses. It is the opinion of WJVA that this is not

an accurate application of the City's noise level standards, and that these exterior school areas should fall under Land Use Category 3, described as *"Schools, Libraries, Museums, Meeting Halls, Churches"*. An exterior noise level of 60 dB L_{dn} is considered *"normally acceptable"* for Category 3 land uses. Modeled receivers S1 and S5 (shown on Figure 8-Page 5 of the report, with modeled noise levels provided Table 5-Page 22, Table 6-Page 23 and Table 7-Page 24 of the report) are located on the school campus, with an exterior noise level standard of 65 dB L_{dn} applied within the report. An exterior noise level standard of 60 dB L_{dn} (Land Use category 3) should be applied to these areas.

Noise Impacts and Mitigation Measures

WJVA reviewed the report's discussion of noise impacts and mitigation measures (commencing on page 19 of the report) and provides the following comments:

- The report states that an existing 5-foot sound barrier provides acoustic shielding for single-family residences located adjacent to Silk Wood Lane. Sentence 2 of paragraph 1 on page 21 states *"Note that locations R2 and ST-1 are behind an existing 5-foot high sound barrier and locations R3 and R4 are behind an existing 10-foot high sound barrier"*. WJVA has not conducted a project site visit, however, images viewed on Google Earth (imagery date 3/2019) appear to show existing wooden fences along the rear of residences R2 and ST-1, not a sound barrier. Wooden fences do not provide any substantial (and measurable) attenuation of traffic noise. It is unclear how this may affect the overall findings of the analysis, but it is the opinion of WJVA that this should be considered and may warrant a review of existing and 2040 No Build modeled noise levels.

- In regards to noise levels provided in Table 5 (page 22), Table 6 (page 23) and Table 7 (page 24), while WJVA does not question the accuracy of the modeled noise levels, as stated above, a 60 dB L_{dn} noise level standard should be applied to modeled receivers S1 and S5, not 65 dB L_{dn} applied within the report.

- In regards to the school, and specifically noise level data provided for receiver S2 on Table 5 (page 22) and Table 6 (page 23), the reported exterior noise levels of 61 dB L_{dn} (existing plus project conditions) and 63 dB L_{dn} (2040 Build Conditions) should be indicated as a significant impact, as they also exceed the 60 dB L_{dn} exterior noise level standard applicable to school land uses. This impact would also be qualified under the City's impact determination criteria which states that a significant impact would occur if the project would *"Cause the L_{dn} at noise sensitive receptors to increase by five dBA L_{dn} or more where the noise levels would remain "Normally Acceptable"*.

- In regards to the *Noise Barrier Analysis* provided on Table 24 (and Figure 9 on page 25), the noise barrier height (6-foot) shown along the south side of Silk Wood Lane (adjacent to the school) should be recalculated to demonstrate compliance with the 60 dB L_{dn} exterior noise level standard.

- In regards to Table 7 (page 24), noise levels described for modeled receiver S5 (with the construction of the stated 6-foot sound barrier) state that an exterior noise level of 59 dB L_{dn} would be expected for 2040 No Build conditions, and an exterior noise level of 64 dB L_{dn} would be expected for 2040 Build conditions with the recommended 6-foot barrier. This would still be considered a significant impact even if the 65 dB L_{dn} standard were to be applied, as the General Plan states that a significant noise impact would occur if the project would *"Cause the L_{dn} at noise sensitive receptors to increase by five dBA L_{dn} or more where the noise levels would remain "Normally Acceptable".*

- In regards to compliance with the interior noise level standard of 45 dB L_{dn}, it is the opinion of WJVA that the analysis does not adequately address interior noise levels that could result from the project within the building(s) closest to the proposed roadway alignment. Exterior noise levels should be modeled at the northern façade(s) of the building(s) closest to the proposed roadway alignment (the building(s) in the vicinity of modeled receiver S2). An interior noise analysis should be prepared based upon the exterior façade noise levels along the north facing façade(s) of these three buildings (not the modeled noise levels at receiver location S2).

Conclusions and Recommendations:

- Calculated Existing and 2040 No Build noise levels for the residences represented by modeled receivers ST-1 and R2 may need to be recalculated if the calculated noise levels included attenuation of a 5-foot sound barrier, if indeed no such sound barrier exists along this section of Silk Wood Lane (which appears to be the case from Google Earth imagery)

- Exterior noise levels at the Orchard School should be evaluated based upon the Land Use Category 3 exterior noise level standard of 60 dB L_{dn}.

- An interior noise level analysis should be prepared for the building(s) located closest to the proposed roadway alignment (the buildings near modeled receiver S2). The interior analysis should be prepared based upon noise levels calculated at the north-facing

façade(s), closest to the proposed roadway alignment, and not based upon noise levels calculated at receiver location S2.

This concludes our review of the Illingworth & Rodkin *Charcot Avenue Extension Noise and Vibration Assessment* report (dated June 14, 2019). Please do not hesitate to contact me at (559) 627-4923 or walter@wjvacoustics.com if you have any questions or would like additional information.

Sincerely,

WJV ACOUSTICS, INC.

Walter J. Van Groningen
President

WALTER J. VAN GRONINGEN
President
WJV Acoustics, Inc.

Experience:

Mr. Van Groningen is the founding consultant of WJV Acoustics, Inc. His technical skills include the prediction and analysis of aircraft, traffic, railroad and construction noise and the evaluation of community noise problems and litigation support. He has prepared technical noise studies for a variety of projects requiring CEQA or NEPA documentation and has developed noise level criteria and implementation programs for addressing noise-related conflicts and long-range noise compatibility planning. Mr. Van Groningen has particular expertise in preparing traffic noise assessments for federally funded roadway improvement projects using the Caltrans Protocol. Mr. Van Groningen has also prepared general plan noise elements and noise element updates for several California jurisdictions.

Mr. Van Groningen became involved in community noise control in 2005, when he joined the consulting staff at Brown-Buntin Associates, Inc. Since that time he has conducted short- and long-term aircraft noise monitoring and acoustical testing for federally funded aircraft sound insulation programs and conducted and/or managed numerous environmental noise analyses, including the following:

- Environmental noise assessments addressing aircraft, traffic, rail, commercial, industrial and construction sources for projects requiring CEQA/NEPA documentation. Many of these studies have involved controversial projects and significant public interest in the agency review process.
- Aircraft noise analysis and preparation of noise exposure maps and summary reports for Las Vegas McCarran and Reno-Tahoe International Airports.
- Federally funded school and/or residential sound insulation programs for Los Angeles, Reno-Tahoe, Phoenix Sky Harbor and Anchorage Ted Stevens International Airports.
- General Plan Noise Elements for numerous California jurisdictions.
- Acoustical analyses and noise monitoring for numerous mining operations and construction projects.

Professional Affiliations:

- Member, Institute of Noise Control Engineering.
  Member, Acoustical Society of America.

Software Skills and Certifications:

- FHWA Traffic Noise Model Certified
- FAA Integrated Noise Model (INM)
- Aviation Environmental Design Tool (AEDT2B)
- Larson Davis Laboratories, AutoCAD, Microsoft Word, Microsoft Excel, SoundPLAN

Education:

- B.A. Physical/Environmental Geography, Humboldt State University, 1999.
- Post Graduate studies in Hydrology, California State University Chico, 1999-2002.

From: Erin McCarthy
To: Raval, Meenaxi
Subject: File No. PP 18-44 Charcott Ave.
Date: Wednesday, October 30, 2019 8:34:25 AM

To Whom it May Concern,
Please let this letter reflect and represent the sentiments of the Teachers at Orchard School. I am writing to once again express that Orchard Teachers Association opposes the construction of the flyover on and near our school campus. I am responding to the draft EIR and have some specific concerns that should be addressed.

*The public meeting regarding the flyover was held approximately 30 minutes from the school and the construction site. Why wasn't the school used for this meeting?

*Was the venue chosen to keep the people most impacted away from this meeting?

*The draft proposes that the road will come within 30-40 feet of classrooms. The speed limit will be 35 miles per hour. The DMV asserts that traveling at that speed a driver should allow 100ft to come to a complete stop. How is this acceptable?

The draft does not indicate that Orchard School will be impacted by construction. This is untrue. Our field will need to be modified to remain usable as a baseball diamond and a track. With the current layout of our campus there is a possibility that buildings will need to be moved to accommodate a new track. Our playground will need to be moved and building a concrete wall is considered construction. Who will absorb this expense?

*The concrete walls on the school side of the road are slated to be 6ft and those on the housing side of the street are slated to be 8ft. How did the city determine that children were not as important as houses? Why is there a difference in height?

*How does the city justify doubling pollution in an area where there are students?

*Does the city realize that students learning in polluted areas do not perform as well on high stakes testing?

*How does the city plan to keep our students safe from the extra pollution?

*The cross walk near the school is not intended to have a traditional stop light. This is unsafe. How will the city respond to students being run down on their way to school?

Our planet is in desperate need of reducing greenhouse gasses so that future generations may simply live. How does this support that goal for the future of our students and our community?

*In short, our community does not support this road. The city had planned this road prior to the school and prior to the homes being built across the street. Why does the city insist on building this antiquated plan?

I look forward to an update of the EIR and some clarification of the above questions.

Thank You,
Erin McCarthy
Orchard Teachers Association
President

Comment T

From: Sarah Alam
To: Raval, Meenaxi
Subject: File No. PP18-044
Date: Monday, November 4, 2019 12:37:54 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars.

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,
Sarah Mokarim

Comment U

From: Zeeshan Mokarim
To: Raval, Meenaxi
Subject: File No. PP18-044
Date: Monday, November 4, 2019 12:44:36 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars.

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,

Zeeshan Mokarim

Comment V

November 4, 2019

Dear Meenaxi Raval,

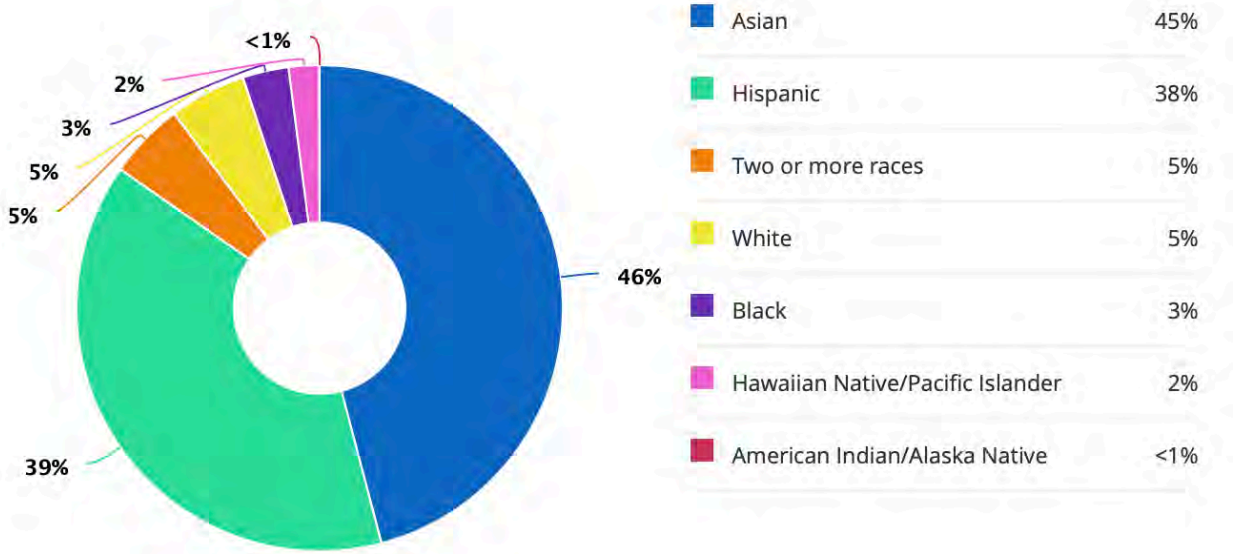
We are writing in reference to the **Charcot Avenue Extension Project (File No. PP18-044)**. As residents of San Jose, and as leaders in the community, we have **serious concerns about this proposed project** for health, safety, climate and equity reasons.

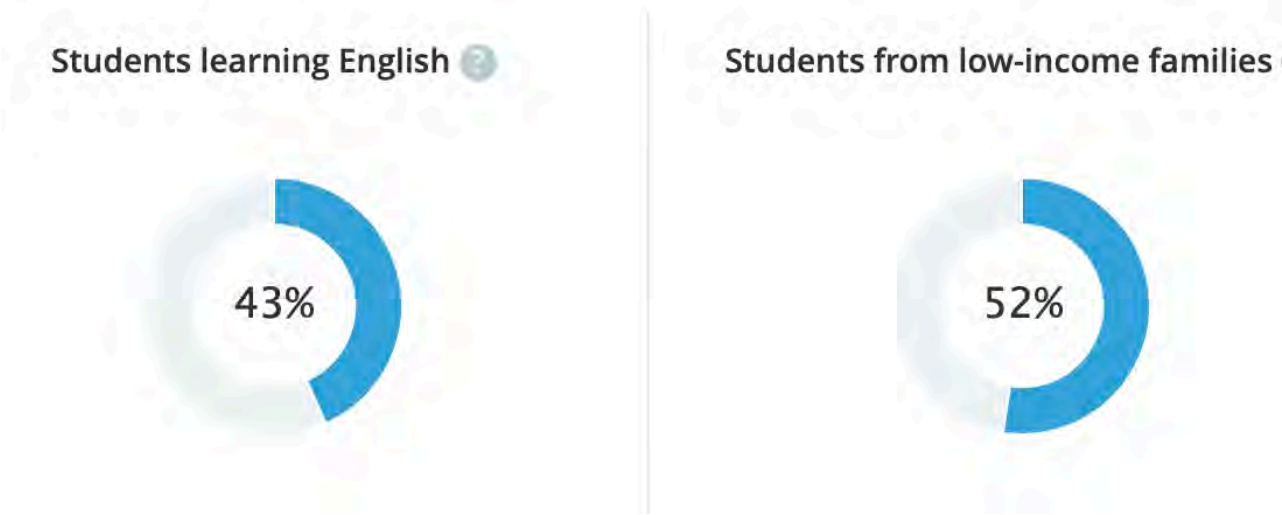
Health: By increasing vehicle traffic in the neighborhood, this project will increase air pollution from CO2 and particulate matter. Vehicle exhaust contains numerous poisonous chemicals, including carbon monoxide, sulfur dioxide, nitrogen oxides, formaldehyde, benzene and soot. Given the close proximity to Orchard School, this project **threatens the health of nearly 1000 children**, whose developing lungs are particularly vulnerable to the harmful effects of air pollution, putting them at increased risk for asthma, cancer, COPD and cardiovascular disease. Children deserve clean air to breathe; routing even more vehicles next to an established school is not treating their health as a priority.

Safety: This project will significantly increase traffic in the neighborhood. This will make it **less safe to walk to school** and work, increasing the likelihood of collisions between vehicles and pedestrians, especially children, threatening their lives. Rather than bringing vehicles into closer proximity to kids, we should be routing them away from school zones.

Climate: In September, the San Jose City Council unanimously declared a **Climate Emergency**, recognizing the threat that climate destabilization poses to all of our residents. In an emergency, we cannot continue business as usual. We must examine the policies that are contributing to the climate crisis and replace them with new policies. The Charcot Avenue Extension Project undermines the goals of Climate Smart San Jose and is based on outdated plans and assumptions. It does not fit into the City's new vision of itself as a vibrant, active, walkable City. Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. These trees **draw down carbon from the atmosphere**, serving as a valuable carbon sink and air purifier. We urgently need to plant new trees not destroy the mature ones we already have. In addition, to be climate-smart, we must stop directing funds to increased highway infrastructure and **instead invest in public transit.**

Equity: Over half (52%) of the students at Orchard School quality as low-income, 83% are students of color, and 43% are English-language learners, as shown in the graphics below by [Great Schools](#):





Siting an undesirable, air-polluting and safety-threatening project in such a disadvantaged neighborhood raises **questions of environmental racism**, however unintentional. As San Jose strives to evaluate its programs and policies through an Equity lens, it would do well to commission an **additional environmental study** that would consider how this project would divide the neighborhood, disturb residents and students with increased noise, threaten their health and safety, increase pollution, and damage the environment. Furthermore, the project would shrink the school's ballfield and remove the playground structure, diminishing students' quality of life.

We urge the City to consider how polluted the air in the area already is and how the school and the recreational space serve as a refuge for the community. The environmental study done for the City does not adequately consider this reality.

Finally, spending more than 50 million dollars to increase neighborhood congestion is not a good use of taxpayer money. Most importantly, the harm done to the students, staff and neighbors will be irreparable. The health and safety of the students at Orchard School and the protection of our climate are more important than increasing the speed of cars.

Therefore, we respectfully request that the City take the concerns of the community under serious consideration and re-evaluate this misguided project. A much wiser solution would be a **bike and pedestrian bridge**, which would provide many of the benefits of a road expansion, with none of the negative impacts and at a cost savings.

Thank you in advance for listening to and reflecting the wishes the community.

Sincerely,

Linda Hutchins-Knowles, D9, Co-founder of Mothers Out Front South Bay
Hoai-An Truong, D3, Leader with Mothers Out Front South Bay and with Silicon Valley Youth Climate Action
Isabelle Chappuis, D4, Leader with Mothers Out Front South Bay
Stacy Levy, D1, Co-founder of Mothers Out Front South Bay
Stephanie Snow, D1, Leader with Mothers Out Front South Bay

SIERRA CLUB
LOMA PRIETA CHAPTER

SAN MATEO, SANTA CLARA & SAN BENITO COUNTIES

November 4th, 2019

San Jose City Councilmember Diep
District4@sanjoseca.gov
San Jose City Coucilmember Peralez
District3@sanjoseca.gov

Re: DEIR Public Comments on Charcot Ave. Extension Project, File No. PP18-044

Dear Distict 4 Councilmember Diep and District 3 Councilmember Peralez,

This letter has three objectives

- Don't build the extension because of automobiles and instead improve circulation for people.
- Address the screening criteria for Vehicle Miles Travelled which lack data or effectiveness.
- Consider an alternate such as a pedestrian overcrossing or a functional Coyote Creek Trail that allows for service access on both sides as that proposed for the Charcot Avenue Extension.

The mission of Sierra Club includes a wide range of environmental concerns in order to protect natural resources through efficient planning. We wish to protect the health and safety of our most vulnerable, children, and those in underserved communities, often people of color including the students of Orchard School K-8 and residents who would be most impacted by the Charcot Project. We are troubled by the impact of the project and respectfully submit the following comments in regards to the Draft Environmental Impact Report (DEIR).

EIRs are intended to inform citizens and decision makers about the environmental impacts of projects as required by the California Environmental Quality Act (CEQA). This is valuable. But they do not evaluate the wisdom of a project or the project objectives and opportunity costs.

The problem with this project lies with several of the project objectives as listed in the DEIR and especially their juxtaposition to the school.

The DEIR states, "*The objectives for the proposed project are as follows:*
[PO1]► *Improve connectivity between the east side of I-880 and the west side of I-880;* [implied as for automobiles as described elsewhere in the document]
[PO2]► *Increase the capacity for east/west travel across the I-880 corridor;* [implied as for automobiles as described elsewhere in the document]

[PO3]► *Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete Streets Policy;*
[PO4]► *Implement a programmed roadway network improvement project identified in the Envision San José 2040 General Plan; and*
[PO5]► *Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan."*

In regards to PO1 and PO2, we suggest the project goal should be to provide for circulation of people not necessarily automobiles.

Only a block away from the project to the south is east/west connectivity via E. Brokaw Rd., a major arterial. East/west capacity is also available to automobile traffic just a few blocks to the north at Montague Expressway. With those two major arterials, there are already 12 high rate of speed east/west lanes plus separate turn lanes in the span of just 1.35 miles.

While automobile traffic may still experience congestion, this exemplifies the need to provide better bus and transit options, not more lanes jammed through school grounds.

Our City and State has a century of experience of attempts to alleviate congested roadways with adding lanes and roadways only leading to more automobiles and congestion. Alternative modes of circulation are needed rather than degrading the living standards and quality of life of children.

California legislators realize we need to avoid adding additional automobile capacity for many reasons including the need to mitigate climate change. So CEQA rules now directs the use Vehicle Miles Traveled (VMT) analysis. Screening away from this analysis was only done for this project because of the bikeway since it "*substantially improves conditions for pedestrians, cyclists, and/or transit, including but not limited to:*
o Protected and separated Class IV bikeway
o Pedestrian refuges, bulb-outs, and elements that shorten pedestrian crossing distances
o Consistency with the San José Complete Streets Design Standards and Guidelines and/or other applicable design guidelines;".

Yet, the Alternative E providing for bicycles and pedestrians was deemed infeasible for not meeting the automobile objectives.

Objectives PO4 and PO5 do reflect the expectations of planners and it is understandable why they have come about. But built into the General Plan itself is an ongoing revision process including a 4 year review cycle, one of which is beginning now. We believe it is time to reevaluate the *North San José Area Development Policy and the North San José Deficiency Plan* with new perspectives especially in regard to circulation.

Reflecting our current knowledge and with dictate from State law, we now have the VMT rules, a Climate Smart Plan including "*Developing integrated, accessible public and active transport infrastructure reduces the dependency on the car to move within the City*", and a resolution of

"Climate Emergency", acknowledging our need to rapidly change our dependency on GHG producing activities. The fact that this project is being proposed suggest additional throughput need or increased Vehicle Miles Travelled.

This EIR has placed screening criteria for VMT but haven't shown that any of the screening criteria individually or in concert actually work in San Jose to reduce VMT. Has VMT decreased since the implementation of the criteria? No data. The screening criteria is purely conjecture.

• Table 3.17-2 lists the City's screening criteria for transportation projects that are expected to result in less than significant VMT impacts (Page 136)

• The EIR goes on to claim "the project is presumed to result in less-than-significant VMT impacts and a detailed VMT analysis is not required under CEQA. (Page 137)"

However road expansion, as contemplated by the Charcot overcrossing, according to UC DAVIS, is the primary cause of VMT increase. https://ncst.ucdavis.edu/wp-content/uploads/2017/03/State-Level-VMT-Strategies- White-Paper_FINAL-03.2017.pdf

Californians face increased fires, precipitation patterns, and drought. We need solutions that work now, not conjecture for business as usual. Under SB32 reductions of 1% per year are necessary in VMT. The strongest tool according to UC Davis is pricing. Moderate tools to reduce VMT include infill development and TDM. These too are not in the screening criteria. The screening criteria is heavy on recommendations for alternatives like pedestrian and bicycle use which the city has been doing for two decades with no reduction in VMT as can be attested by the increase in public and commercial parking lot construction during that period. *The EIR should rely on known effective screening criteria and provide data of their effectiveness instead of conjecture.*

The Measure B resources to be expended on this project should be shifted to other projects or toward, "*7.4.2 Alternative E: New Overcrossing for Bicycles and Pedestrians Only.*

Alternative E would consist of constructing a new bicycle/pedestrian overcrossing of I-880/ O'Toole Avenue on the same alignment as that proposed for the Charcot Avenue Extension. The overcrossing would connect to the existing bike lanes and sidewalks along Charcot Avenue west of O'Toole Avenue. On the east side of I-880, the overcrossing would connect to Silk Wood Lane." An alternative suggestion would be to make the Coyote Creek Trail work for access on both sides of Charcot.

The benefits of this alternative over the project are tremendous for the health and safety of the children of the neighborhood and entire community. *"Since this alternative would not include any travel lanes for motor vehicles, its cross-section/footprint would be much smaller than that of the proposed project. On the west side of I-880, this alternative would not require the elevation of Charcot Avenue between Paragon Drive and O'Toole Avenue and access to properties along this segment of Charcot Avenue would be maintained. Unlike the proposed project, this alternative would also not require the removal of most of the trees that line both*

sides of Charcot Avenue between Paragon Drive and O'Toole Avenue. On the east side of I-880, the footprint of Alternative E would fit within the right-of-way reserved by Super Micro for the Charcot Avenue Extension and within the existing Silk Wood Lane right-of-way. No right-of-way from Orchard School would be required and there would be no direct impacts to the school's playground and playing field. The noise and air quality impacts of the project to the residences located on the north side of Silk Wood Lane and the school located on the south side of Silk Wood Lane would not occur under this alternative since there would be no increase in traffic. Finally, tree removal along Silk Wood Lane would be minimal, if any."

Please redirect the efforts of staff to wiser uses of Measure B funds as soon as possible.

Sincerely,

David W. Poeschel, Sierra Club Loma Prieta Chapter Open Space Committee Chair

Gladwyn d'Souza, Conservation Committee Co-Chair

CC: **Environmental Project Supervisor** Meenaxi Raval, AICP
meenaxi.raval@sanjoseca.gov

Katja Irvin, Gladwyn d'Sousa, Sierra Club Loma Prieta Conservation Committee Co-chairs

Comment X

From: Ana Romero
To: Raval, Meenaxi
Subject: re: Very Concerned. Please put a STOP to the Charcot Extension Project.
Date: Wednesday, October 30, 2019 12:07:24 PM

Reference File No. 18-044, Charcot Extension Project.

I am writing on behalf of my students at Orchard Elementary School.

Our community strongly, strongly, strongly opposes this project and believes it will have an extremely negative and harmful impacts on our students and our community.

The wall they plan to build around the school is only 6 feet . The one across the street by the houses is 8 feet.

We will have to restructure our entire playground.

The road will be only 40 feet from our classrooms!

Construction noise will be incredibly disruptive to our school and learning environment.

More than anything the POLLUTION in the area will double. The health issues that this will create are SO harmeful.

This is UNACCEPTABLE that it is even being considered to build a highway literally on a school's campus. It is appalling and shameful. It is just flat out the WRONG thing to do. Please do everything in your power to put a stop to this please, from the bottom of all of the hearts of the teachers, students, staff, neighbors, and families of our Orchard Elementary community.

Additionally, the traffic will threaten the safety of our students and make school less accessible to the community.

Please stop this plan in its tracks.

Thank you so much.

Comment Y

From: Thu Vu
To: Raval, Meenaxi
Subject: Reference File No. 18-044, Charcot Extension Project.
Date: Friday, November 1, 2019 10:47:00 AM

Reference File No. 18-044, Charcot Extension Project.

I am writing on behalf of my 4th graders at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

If you would like more, here are some facts from the first EIR:

- The wall they plan to build around the school is only 6feet . The one across the street by the houses is 8feet.
- We will have to restructure our entire playground.
- The road will be only 40 feet from our classrooms.
- Construction noise will disrupt our learning.
- Consistent noise from traffic on the overhead when the project will continue to disrupt students' learning when it is finished.
- Pollution in the area will double which risks the health of our students.
- Traffic will threaten the safety of our students and make school less accessible to the community.

Please consider our students in mind when you discuss the Charcot flyover. This will have a negative effect on our community.

--
Thu Vu
4th Grade Teacher
Orchard Elementary School
921 Fox Lane SJ CA 95131
408.944.0388 ext 429
www.orchardsd.org

Comment Z

From: Mandy Peng
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: Charcot Avenue Extension Project File No. PP18-044
Date: Monday, November 4, 2019 11:02:27 AM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).
Your project was planned over 20 years ago and it's absurdly wrong since we already have big residential community near the school.

If you insist building this out-dated project, my kids will have to walk across a very dangerous street to get to school and the polluted air they have to suffered every day is unacceptable.

You put kids' life and all residential commuity health ahead of so-called traffic jam improvement is totally absurd!

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,
Mandy Peng

(9)

Comment AA

CHARCOT AVENUE EXTENSION PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT

COMMENT CARD

Comments and questions must be submitted or referred to Meenaxi Raval via e-mail by 5:00 pm November 4th, 2019.

For the official record, please submit your written comment letter and reference ***File No. PP18-044.***

Meenaxi Raval
Department of Planning, Building, and Code Enforcement

200 East Santa Clara St., 3rd Floor
San José, CA 95113
(408) 535-3555

E-mail: Meenaxi.Raval@sanjoseca.gov

Name: VINCE RIVERO

Phone: 408. 813. 2010

Email: URIVERO @ VER-CONSULTANTS.COM

Date: 9/24/2019

Affiliation (if applicable) SUPERMICRO INC

Address: 980 ROCK AVE

Comment/Question: SUPERMICRO WOULD LIKE TO DISCUSS: 1. SECURITY OF EXISTING CAMPUS/IMPACTS OF DESIGN 2. Schedule 3. NOISE & AESTHETICS

Please continue on the back if necessary.

Comment BB

Comments to the Draft Environmental Impact Report – "Charcot Avenue Extension Project"

File No. PP18-044

November 3, 2019

Robin Roemer
135 Rio Robles E #405
San Jose, CA 95134
robin.roemer@ymail.com

Orchard School PTA
921 Fox Lane
San Jose, CA 95131
orchardpta921@gmail.com

"We know it's a problem when we see much higher rates of asthma in low-income communities in the eastern part of my city where we know there are neighborhoods built closer to freeways. We know it's directly resulting from transportation, particularly automobiles. We know we have much farther to go. [...]

As I experience children who simply cannot engage in daily activities because of asthma, as I see premature deaths, particularly in low income communities, caused by this kind of air, it makes me furious."

(Mayor Sam Liccardo, October 29, 2019)

Executive Summary

The DEIR is in many parts inaccurate and inconsistent (see chapter I, II, VIII). Given the major impact this will have on the community, a more diligent approach and further fact finding (chapter III) is needed.

Many aspects of the environmental setting, impacts and mitigation have not been sufficiently addressed (chapter IV). Especially the transportation analysis is in many instances implausible as according to DEIR:

- Cars will travel 72 mph on the extension next to the school.
- Drivers across 880 will save on average less than 17 seconds because of the project.
- More cars will come down on one side of the overpass as are going up on the other side.
- The 2-lane extension will be used during peak hours by more cars than 8-lane Montague and still provide greater speeds than the Expressway.
- Every day, 17,000 cars enter North San José from the East only to never return.

Furthermore, the transportation analysis denies the existence of the well-established and documented effect of induced demand and does not adequately consider the impact on pedestrian safety, especially students walking to school.

Since the transportation analysis is the basis for many other aspects in the DEIR, most importantly the noise and air quality analysis, those parts of DEIR seemed to be flawed as well.

- *"For road projects, the accuracy of traffic demand forecasts are crucial to the validity of any subsequent impact assessments […]. These forecasts form the basis for estimates for a wide range of impact factors, including time savings, emissions, and noise. […] traffic demand seems to be underestimated for road projects on average."* [1]

Given the current already strained school environment near I-880 and Oakland road, it is of utmost importance to establish a true picture of current conditions. Yet, the DEIR failed to take any noise or air pollution measurements on the school site. The proposed mitigation measures "6+ feet noise barriers" raises additional concerns – which have not been adequately addressed by the DEIR.

The DEIR also fails to consider any impact of increased air pollution on student learning – a connection for which there is also well established scientific research.

Lastly and most importantly, what are we trying to achieve with this project and is it still consistent with the City's plans (chapter V and VI)? The original issue – LOS at one specific screen line – is outdated especially given recent changes from LOS to VMT. The Project will hamper Climate Smart San José by increasing VMT. There is no evidence provided that the project is needed or even helpful for the development in North San José envisioned by the City.

Although "it is not the intent of an EIR to recommend either approval or denial of a project." (DEIR, p. 1), it is clear that the project should either be cancelled or the alternative of a bike- and pedestrian-only-overpass should be considered instead (chapter VIII).

[1] Petter Næss, Morten Skou Nicolaisen and Arvid Strand (2012), "Traffic Forecasts Ignoring Induced Demand: a Shaky Fundament for Cost-Benefit Analyses," European Journal of Transport and Infrastructure Research, Vol. 12 (3), pp. 291-301; at www.ejtir.tbm.tudelft.nl/issues/2012_03/pdf/2012_03_02.pdf

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“Sept. 12 marks two years since the funeral of my 15-month-old son, Liam. He had been in a stroller, being pushed through a pedestrian crosswalk in suburban Los Angeles by my sister-in-law, who was 15 years old at the time. She had done everything right: pressed the button, waited for the lights to change and then started walking. Other cars stopped, but one didn’t. Police later estimated that the car was going 35 to 40 mph as it smashed into Liam and my sister-in-law. The car was driven by a 72-year-old woman. She was drunk and behind the wheel at 3:30 in the afternoon. […]

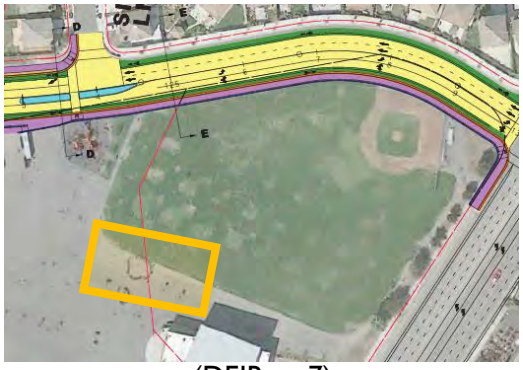
Liam’s injuries were devastating. Doctors soon told my wife, Mishel, and me that our son was brain-dead.”

(Marcus Kowal, “I lost my infant son to a drunk driver.”
Washington Post, September 11, 2018)

I. Inaccurate statements in the DEIR

Regarding project and surrounding area

1- Outdated satellite picture is missing portable classrooms constructed in 2015



(DEIR, p. 7)

(Picture source: Google Earth, 10/2015)

The satellite photographs used in the DEIR are outdated as they do not include the portable classrooms installed next to the school's ball field.

2- DEIR describes non-existent "dense" tree planting

*"Three adjoining service buildings of Orchard School are **completely screened by** **existing dense tree** planting"*

(Appendix D, p. 11)

Current picture of the tree planting at the location described, school buildings on the left, future roadway on the right. This is not dense nor completely screening.

3- DEIR: "no view" of the project

*"Three adjoining **service buildings** of Orchard School are completely screened by existing dense tree planting and **have no views facing the right-of-way**."*

(Appendix D, p. 11)

Buildings described is a classroom building. Photo shows windows with views of the right-of-way.

4- Nearest school building

"For most school viewers, views of the project would be at a distance. The nearest school buildings with windows facing the project, for example, are 300 to 400 feet."

(DEIR, p. 21)

Statement not true (see above.) Closest school building is about 20 feet from the edge of the project, both pod as well as class rooms have windows from which the project is clearly visible.

This is also inconsistent with the response B-27:

"The classroom building for grades 4-6 is the one that will be the closest to Charcot Avenue. Based on preliminary plans, the northerly end of that building is estimated to be approximately 50 feet from the outside edge of the eastbound traffic lane on Charcot Avenue."

As shown in the photo above the building has windows facing the right-of-way.

5- Views screened

"Views of the right-of-way from the ball field are currently screened by a row of trees along Silk Wood Lane."

(Appendix D, p. 11)

Since the row of tree on Silk Wood Lane is sparse and needs to be removed for the project, its current impact on views is irrelevant as a means of moderation.

6- Sidewalk south side of Silk Wood Lane

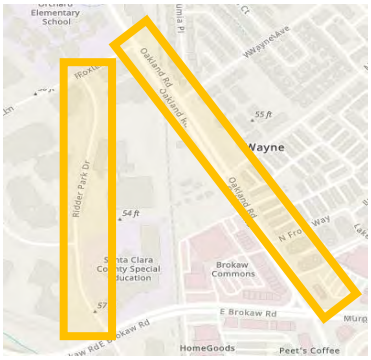
A map in the DEIR shows existing sidewalks (purple lines) on both sides of Silk Wood Lane (Appendix K, p. 12)

Silk Wood Lane currently has sidewalks only on one side.

7- *Ridder Park North of Oakland Road*

Ridder Park Dr	North of Oakland Road

The DEIR describes a roadway segment as "Ridder Park Dr – North of Oakland Road" (DEIR, p. 143)



"Ridder Park Dr" (on the left) does not intersect with Oakland Road (on the right), but runs parallel to it. There is no Ridder Park Dr that could be described as north of Oakland Road.

8- *Speed limit on Oakland Road*

Roadway	Location	Speed (mph) Limit	Speed (mph) 85th Percentile
Charcot Avenue	East of First Street	40	39
Junction Avenue	North of Brokaw Road	40	38
Oakland Road	North of Silk Wood Lane	45	44
Oakland Road	South of Silk Wood Lane	45	39
Ridder Park Dr	North of Oakland Road	25	31

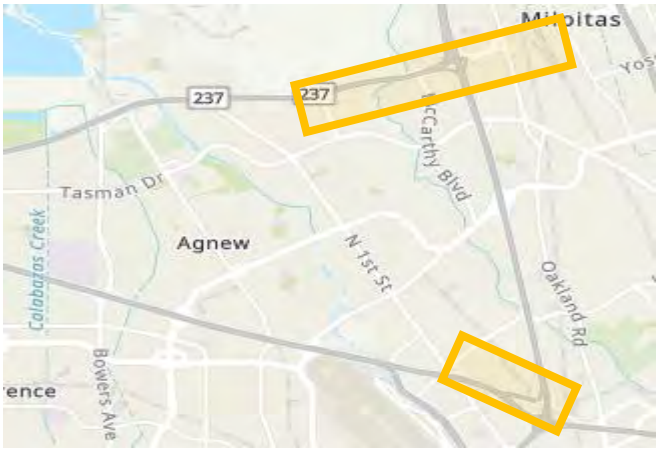
The DEIR describes the speed limit on Oakland Road as 45 mph (DEIR, p. 143)

Speed limit on Oakland Road is 40 mph. (Picture taken adjacent to Silk Wood Lane)

9- *Existing east/west connections*

"Currently, all east-west through traffic ***crossing between both sides of I-880 in the North San José Area*** *travel on the Tasman Drive overcrossing, the Montague Expressway overcrossing, or the Brokaw Road undercrossing, all of which experience congested conditions during commute periods."*

(DEIR, p. 13)



This statement omits the east-west routes of
a) the 237 freeway/Calaveras Blvd,
b)101, and the Old Bayshore Highway,
which also serve the NSJ area.

10- VTA Express Bus 321

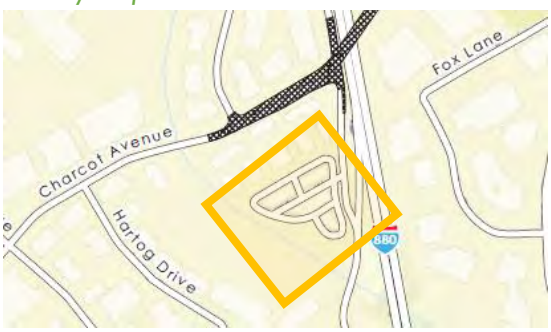
"The extension of Charcot Avenue will provide an additional east-west route in the greater North San Jose area, which will reduce traffic volumes on parallel routes. For example, ***volumes on Montague Expressway, which is utilized by VTA Express Bus 321, will decrease. This would improve travel times for the bus."***

(Appendix B, Response 39.3)

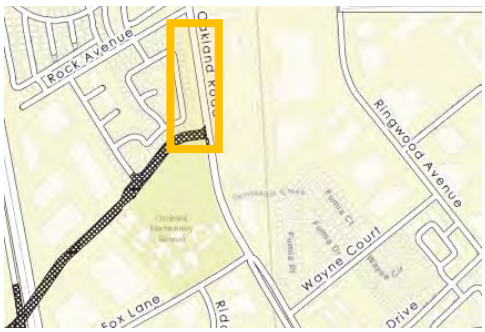
The analysis has not specifically considered the usage of the HOV lane on Montague which is used by the bus. The bus currently runs only once a day per direction and each time during commute times/HOV lane usage times.[2]

Therefore travel times for the bus would remain the same as it should be expected that HOVs will not switch from Montague to Charcot as the existing HOV lanes will likely provide greater speeds than the planned extension.

11- Vicinity map



The vicinity map shows a non-existent road grid south of Charcot Ave connected to O'Toole Ave. (p. 5)



While the map shows medians on Oakland Road south of Fox, medians north of Rock Ave are omitted. (p. 5)

12- Surrounding Land Uses

"To the east of I-880, the alignment is partially developed with a loading dock area, Silk Wood Lane, and landscaping and outdoor recreation areas associated with the Orchard Elementary School site. The eastern portion also includes vacant right-of-way that has been set aside for the proposed project. Residential uses are located adjacent to the north side of Silk Wood Lane, west of Oakland Road."

(DEIR, p. 99)

The paragraph fails to clearly state that surrounding land use includes classrooms and school buildings not just recreational areas.

[2] https://www.vta.org/go/routes/321

13- Location of noise walls

The location of sound walls as shown on page 116 is incorrect as it doesn't reflect actual project boundary and shows sound wall going into classrooms at the western edge of Orchard School.

14- Right-of-way

"For many years dating back since 1994 when the City adopted its 2020 General Plan, ***the City has planned and maintained right-of-way for the proposed alignment of the Charcot Avenue extension*** *over I-880 from its current terminus at O'Toole Avenue on the west side of I-880 to the current alignment of Silkwood Lane near Oakland Road.."*

(Appendix K, p. 42/43)

The statement that the city has maintained right-of-way for the alignment since 1994 is untrue and not supported by facts. Especially, **the City does not have right-of-way for the section across I-880** as this right-of-way belongs to Caltrans.

15- Dates of local observation

"The observations [at the school] were ***conducted on September 25th and 26th 2018, which were normal school days*** *during the morning drop-off (7:30-8:30 am) and afternoon pick-up (2:15-3:00 pm) periods."*

(Appendix K, p. 47)

During the month of September, Kindergarten operates on a shortened schedule which ends at 12:25pm. No Kindergarten pick-up activity could therefore be observed on these days during the 2:15-3:00pm observation period. Kindergarten families contribute significantly to vehicle and pedestrian activity at the school.

September 26th, 2018 was a Wednesday. All of Orchard School operates on schedule where Wednesdays are minimum days schoolwide with all classes ending before 12:45. Therefore, no pick-up activity could have been observed on September 26, 2018 between 2:15 and 3:00 pm.

The statement that these were "normal school days" is untrue.

16- Crossing guards

"Crossing guards were located at both the Fox Lane/Ridder Park Drive and Fox Lane/Oakland Road intersections during drop-off/pick-up periods."

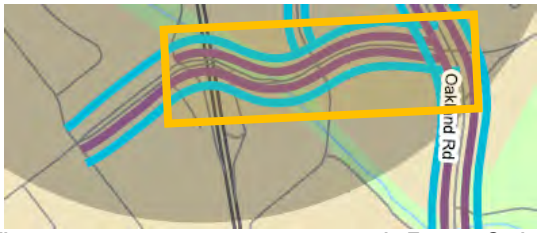
(Appendix K, p. 48)

Although eligible for school crossing guards at the Fox Lane/Ridder Park intersection since 2018, crossing guards only started working at this intersection with the 2019/2020 school year. It is unclear how the traffic consultant was able to observe crossing guards in 2018.

17- Existing Bicycle and Pedestrian Facilities

"Pedestrian and bicycle facilities on each of the roadways are limited and discontinuous between Oakland Road and O'Toole Avenue."

(Appendix K, p. 11)



This statement is inconsistent with Figure 3 that shows continuous pedestrian and bicycle facilities between Oakland Road and O'Toole Avenue on Brokaw Road.

Regarding the City of San José

18- Lead Agency

10.1 LEAD AGENCY

Department of Transportation

John Ristow, Acting Director
Zahir Gulzadah, Division Manager
Thuy Nguyen, Senior Engineer
Josephine Kimura, Project Manager

(DEIR, p. 205)

John Ristow is the current Director of the Department of Transportation, not "*Acting*" Director. [3]

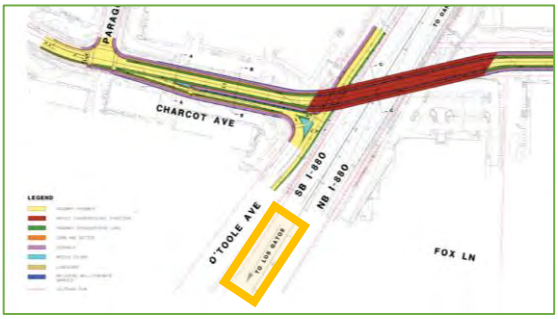
19- Greenprint

"The City is currently in the process of another revision to the plan known as Greenprint Update 2018."

(DEIR, p. 129)

The current Greenprint Update is known as "Activate SJ".[4]

20- Description I-880 southbound



(DEIR, p. 7; Appendix K, p. 3)

Southbound I-880 is currently described in the DEIR as "to Los Gatos".

A more relevant and appropriate description would be "to San José Airport" or "to Downtown San José".

21- Truck Ban

"Truck Ban: The City's ban on select trucks over a certain tonnage is only applicable for residential streets"

(Appendix B, Response 34.2)

Statement is inconsistent with San Jose Municipal Code 11.96.010-100[5] which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.

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[3] https://www.facebook.com/CityofSanJose/posts/join-the-city-in-welcoming-the-new-director-of-the-department-of-transportation-/10156939724360450/
[4] http://www.sanjoseca.gov/index.aspx?NID=6331
[5] https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.96LAVERO

General Plan Transportation Diagram

Photo of truck ban sign on McKay Dr

22- Conflicts with greenhouse gas (GHG) emission plans and policies

"Further, the proposed roadway extension is included in the adopted Envision San José 2040 General Plan roadway network and the planned roadway network for the North San José Area Development Policy, both of which are consistent with the City's GHG Reduction Strategy." (p. 80)	*Climate Smart San Jose assesses "the climate implications of building out the General Plan and finds that the General Plan alone is not enough to meet the [City's or] State's carbon commitments, let alone align with the decarbonization rates implied by the Paris Agreement"*[6]

Statement is inconsistent with staff memo for City of San José Transportation and Environment Committee October 7, 2019.

[6] https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96

Regarding State and Federal regulation

23- Lane Width

"10-Foot Wide Lanes: A 10-foot wide traffic lane would narrow the project's footprint. However, ***10-foot wide lanes are not allowed, per Caltrans design standards****, which require a minimum of 11-foot wide lanes. Therefore, a width of 10 feet for the lanes would not be feasible."*

(Appendix B, Response 34.2)

*"****Where a local facility****, not on the NHS [national highway system], within the State right of way crosses over or under a freeway or expressway but* ***has no connection to the State facility, the minimum design standards*** *for the cross section of the local facility within the State's right of way* ***shall be the local agency adopted standards****."*

(Caltrans design standards section 308.1)[7]

"Lane widths of 10 feet are appropriate in urban areas and have a positive impact on a street's safety without impacting traffic operations." (NACTO, "Urban Street Design Guide")[8]

Even 9 foot wide lanes are generally able to accommodate truck traffic.[9]

24- California standards for motor vehicle emissions

"California also has the ability to set motor vehicle emission standards and standards for fuel used in California, as long as they are the same or more stringent than the federal standards."

(Appendix K, p. 8)

"Trump to Revoke California's Authority to Set Stricter Auto Emissions Rules -
The Trump administration is expected on Wednesday to formally revoke California's authority to set auto emissions rules that are stricter than federal standards"

(New York Times, 09/17/2019)[10]

California currently does not have the ability to set motor vehicle emission standards.

25- Fuel for Motor Vehicles

"In 2012, the federal government raised the fuel economy standard to 54.5 miles per gallon for cars and light-duty trucks by Model Year 2025. (Source: National Highway Traffic Safety Administration. Obama Administration Finalizes Historic 54.5 mpg Fuel Efficiency Standards. August 28, 2012.)" (p. 65)

Given recent developments on the federal level statement needs to be reevaluated.[11]

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[7] https://dot.ca.gov/-/media/dot-media/programs/design/documents/hdm-complete-14dec2018.pdf#page=211
[8] https://nacto.org/publication/urban-street-design-guide/street-design-elements/lane-width/
[9] https://twitter.com/tjhfx/status/1163503124885180421
[10] https://www.nytimes.com/2019/09/17/climate/trump-california-emissions-waiver.html
[11] https://www.vox.com/2019/4/6/18295544/epa-california-fuel-economy-mpg

II. Internal inconsistencies in the DEIR

26- Reduction in automobile trips

*"The **proposed roadway project will […] reduce automobile trips** in the project area consistent with the Envision 2040 General Plan goals and policies."*

(Appendix K, p. 15)

Total Daily Trips (ADT)
in the project area

Without the project:	***With the project:***
813,600	**828,200**

This is an increase of 1.79%, not a reduction.

(DEIR, p. 157)

27- VMT data used in traffic analysis and air quality analysis

Comparing the data in Appendix K – Transportation analysis with the data used in Appendix E – Air Quality Analysis shows major discrepancies for example for VMT, VHT, Speed, Peak AM and Peak PM traffic data.

No Project	**VMT 2025**	**VHT 2025**	**Speed 2025**	**VMT 2040**	**VHT 2040**	**Speed 2040**
Transportation Analysis	1,821,479	104,144	25.22	2,659,078	185,249	14.35
Air Quality Analysis	4,789,277	209,093	22.90	6,080,580	340,160	17.88
Project	**VMT 2025**	**VHT 2025**	**Speed 2025**	**VMT 2040**	**VHT 2040**	**Speed 2040**
Transportation Analysis	1,823,272	103,460	25.28	2,661,463	183,620	14.49
Air Quality Analysis	4,787,047	205,279	23.32	6,092,019	336,012	18.13
Cars/h	**Peak AM 2025**	**Peak PM 2025**	**Peak AM 2040**	**Peak PM 2040**		
Transportation Analysis	1240	1250	1490	1720		
Air Quality Analysis	776	818	1026	1082		

28- Criteria for alternatives

"The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project,
<u>even if these alternatives</u> would impede to some degree the attainment of the project objectives, or <u>would be more costly</u>."

(DEIR, p. 183)

"In conclusion, it has been determined that Alternative B, the widening of Montague Expressway or Brokaw Road, is
not feasible for the following reason:
From an economic/funding perspective, there would be
<u>significant right-of-way costs</u>
associated with the widening of Montague Expressway or Brokaw Road."

(DEIR, p. 187)

According to DEIR (p. 183) alternatives shall not be considered infeasible because of costs, yet a few pages later, the DEIR does exactly that.

29- Alternative E - Impact of improved bike and pedestrian facilities

*"**Traffic circulation** for the Bicycle/Pedestrian Overcrossing Only **would be the same as for the No Project Alternative** under existing, year 2025, and year 2040 conditions"* (DEIR, p. 189)	*"**By providing improvements that will facilitate bicycle and pedestrian use, the operational phase would reduce vehicle trips**"* (DEIR, p. 67)

If traffic circulation is the same as no project alternative than providing improvements that will facilitate bicycle and pedestrian use aren't actually reducing vehicle trips.

30- Response 21.1

*"This comment states the opinion that building and planning should stop as it **is not safe or healthy for children** attending Orchard School. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as **the comment does not raise any environmental issues.**"* (Appendix B, Response 21.1)	This statement is in itself inconsistent: the health of children is an environmental issue.

31- Response 31.1

*"This comment states the opinion that **the project should not utilize land that is part of Orchard School.** The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. **No further response is required as the comment does not raise any environmental issues."*** (Appendix B, Response 31.1)	*"While the implementation of MM REC-2.1 would mitigate the project's impact on the school's recreational facilities, it would not replace the lost parkland/recreational acreage. Further, there is no vacant land available contiguous to Orchard School that could be purchased and added to the school. Therefore, **the loss of 0.44 acre of recreational land would constitute an unavoidable effect of the project.*** ***Conclusion: Significant Unavoidable Impact"*** (DEIR, p. xii)

The comment raises issues of impact to recreational land ("Please don't take away a piece of land from Orchard School that my children attend because they need the space to play to regain physical and mental health to be productive.") which the EIR itself considers a Significant, Unavoidable Impact. The response given is inconsistent with the findings of the DEIR.

32- Cumulative Impact – Efficiency of vehicle travel

*"By providing an additional east-west route in the greater project area, the project will improve the **efficiency** of vehicle travel, thereby reducing energy consumption."*

(p. 67)

*"the TDF model is designed to reflect driver's behavior by minimizing the travel time of motorists rather than travel distance. Since the roadways in the area are congested during the morning and afternoon peak periods, **commuters will drive longer distances to shorten their travel time**."* (Appendix K)

Statement inconsistent with the result of the traffic analysis that shows commuters driving longer distances than before, which is less efficient.

33- Electricity consumption associated with the project

*"Electricity consumption associated with the project would be **limited to power for new streetlights and traffic signals**."*

(p. 174)

*"Existing electricity use associated with operation and maintenance of the project alignment primarily consists of **electricity used to power electric vehicles and streetlights**."*

(p. 64)

34- Number of workdays

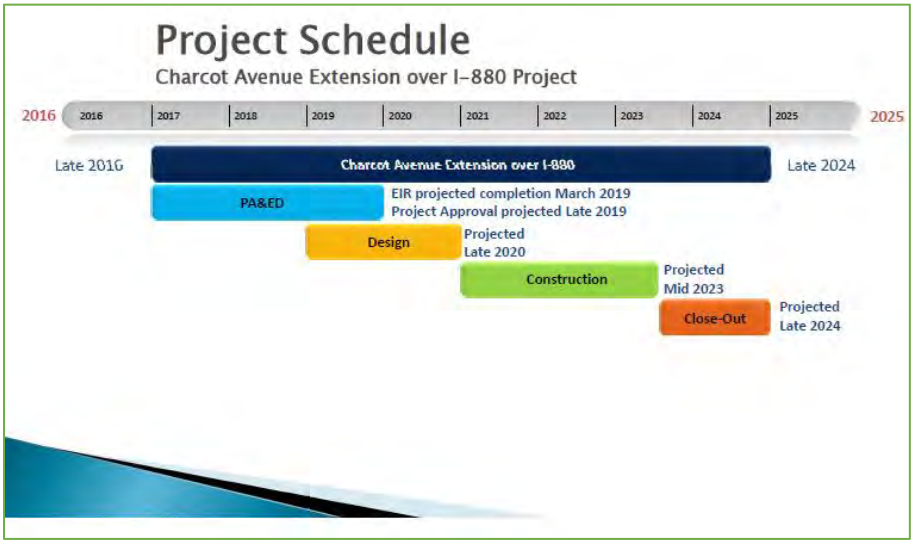
*"The provided project schedule and equipment usage assumptions are that the project would be built out over a period of approximately 10 months beginning in 2019, or an **estimated 220 construction workdays**"*

(Appendix E, p. 16)

"*Construction is anticipated to occur **over a total period of 130 days**.*"

(Appendix J, p. 28)

Statement also seems inconsistent with timetable provided by the City as response to request for public records, which shows construction lasting longer than two years.



35- Existing CO2e Emissions

"Under existing conditions, […] ***existing GHG emissions are considered nonexistent****."*

(Appendix E, p. 30)

Table 8.
Existing CO2e Emissions*:*

598,123 *Metric Tons per Year*

(Appendix E, p. 31)

36- Reduction in VHT

Table 11
Percentage change in daily VHT

2015: ***-0.1%***
2025: ***-0.7%***
2040: ***-0.9%***

(Appendix K, p. 40)

"The model results show that VHT would decrease by approximately ***1 to 2 percent*** *in the project area."*

(Appendix K, p. 31)

37- Increase in travel speeds

Table 11
Percentage change in average speed

2015: ***0.2%***
2025: ***0.8%***
2040: ***1.0%***

(Appendix K, p. 40)

"The Charcot Avenue extension also would increase the travel speeds on the roadways within the area by approximately ***1 to 2 percent****."*

(Appendix K, p. 40)

38- Parking on Silk Wood Lane

*"****The project will not take away any parking*** *from this area.* ***The portion of Silk Wood Lane*** *adjacent to Orchard School is not a designated drop-off and pick-up location and* ***is signed as a "No Stopping Any Time" zone****"*
(Appendix B, Response 17.1, similar: Responses 15.1, 34.8, 44.1, 45.4, 48.3, 51.1, 51.2)

"The ***north side of Silkwood Lane provides on-street parking.****"*
(DEIR, p. 147)

*"****The project will remove the existing on-street parking along the north side of Silkwood Lane****."*
(Appendix K, p. 50)

39- Impact of parking Silk Wood Lane II

*"**The Charcot extension will have no effect on the school's access points, drop-off/pick-up areas, and/or parking lots that are located on Fox Lane and Oakland Road**."*
(Appendix K, p. 50)

*"These changes will substantially curtail this informal use of Silkwood Lane for student drop-off/pick-up because the only remaining on-street parking will be along the north-south segment of Silkwood Lane that connects to Rock Avenue. **This, in turn, will result in a greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas**."*
(p. 50)

The quantitative traffic analysis (p. 34-36) shows no impact to Fox Lane as traffic volume will supposedly stay the same as without the project, which is inconsistent with *"greater use"*.

Table 8
Existing and Existing Plus Project Roadway Segment Traffic Volumes

#	Roadway	Location	AM				PM				ADT	
			Existing	Existing+ Project	Change Volume	Change Percent	Existing	Existing+ Project	Change Volume	Change Percent	Existing	Existing+ Project
18	Ridder Park Drive	North of Oakland Road	730	730	0	0%	500	500	0	0%	6,700	6,700
19	Fox Lane	West of Oakland Road	620	620	0	0%	440	440	0	0%	6,100	6,100

40- Access

"Access to adjacent properties along Charcot Avenue between Paragon Drive and Silkwood Lane will not be provided.".

*"To enhance pedestrian access to/from Orchard Elementary School, the width of the **sidewalk on the south side of Charcot Avenue at Silk Wood Lane would widen to 11 feet**. In addition, a 9-foot wide paved pedestrian path would be constructed next to the 11-foot wide sidewalk to **connect to a gate at the school playground**."* (DEIR, p. 10)

The project map on page 7 seems to indicate openings/access for pedestrian towards Super Micro on the north side of the project. The map showing the proposed soundwalls is inconclusive in this regard.

"Two days ago, a driver took the life of a four-year-old girl named Alessa.

Alessa's mother was walking her daughter to preschool. A left-turning driver crashed into them as they walked across Olympic Boulevard at Normandie Avenue in the city of Los Angeles' Koreatown neighborhood. Alessa was pronounced dead at Childrens Hospital."

("Driver Killing Koreatown 4-Year-Old Sparks Protest Push For Vision Zero",
Streetsblog LA, October 18, 2019)

III. Further fact finding required

41- Length of the project

Please provide the total length of the project in feet. The DEIR states the length of the project as 0.6 miles. Measurements taken indicate a length of approximately 0.5 miles instead. Please also provide detailed measurement for the length of the existing roadway segments in the alignment. An accurate measurement is important for the VMT analysis.

42- Roadway capacity

Please provide maximum capacity for all roadway segments analyzed.

43- Creation of new impervious surfaces

Please state the amount of new impervious surfaces created by the project.

44- On-site measurements - Noise

The EIR fails to include any actual measurements taken on school grounds for all of the noise receptor locations. This needs to be corrected.

45- On-site measurements – Air quality

The EIR fails to include any actual measurements for current air pollution in the area. This needs to be corrected. See Attachment E – "Air Quality Measurements taken at school site" for a snapshot of measurements taken in the area.

46- New significant developments since traffic data was taken in 2018

Local developments in the area (e.g. Lumentum moving their corporate headquarter to a previously vacant office building)[12] have potentially resulted in significant changes to traffic volumes on some of the roadway segments analyzed. An updated count as input for the traffic analysis is required.

It should also be noted that in the very near future and likely before the final approval of the EIR, the BART extension to Milpitas and Berryessa will open. This is likely and intended to again alter traffic patterns in the area. This would require another update of the data after new traffic patterns have established itself.

Similarly the City plans signal re-timing along Brokaw Road in order to *"reduce travel delay along major commute corridors reduces vehicle emissions and improves traveler experience."*[13] This is likely to affect traffic volumes and patterns as well.

47- 2.5 Additional permits required

The EIR should clearly acknowledge any additional permits required for the project such as the many tree removal permits or the National Pollutant Discharge Elimniation System Construction General permit required for the project.

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[12] https://www.mercurynews.com/2019/05/22/lumentum-buys-big-north-san-jose-office-park-where-it-will-move-hq/

[13] http://www.sanjoseca.gov/DocumentCenter/View/86326, p. V - 838

"My 12-year-old son was killed in a crash in front of our home on Oct. 8, 2013.

Sammy kissed me goodbye and said, "I love you Mommy."

I never imagined those would be his last words. Sammy was bright, kind, athletic and had a huge heart. We miss him every day."

(Amy Cohen, as quoted in
"Cars Are Death Machines. Self-Driving Tech Won't Change That."
New York Times, October 4, 2019)

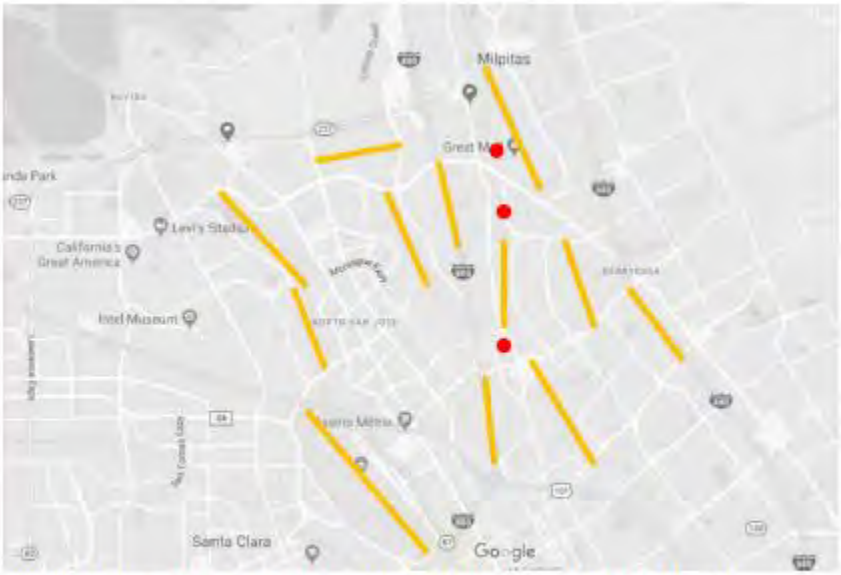
IV. Comments to environmental setting, impacts, and mitigation

Land Use and Planning

48- Division of Established Community (1)

"In the project area, I-880 currently physically divides the community." (p. 99)

The community is also divided by Oakland Road (a major arterial street) and the UPPR rail road tracks (railroad line). Other major barriers in proximity to the project site are for example Coyote Creek and the BART tracks. Statement needs to be amended.



Major barriers (i.e. ± 1 mile between crossings) and at-grade rail crossings between Berryessa, North San Jose and employment centers further west after Charcot is extended over 880.

"Examples of projects that have the potential to physically divide an established community include new freeways and highways, major arterial streets, and railroad lines. [...]The proposed roadway is not a new freeway, highway, or major arterial." (p. 99)

Even if the proposed roadway is not among the examples the report chose to enumerated, that doesn't exclude it from dividing a community. The project is classified as a highway project on the City's website and a highway interchange project under VTA measure B.

Home > Government > Departments & Offices > Departments & Offices P-Z > Transportation > Roads > Freeways

Freeways

We work with our regional partners to plan and construct improvements on the regional highway system.

Current Projects

- I-880/Charcot Avenue Extension Project
- I-280/Winchester Blvd Interchange Improvement Project
- US 101/Zanker Rd Interchange Project
- US 101/Blossom Hill Interchange Improvement Project

49- Division of Established Community (II)

"The proposed project would not divide an established community." (p. 99)

Statement not supported by facts and inconsistent with staff statement:

"The applicant's proposal to have the residential development and the park separated by the future extension of Charcot Avenue is not supported by staff." (SJ City Staff memo to SJ City Council, March 10, 2004)

The statement that the land purchase for Orchard School was approved in anticipation of the proposed Charcot Avenue is not supported by the evidence presented.

A consideration of the planned Extension in the development adjacent to it, does not necessarily imply that the Extension is not dividing a community.

It would even be illogically for those developments mentioned to consider the potential division of the community by the Extension project as:

- *"The California Supreme Court in a December 2015 opinion in California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (BIA v. BAAQMD) confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing [or potentially planned] environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the following sections focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards." (DEIR, p. 16)*

It should also be noted that the housing along Silk Wood Lane was approved to improve connections throughout the neighborhood:

- *"In urging council members to vote for the conversion, Reed said the most important reason to support it is that the new neighborhood would connect Orchard School with the Casa del Lago Mobile Home Park. The new homes also would supply the school with more students, and the developer would build a park for the area on school district land. "Our school is ready to support the students that would come from these homes," said Ken Riley, Orchard school board president. "And the kids from the mobile home park wouldn't have to walk on Oakland Road." (Mercury News, San Jose Approves Developer's Proposal, 7 April 2004)*

The division of the community is a significant, unavoidable impact.

50- Division of Established Community (III)

The division of the community <u>during construction</u> needs to be evaluated as well.

51- Conflict with plans, policies and regulations

According to staff memo building out the General Plan will not comply with the City's goals as set in "Climate Smart San Jose".

- *"Climate Smart San Jose (Climate Smart) builds on and furthers the General Plan's vision. It assesses the climate implications of building out the General Plan and finds that the General Plan alone is not enough*

to meet the [City's or] State's carbon commitments, let alone align with the decarbonization rates implied by the Paris Agreement. With 63% of San Jose emissions coming from transportation, Climate Smart doubles down on the importance of focused land use growth and a robust multi-modal transportation network to set the City on a path to meeting the Paris Agreement's emissions reduction goals."[14]

By increasing VMT per capita the project violates Climate Smart San Jose.

This is a significant, unavoidable impact.

52- Cumulative Land Use Impacts

As shown above the project has several significant impacts on land use.

"The City of San José prepared and adopted the North San José Area Development Policy to support the implementation of the City's vision for the North San José Area, such vision consisting of compact, in-fill uses. The Area Development Policy establishes a specific procedure for the allocation and timing of development capacity within the policy area. The policy identifies major transportation improvements needed to serve the development in the North San José Area, including the extension of Charcot Avenue to Oakland Road." (p. 98)

Based on the EIR for the NSJADP building the planned improvements will significantly increase VMT and GHG and therefore violate the Climate Smart San Jose plan.

This is a significant, unavoidable cumulative Impact

[14] https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96

““We can’t stay being a car-oriented community any longer”

(Councilmember Lan Diep, November 1, 2019)

Transportation

Existing conditions

53- Existing conditions

Although traffic counts were supposedly collected in September 2018 (p. 8). The analysis often refers to 2015 as base line year, e.g. on the same page. For example in Table 11 on page 40, the baseline and data for the traffic analysis is from four years ago (2015) and therefore outdated.

"Hexagon utilized the recently updated City of San Jose Travel Demand Forecasting (TDF) Model to forecast traffic volumes, daily VMT and VHT values as well as average travel speeds with and without the implementation of the proposed Charcot Extension under baseline (year 2015), Year 2025, and Year 2040 General Plan conditions." (Appendix K, p. 8)

The discrepancy needs explanation.

54- Existing roadway network

The description of the existing roadway network and *"roadways in the vicinity of Charcot Avenue that would be directly affected by the proposed Charcot Extension"* (Appendix K, page 10) is inconsistent with the traffic analysis.

- Paragon Dr and O'Toole not described
- Other roads affected by the project include for example Fox Lane, Ridder Park, McKay, Wayne, Trade Zone
- First Street is included and therefore deemed "directly affected", yet the roadway segment analysis doesn't include First Street

55- Regional access to the project area

"Regional access to the project area is provided by Interstate-880 (I-880)." (p. 10).

According to the description further down regional access is also provided by Montague Expressway, Trimble Road and Brokaw Road. Please ensure consistency throughout the DEIR

56- Charcot Avenue

"Segment east of North First Street functions as a two-lane collector street providing access to adjacent employment areas."

It should be noted that Charcot in this section has a middle two-way lef turn lane and that this section is designated in the North San Jose design guidelines to become a Parkway.

57- Montague Expressway

It should be noted that the HOV lanes on Montague Expressway are not continuous and that its transition from 8 to 6 lane is in the project area between Oakland Road and O'Toole Avenue.

58- Existing Bicycle and Pedestrian Facilities on Montague and Brokaw

"The large traffic volumes and congestion on the roadways are not conducive to pedestrian and bicycle travel."

The main barrier for pedestrian and bicycle travel on these roadways is the current roadway design and sub-standard bike and pedestrian facilities currently provided on these roadways.

It should also be noted that Charcot is also a "high stress" road for bicyclists similar to Brokaw or Trimble.[15]

59- Existing Bicycle and Pedestrian Facilities on Silk Wood Lane

Figure 3 (Appendix K) shows existing sidewalks on the south side of Silk Wood Lane. This is incorrect as only one side has sidewalks currently.

60- Sidewalks on Charcot Avenue

"There are no sidewalks along either side of Charcot Avenue under existing conditions. Similarly, there are no sidewalks along either side of O'Toole Avenue north of Charcot under existing conditions."

Statement inconsistent with response 36.3

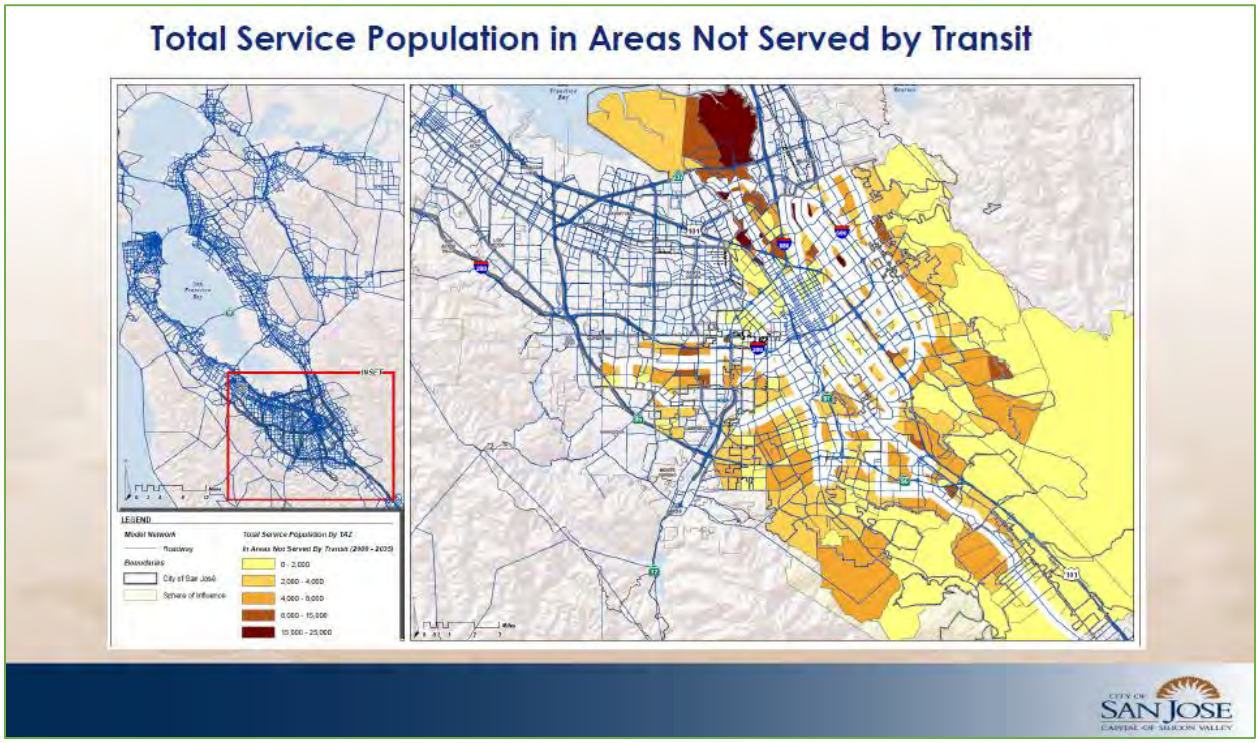
"The proposed design retains the current sidewalk circulation from Charcot Avenue to O'Toole Avenue south of Charcot."

[15] Montague as a County Expressway was not evaluated. Source: San Jose Bikeplan 2025 documents: https://static1.squarespace.com/static/5b85b16db40b9d1dd2ad6421/t/5c12c093aa4a99d17f4deb37/1544732839253/Level+of+Traffic+Stress.pdf

61- Transit Facilities

The description of transit facilities should include a discussion of the approved VTA new transit plan since the transit plan is likely to be in force before construction of the project starts. Both bus and light rail lines will see significant changes.

It should also be noted that significant parts of the area are not served by transit according to City data.



Source: Modernizing Transportation Review, City of San Jose,
AEP Conference, May 19, 2017, San Francisco

62- Existing congestion

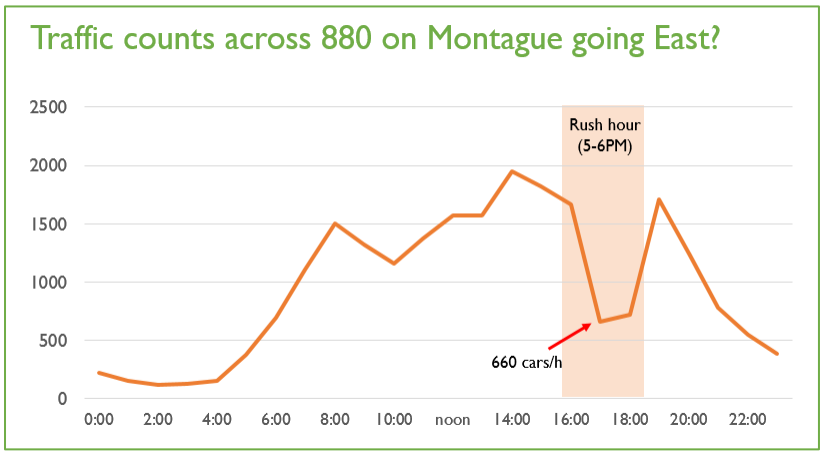
"There is a need to […] reduce the congestion on the adjacent interchange" (Appendix I, p. 6)

The most recent VTA CMP 20180 report does not identify any significant congestion on the Montague/880 intersection and Brokaw/880 operates on acceptable to good LOS B/D. It needs to be clarified what data the statement is based on.

63- Congestion

"The roadways [Montague and Brokaw] currently experience traffic congestion due to the large traffic volumes and reduced travel speeds and congestion along both roadways is projected to increase due to the planned development growth in the North San Jose area." (p. 42).

Traffic volumes especially on Montague during commute hours in commute direction is less than 700 cars/h total. Why is this considered large?



Benefit of the project

64- 30 seconds

"Travel times between the selected origins and destinations were projected assuming that it would take approximately 30 seconds to travel between Oakland Road and O'Toole Avenue via the proposed extension."

Given the length of the extension of 0.6 miles (DEIR p. vi) **this suggests that cars will go on average an unlikely 72 mph[16] on the Charcot extension –through the school zone and during commute hours**.

Google Maps shows the distance between Oakland Rd and O'Toole Ave as shorter (~2200 ft). This would still equal to an average speed of ~50mph not considering time needed to stop at a crosswalk or to then accelerate to 50+mph.

This seems unlikely and should be corrected.

Staff has indicated in the time since the publication of the DEIR that this is a typo. Please provide any calculations that are potentially affected by this assumption, especially but not limited to underlying calculations for table 3.17-11. DEIR so that it can be verified that there are no other "typos" in these calculations.

[16] 0.6 miles / .5 min = 1.2 miles / min = 72 miles / 60 min = 72mph

65- Travel time analysis

Table 12 "Reduction in Travel Times Due to Charcot Extension" should include travel times for bicycle use in order to allow for a multi-modal comparison and the impact of a mode shift on congestion.

- *"Walking and e-scooters can be good options for trips between a half and one mile long, while bikes are frequently used for trips between one and three miles long. The problem in most cities is that infrastructure is lacking because investments have favored car travel, making bike and scooter networks disconnected and potentially dangerous for people who would opt for these modes.*
- *But if some of those short trips could be switched from cars to bikes or scooters, cities would benefit greatly. And not all drivers, or even very many, would need to switch. Past studies, including of the London congestion zone when it was first implemented, have shown that a small mode shift of four to five percent could cut congestion by as much as 25 percent."*[17]

66- Google Maps

"The evaluation utilized Google Maps navigation to estimate current travel times during the morning and evening commute periods."

The use of Google Maps for the evaluation is surprising and does not meet necessary standards for an EIR. The City's traffic model should be used instead.

67- Reduction of congestion

"Decrease [in GHG] is the result of the reductions in congestion" (p. 79)

No data in the DEIR allows for the conclusion that the project would lead to a reduction in congestion. Statement needs to be substantiated. It also inconsistent with research.[18]

68- Reduction in automobile trips

"The reduction in length of travel routes will provide the opportunity to utilize walking and bicycling as an alternative travel mode and reduce automobile trips in the project area." (p. 42)

Please provide supporting facts for this statement. It does not seem to be supported by the data from the transportation analysis and given the fact that sidewalks are either missing or inadequate in many parts of the area.

69- Mode share

"The Extension includes bicycle and pedestrian improvements, including a new bike/ped connection over I-880, which will facilitate those modes of travel. Trips made by non-motorized modes instead of by motor vehicle have a direct benefit in terms of fewer GHG emissions." (p. 79/80)

The impact of the project on mode share has not been analyzed.

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[17] https://cal.streetsblog.org/2019/09/16/bikes-and-scooters-could-replace-a-lot-of-car-trips-in-u-s-cities/
[18] http://cityobservatory.org/urban-myth-busting_idling_carbon/

70- Reduced congestion and reduced travel time

*"The proposed Charcot Avenue extension will […] **reduce traffic congestion** during peak commute periods […and] would **reduce travel time**." (Appendix K, p. 5).*

The analysis also recognizes on the same page:

*"the State of California has recognized the limitations of measuring and mitigating only vehicle delay at intersections and in 2013 passed Senate Bill (SB) 743, **which requires jurisdictions to stop using congestion and delay metrics**."*

It further writes:

*"In adherence to SB 743, the City of San Jose has adopted a new Transportation Analysis Policy, Council Policy 5-1. The policy replaces its predecessor (Policy 5-3) and establishes the thresholds for transportation impacts under the CEQA based on vehicle miles traveled (VMT) instead of levels of service (LOS). **The intent of this change is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway auto capacity to a reduction in vehicle emissions, and the creation of robust multimodal networks that support integrated land uses**."*

Given the new focus of the State of California and of the City of San José, the analysis fails to explain why the noted reduction in congestion or travel time should be relevant or is beneficial under CEQA.

71- Use of the extension outside of a two-mile radius

"The use of the proposed extension is expected to be minimal outside of a two-mile radius" (p. 44)

This statement requires further explanation. Use of the extension is obviously difficult for someone who is two miles away.

Assuming the statement is meant to mean that drivers with start and end points that are more than two miles from the project will not use the extension, this would be inconsistent with statement made previously in the analysis that:

"Since the roadways in the area are congested during the morning and afternoon peak periods, commuters will drive longer distances to shorten their travel time."

And this would be true even for drivers coming from a longer distance. As more and more drivers are guided mobile driving apps such as Google Maps and Waze, which are also optimizing VHT not VMT, it seems logical that any driver in the area regardless of origin or destination will potentially use the Extension as long as it provides time-savings compared to Montague or Brokaw. Meaning usage of the Extension will increase till it is similarly congested as those roadways. [19]

72- Extension will reduce congestion

"The proposed Charcot Avenue extension will […] reduce traffic congestion during peak commute periods on Brokaw Road, Trimble Road, and Montague Expressway that currently serve as the primary east-west roadways and run parallel to the Charcot Avenue extension." (p. 6/8)

Statement is not substantiated as travel speeds on these roads are not included in the analysis.

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[19] See also: https://www.theatlantic.com/technology/archive/2018/03/mapping-apps-and-the-price-of-anarchy/555551/

Pedestrian and bicylists impact

- *"A global status report[20] shows that road traffic injuries are now the single biggest cause of death for children and young adults"[21]*

- *"When we design streets to move cars as quickly as possible instead of prioritizing the safety of all people, the consequences can be deadly, especially for people walking. Between 2008 and 2017, drivers struck and killed 7,127 people walking in California. Over the past decade, the number of people struck and killed by drivers while walking increased by 35.4 percent nationwide, and in California, pedestrian deaths increased by 38.4 percent during this time period." (Deadly by Design)[22]*

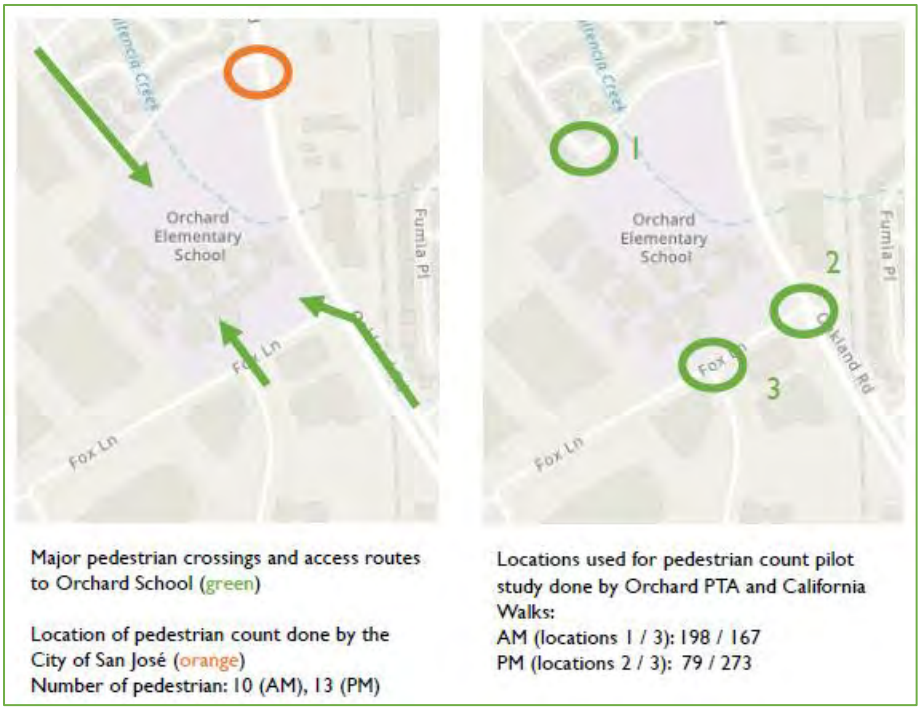
- *Source: "City to State: 'Distracted Pedestrians' is Not a Thing", September 2019[23]*

Given San José is a Vision Zero city, the impact on the safety of pedestrians and bicyclists in particular has to be considered in detail in the DEIR.

73- Pedestrian Counts

The location for the pedestrian counts (p. 148) is inconsistent with the area of heavy pedestrian activity described in the report (ie Fox Lane, Oakland Road south of Fox Lane, Silk Wood Lane near the school gate). A recent count at the school showed significantly higher pedestrian activity than what is disclosed in the report. A recent survey among students (October 2019) showed over 170 students walking to school.

[20] https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/
[21] https://theconversation.com/why-us-cities-are-becoming-more-dangerous-for-cyclists-and-pedestrians-111713
[22] https://smartgrowthamerica.org/app/uploads/2019/06/Dbd2019_State_CA.pdf also see: https://cal.streetsblog.org/2019/06/19/state-specific-data-shows-high-risk-for-california-pedestrians/
[23] https://nyc.streetsblog.org/2019/09/02/city-to-state-distracted-pedestrians-is-not-a-thing/



For a detailed discussion of pedestrian count methodology please refer to Attachment B – "Pedestrian Count".

74- Multi-modal traffic analysis / traffic analysis for bike-/pedestrian only overcrossing

The DEIR does not provide a multi-modal traffic analysis / traffic analysis for bike-/pedestrian only overcrossing. This is insufficient.

75- Pedestrian safety

"The installation of a traffic signal at the Paragon Drive and Charcot Avenue intersection will result in queues along westbound Charcot Avenue that may not be clearly visible to drivers travelling westbound along Charcot Avenue. Therefore, it is recommended that safety measures be implemented along with the new traffic signal at the Paragon Drive and Charcot Avenue intersection. The safety measures could include advance warning flashing beacons and signage that provide drivers with advance warning of the upcoming signal. In addition, the signal design should consider signal head placement and size to improve its visibility to drivers." (p. 21)

Since the analysis is ableto evaluate safety of vehicle users along the planned extension, the analysis should also include an analysis of the safety of pedestrians and bicyclists along the extension and include additional safety measures as described on p. 21:

And as demanded by the City's Transportation Analysis Handbook:

- *Private schools, community centers, libraries, parks, and other high pedestrian generators should be evaluated for pedestrian activities. These projects may be required to collect data on adjacent neighborhood streets and propose pedestrian crossing improvements, electronic speed limit signs, or other improvements if appropriate. These high pedestrian generators should also be evaluated for safe pedestrian access. Projects that add traffic to the adjacent streets may be required to implement improvements to*

improve pedestrian access to and from these community facilities" (Transportation Analysis Handbook, p. 31)

Especially since,

- *"new safety technologies in cars today have so far fallen short in protecting many outside the vehicle."*[24]

76- Pedestrian safety - visualizations

Based on the visualizations provided, it seems that the signs on the median at Silk Wood will restrict view of pedestrians.

How would slow moving pedestrian that are caught on the median activate the HAWK to continue crossing safely?

The visualization shows no pedestrian signals.

The visualization underlines the pedestrian safety challenges of the project as even in the drawing the two(!) pedestrians in crosswalk are not clearly visible.

77- Pedestrian crosswalk not visible for cars travelling on eastbound Charcot

"The extended queue along eastbound Charcot Avenue may not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880." (p. 195)

Queue for all alternatives would lead back to crosswalk. The statement implies that similarly pedestrians in the crosswalk would not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880. This is further supported by the DEIR statement:

[24] https://www.wsj.com/articles/u-s-roadway-deaths-decline-for-second-straight-yearin-2018-11571746206?mod=e2tw

"Due to the large projected traffic volumes and limited sight distance along Charcot Avenue, an uncontrolled crosswalk on Charcot Avenue at its intersection with Silkwood Lane is not recommended." (p. 30)

78- ADA compliance

The DEIR fails to address if slope on the overpass is ADA compliant.

The visualization shows a crosswalk across Silk Wood Lane that is not ADA compliant.

79- Response 34.22

"Irrespective of traffic volumes, pedestrians will continue to use the existing sidewalks along Oakland Road."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment asks for a measure of walkability similar which includes factors such as safety and place-making as referenced in the "San Jose Complete Streets Design Standards and Guidelines", "NACTO Urban Street Design Guide" [25], EPA's "Guide To Sustainable Transportation Performance Measures"[26] or as described by the graph below from Transport for London.[27]

80- Sidewalk circulation O'Toole

"The proposed design retains the current sidewalk circulation from Charcot Avenue to O'Toole Avenue south of Charcot." (Appendix B, Response 36.3)

There is no sidewalk currently on Charcot Avenue.

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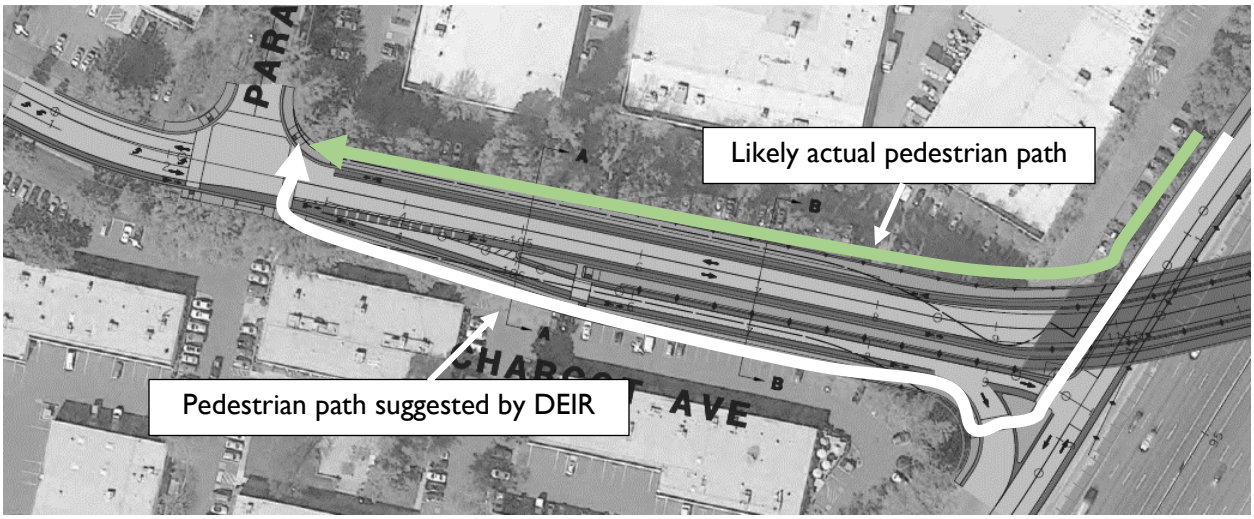
[25] https://nacto.org/publication/urban-street-design-guide/design-controls/performance-measures/
[26] https://www.epa.gov/sites/production/files/2014-01/documents/sustainable_transpo_performance.pdf
[27] From: https://nyc.streetsblog.org/2019/11/01/exclusive-dot-will-track-road-carnage-caused-by-suvs/

Not providing a direct sidewalk connection from O'Toole southbound to Charcot westbound as mentioned in the comment to this response seems to violate General Plan policies and San Jose Street Design Guidelines.

The assumption that Pedestrians traveling southbound on O'Toole would use

"the new westside sidewalk, would cross under Charcot, and would continue southbound using the existing westside sidewalk along O'Toole" (response 36.7 – orange path in map below) instead of crossing through the business parking lot (green path in map below) to go west on Charcot seems not informed by any pedestrian experience.



81- Bike lanes on Brokaw

"Bicyclists, in particular, would be able to utilize existing bike lanes along Charcot Avenue as a faster alternative to bike lanes along Brokaw Road."

Why bicyclists, in particular? Which other users should be expected to use the bike lanes along Brokaw Road?

82- Bicycle and Pedestrian Circulation

"The current crossing of I-880 provided by Montague Expressway and Brokaw Road require lengthy travel routes from destinations within the immediate project area."

It should then also be noted that the new crossing of I-880 requires lengthy travel routes from destinations along Montague Expressway or Brokaw Road.

The only thing that the analysis provided in figure 14 proves is that the shortest distance between two points is a straight line. It should be replaced with a more detailed bike- and pedestrian usage analysis in the project area and for example include travel patterns from Oakland/Brokaw to Junction/Brokaw and Oakland/Montague to Montague/Seely.

"The travel route across I-880 would be reduced by only ¼-mile with the Charcot Avenue extension." (p. 40).

Please explain how the ¼ mile was calculated, figure 14 seems to indicate a reduction of 1.1 miles.

83- Mass access points to NSJ

"The three existing crossings also interchange with I-880, resulting in mass access points of regional traffic that make crossings for local traffic, bicycles, and pedestrians less ideal." (p. 13)

This reasoning that "access to I-880" makes the crossings less ideal is questionable as the volume and ease of use for bicyclists and pedestrians on these roads is much more likely a result of the roadway design: 6-8 lane wide fast moving arterial roads with limited space provided to bicyclists and pedestrians.

Based on data of past crashes recorded in the vicinity of the Montague/880, it seems that adjacent intersections are much more dangerous for all roadway users than the actual interchanges. Crashes seem to occur more frequently on road intersection similar to how the future intersections at Silk Wood/Charcot and Charcot/Oakland would be designed.

Source: Transportation Injury Mapping System (TIMS) by SafeTREC at UC Berkeley[28]

84- Pedestrian improvements

"A new pedestrian-only signal such as a HAWK beacon, would be installed along Charcot Avenue at Silk Wood Lane." (p. 10).

What other pedestrian-only signals are under consideration?

85- HAWK signal

*"Studies have shown that **97% of drivers comply** and yield to pedestrians at HAWKs" (San Jose Streets Smart "HAWK Pedestrian Signal Guide", p1)*

This means in turn **3% of drivers do not comply and yield to pedestrians**. Given that 13,900 cars will use Charcot every day by 2040 (DEIR, p. 157), this **equals to 417 cars per day[29] that will not comply with the HAWK signal and yield to pedestrians** in this school crossing. Does the EIR concur with this conclusion?[30] Other studies have seem to have shown even lower compliance rates.[31]

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[28] https://tims.berkeley.edu/ also see: https://www.henshawhenry.com/san-joses-most-dangerous-intersections/

[29] (13,900 cars/day * .03 = 417)

[30] Also see: Godavarthy, R.P., Russell, E.R., Study of pedestrian hybrid beacon's effectiveness for motorists at mid-block pedestrian crossings, Journal of Traffic and Transportation Engineering (English Edition) (2016), doi: 10.1016/j.jtte.2016.01.007 ;
FHWA: Safety Effectiveness of the HAWK Pedestrian Crossing Treatment https://www.fhwa.dot.gov/publications/research/safety/10042/10042.pdf

[31] Federal Highway Administration "Pedestrian Hybrid Beacon Guide– Recommendations and Case Study", https://safety.fhwa.dot.gov/ped_bike/tools_solve/fhwasa14014/fhwasa14014.pdf

- *"One truck barreled on through the red light at the HAWK traffic signal that had been activated by pushing a button around 11 a.m. Thursday, signaling that all vehicles should stop for a pedestrian to cross the street near the Pittsburg County Courthouse. While other drivers stopped, the driver of the truck didn't even slow down. A similar situation occurred at the site of a second HAWK traffic signal on Carl Albert Parkway."*[32]

How will the HAWK signal be visible to drivers going South on Silk Wood Lane and turning right into Charcot?

NOTE: The HAWK signal is only activated when pedestrians are present.

86- Response 34.18

"If pedestrians activate the "walk" portion of the signal cycle, traffic is held until that phase is completed. At most intersections, activating the "walk" cycle results in an increase in traffic delay, as compared to when the "walk" signal is not activated."

Please explain at which intersections activating the "walk" cycle would not result in an increase in traffic delay. How much delay can be expected during AM peak and school start between 8 and 9 AM?

Please provide estimate pedestrian crossing times for all lane-configuration alternatives as:

- *"There are plenty of reasons not to widen roads. Not the least of which, as Klipp points out, is that wider roads mean drivers have to wait longer at intersections while pedestrians get across. Theoretically, road widening is supposed to add car throughput and capacity, but the increased time to walk further across negates this supposed advantage. In an email, Klipp stated "road widenings may do about as much harm to their intended purpose as any good, but they do certainly give people free license to drive faster in between signals, which makes streets less safe."*[33]

87- Detailed analysis of pedestrian and bicycling situation at the school

For an in-depth assessment of the pedestrian and bicycling situation at the school please refer Attachment H – "Report Orchard School Community Pedestrian and Bicycle Safety Training".

[32] https://www.mcalesternews.com/news/hawk-pedestrian-crossings-installed-some-drivers-ignoring-signals/article_e97b71fc-9995-11e7-a0be-c319d82642f6.html
[33] https://la.streetsblog.org/2018/08/28/luke-klipp-pedestrian-beg-buttons-exist-to-serve-people-in-cars

"The 'fundamental rule' of traffic: building new roads just makes people drive more"

(Joseph Stromberg, Vox.com, May 18, 2015)

Induced demand

88- Longer distances for shorter travel times

"The slight decrease in VHT and minimal increase in VMT is not abnormal since the TDF model is designed to reflect driver's behavior by minimizing the travel time of motorists rather than travel distance. Since the roadways in the area are congested during the morning and afternoon peak periods, commuters will drive longer distances to shorten their travel time." (p. 31/40).

The analysis should note that this behavior is exactly what the City of San José – with its focus on VMT – is trying to discourage.

The DEIR does not disclose if the traffic model incorporates changes brought upon by apps such as Waze which multiply the magnitude of the issue.[34]

89- Induced demand

"It is important to note that roadway improvement projects, unlike development projects, typically do not generate new vehicle trips that are added to the roadway system. Rather roadway improvement projects, such as the proposed project, provide additional roadway system capacity to accommodate traffic that is currently and projected to be on the roadway system regardless of the contemplated roadway improvement project." (p. 31)

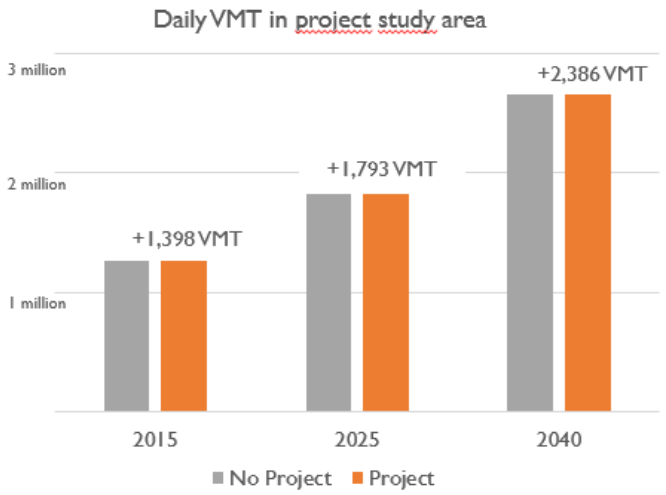
Charcot will increase daily cars usage measured in vehicle miles travelled (VMT) by ~1,400/day today and up to ~2,400/day in 2040.

This adds up to a total of ~16 million additional VMT driven between now and 2040.

NOTE:

City goal: Overall decrease of 40% in VMT/capita by 2040, Climate Smart furthers the goal to a 57% reduction by 2050

Traffic Analysis projects an increase by about ~1.4 million daily VMT (increase of 111% over 2015) for the area in the vicinity of the project alone.



This statement is not supported by the projects own traffic analysis (showing an increase in trips across 880 as well as in VMT), the City's traffic impact analysis handbook[35] nor extensive scientific research[36]:

[34] See "Google Apps Are Causing Gridlock" (Mercury News, 2 June 2018) or https://www.lamag.com/citythinkblog/waze-los-angeles-neighborhoods

[35] „*However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree.*" (Transportation Impact analysis handbook)

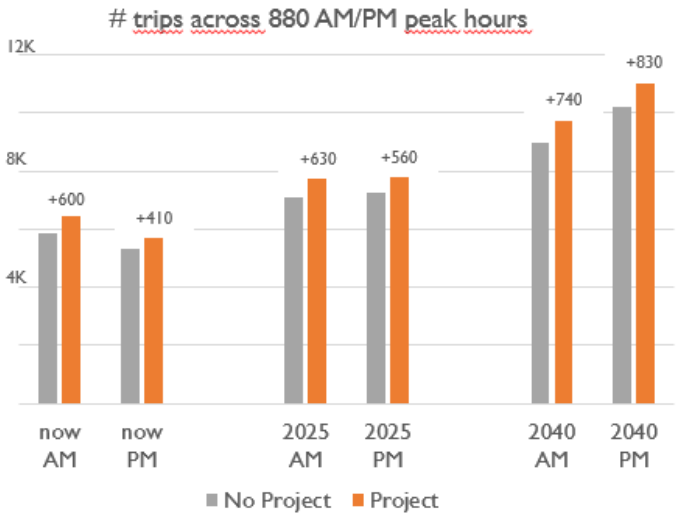
[36] https://www.vox.com/2014/10/23/6994159/traffic-roads-induced-demand

By evaluating traffic volumes on road segments crossing 880 with or without the Charcot Extension, induced demand from the project can be calculated.

"No project" represents crossings of 880 on Montague (segment 7 in the analysis) and Brokaw (segment 11).

"Project" represents crossings on Montague, Brokaw and Silk Wood/Charcot (segment 4).

The Charcot Extension will induce new trips which in turn is likely to create adverse impacts (e.g. additional GHG from additional trips)



Source: DEIR – Appendix K "Transportation Analysis", pages 34-36

19

San José DOT Transportation Impact Analysis guidelines state:

- *"**Shortly after the project becomes operational, induced VMT may occur where road users respond to an initial appreciable reduction in travel time. With lower travel times, the modified facility becomes more attractive to travelers, resulting in four short-run trip-making changes: (1) longer trips; (2) changes in route choice; (3) changes in mode choice; and (4) newly generated trips.** Longer trips may occur because the ability to travel a long distance in a shorter time increases the attractiveness of destinations that are further away, increasing trip length and VMT. Changes in route choice may occur immediately when faster travel times on a path attract more drivers to that path from other paths, which can increase or decrease VMT depending on whether it shortens or lengths trips. Changes in mode choice may also occur in the near-term when travelers respond to a reduction of personal motorized vehicle travel time by shifting toward personal motorized vehicle use from other modes. Newly generated trips may occur when an individual who previously did not have a travel need might have one because of increased speed and decreased travel time. The short-run effect of a project on induced VMT, measured in percent change in total VMT, is evaluated for a project." (TIA, p. 49)*

As Mayor Liccardo writes:

> *"Building fewer cars may well reduce traffic, but building more roads won't. Why? What economists call "induced demand" governs behavior of motorists with an iron fist: by providing more of a public good — i.e., a road — without charging for its use, consumers will happily use more of it. The outcome: more traffic. In 2014 for example, Los Angeles spent more than $1 billion on a five-year project to widen the 405 freeway to add a lane, only to learn that traffic moved one minute slower as a result. Beyond the inefficacy of freeway expansions, the more obvious cost and physical constraints pose sufficiently formidable barriers to road-widening projects — "they're not making any more land," according to Mark Twain — to send us looking for alternatives.*
>
> *Alas, all good intentions of city building and traffic planning bump up against this seeming paradox: we can't simply build our way out of a traffic congestion problem. That isn't to say we don't need to invest in*

our roads; indeed, we can make our roadways more efficient and effective for all modes of travel, and Measure B will provide some relief in key intersections and freeway interchanges that create choke-points. We can also certainly improve our roads' maintenance, reliability, and safety. ***But more freeway lanes and bigger roads consistently fail to deliver much relief to aggrieved commuters, and worst of all, they fail at a high cost.***"[37]

And research agrees:

- *"Reduced congestion leads to more driving, and that induced and suppressed demand "are critical considerations when assessing the emissions effects of capacity-based congestion mitigation strategies. Capacity expansions that reduce marginal emissions rates by increasing travel speeds are likely to increase total emissions in the long run through induced demand." ("Congestion and emissions mitigation: A comparison of capacity, demand, and vehicle based strategies")[38]*

- *"The fundamental reason is that state and local governments often only view new or wider roads as the right intervention to improve LOS. Major urban road mileage rose by 77 percent from 1980 to 2014 (a total of 169,153 lane miles), compared to 41 percent growth in U.S. population. As the number of lane miles grew, urban residents drove more, and vehicle miles traveled (VMT) on major urban roads grew by 146 percent over the same period. This phenomenon is best explained by the concept of "induced traffic," which states that more roadways just means more miles traveled via car." ("Stop trying to solve traffic and start building great places", Brookings Institute)[39]*

> ▶ Induced travel does not necessarily result from people making more or more frequent *trips*. Rather, the term refers to the overall amount of travel that is undertaken. Lay-people and transportation professionals often refer inadvertently to changes in "trip-making" when discussing induced demand (*e.g.* "induced trips"). At best, such references are a kind of shorthand used by professionals who may thoroughly understand the issue, but find such terminology easier to manage in discussions among themselves. More commonly, though, use of such terminology may suggest that the user does not have a good grasp of the subject. For example, one frequently hears the notion expressed "I don't believe induced travel is real, because it defies logic that people will make more trips simply because travel time is reduced." Such an expression shows that the speaker confuses induced travel as a phenomenon of discrete trips, rather than aggregate travel.

Source: Gorham, R. Demystifying Induced Travel Demand. Sustainable Urban Transport Document #1

Also see:

- *"Generated Traffic and Induced Travel Implications for Transport Planning" 18 March 2019 Todd Litman Victoria Transport Policy Institute (https://www.vtpi.org/gentraf.pdf)*
- *Cervero, Robert, and Mark Hansen. 2002. "Induced Travel Demand and Induced Road Investment." Journal of Transport Economics and Policy, 36(3): 469–90*
- *Research Brief: Effects on VMT of adding roadway capacity (Caltrans/National Center for Sustainable Transportation, 2p): Increasing Highway Capacity Unlikely to Relieve Traffic Congestion*

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[37] https://medium.com/@SamLiccardo/one-look-back-four-years-forward-transportation-f0f13f069995
[38] https://www.sciencedirect.com/science/article/pii/S1361920912000727
[39] https://www.brookings.edu/blog/the-avenue/2019/03/20/stop-trying-to-solve-traffic-and-start-building-great-places/

http://www.dot.ca.gov/research/researchreports/reports/2015/10-12-2015-NCST_Brief_InducedTravel_CS6_v3.pdf

- *Research Brief: Effects on VMT of adding roadway capacity (CA Air Resources Board, 10p): Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions Policy Brief https://www.arb.ca.gov/cc/sb375/policies/hwycapacity/highway_capacity_brief.pdf*
- *Research Brief Technical Background Document: Effects on VMT of adding roadway capacity (CA Air Resources Board, 10p): Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions Technical Background Document https://www.arb.ca.gov/cc/sb375/policies/hwycapacity/highway_capacity_bkgd.pdf*
- *Fulton, L.M., R. B. Noland, D.J. Meszler, J.F. Thomas. 2000. A Statistical Analysis of Induced Travel Effects in the U.S. Mid-Atlantic Region. Journal of Transportation and Statistics, 3(1): 1-14*
- *Cervero, R. 2002. Induced Travel Demand: Research Design, Empirical Evidence, and Normative Policies. Journal of Planning Literature, 17: 3-20.*
- *Cervero, R., J. Kang, and K. Shively. 2009. From Elevated Freeways to Surface Boulevards: Neighborhood and Housing Price Impacts in San Francisco. Journal of Urbanism, 2(1): 31-50*
- *Hunt, J.D., A.T. Brownlee, and K.J. Stefan. 2002. Responses to the Centre Street Bridge Closure: Where the "Disappearing" Travelers Went. Transportation Research Record, 1807: 51-58.*
- *Noland, R.B. and L.L. Lem. 2002. A review of the evidence for induced travel and changes in transportation and environmental policy in the US and the UK. Transportation Research D, 7: 1-26.*
- *Alison Cassady, Tony Dutzik and Emily Figdor (2004), More Highways, More Pollution: RoadBuilding and Air Pollution in American's Cities, U.S. PIRG Education Fund*
- *Phil Goodwin and Robert B. Noland (2003), "Building New Roads Really Does Create Extra Traffic: A Response to Prakash et al.," Applied Economics*
- *David T. Hartgen and M. Gregory Fields (2006), Building Roads to Reduce Traffic Congestion in America's Cities: How Much and at What Cost? Reason Foundation*
- *Martin Mogridge (1997), "The Self-Defeating Nature of Urban Road Capacity Policy; A Review of Theories, Disputes and Available Evidence," Transport Policy, Vo. 4, No. 1, pp. 5-23*
- *Han van der Loop (2014), The Latent Demand In Road Traffic, KiM Netherlands Institute for Transport Policy Analysis*
- *"What's Up With That: Building Bigger Roads Actually Makes Traffic Worse" Wired, June 2014*[40]

The resulting additional use of energy because of the project should be considered a significant unavoidable impact.

[40] https://www.wired.com/2014/06/wuwt-traffic-induced-demand

90- City of San Jose Travel Demand Forecasting Model (TDF)

"The model has the ability to estimate the diversion of traffic and change in traffic patterns due to roadway/transit system changes similar to those proposed by the Charcot Extension." (Appendix K, p.8)

Does the TDF have the ability to simulate and estimate "induced demand" as described in the TIA or does it only account for diverted traffic[41]? City staff at the community meeting indicated it might not account for induced demand.

Does the model incorporate higher VMT from increased TNC usage?[42]

Does the model address issues arising from the Braess Paradox?[43]

Source: "Inside the Blackbox – Making Transportation Models Work for Livable Communities"

According to the CA OPR:

- *"Whenever employing a travel demand model to assess induced vehicle travel, any limitation or known lack of sensitivity in the analysis that might cause substantial errors in the VMT estimate (for example, model insensitivity to one of the components of induced VMT described above) should be disclosed and characterized, and a description should be provided on how it could influence the analysis results. A discussion of the potential error or bias should be carried into analyses that rely on the VMT analysis, such as greenhouse gas emissions, air quality, energy, and noise."*[44]

The DEIR fails to disclose any limitations or sensitivity of the model as described above or for example in:

- *Edward Beimborn, Rob Kennedy and William Schaefer (1996), Inside the Blackbox: Making Transportation Models Work for Livable Communities, Center for Urban Transportation Studies University of Wisconsin-Milwaukee*[45]

- *Petter Næss, Morten Skou Nicolaisen and Arvid Strand (2012), "Traffic Forecasts Ignoring Induced Demand: a Shaky Fundament for Cost-Benefit Analyses," European Journal of Transport and Infrastructure Research, Vol. 12 (3), pp. 291-301*

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[41] "Highway expansion advocates generally ignore or severely understate generated traffic and induced travel impacts. For example, Cox and Pisarski (2004) use a model that accounts for diverted traffic (trips shifted in time or route) but ignores shifts in mode, destination and trip frequency." https://www.vtpi.org/gentraf.pdf, p. 24

[42] https://www.citylab.com/transportation/2019/08/uber-lyft-traffic-congestion-ride-hailing-cities-drivers-vmt/595393/

[43] https://en.wikipedia.org/wiki/Braess%27s_paradox

[44] [44] See "Technical Advisory - On Evaluating Transportation Impacts In Ceqa", OPR April 2018

[45] https://www4.uwm.edu/cuts/blackbox/blackbox.pdf

91- Self-driving vehicles

In the context of a potential future of fleets of automated vehicles the impact of providing additional roadway capacity for empty cars has not been evaluated and is likely not yet integrated in the City's traffic model.

- *"New research shows that semi-automated technology like Tesla's autopilot is already increasing travel. Immediate intervention is necessary to ensure this technology benefits the public. In a worst-case scenario, researchers and transportation experts fear a future where self-driving cars are mostly privately owned, powered by gasoline, and priced for only upper-income populations. Automated vehicle owners might move further out of the urban core, worsening gentrification and urban sprawl. They would likely send empty cars home to park rather than paying to park at their destination, resulting in increased traffic congestion and pollution. Middle and low-income populations might become further disadvantaged in accessibility to transportation if private driverless cars are unaffordable." (Kelly L. Fleming, policy analyst at UC Davis in the Policy Institute for Energy, Environment, and the Economy, and a 2019 alumni of the Clean Energy Leadership Institute Fellowship Program)*[46]

[46] https://earther.gizmodo.com/uber-and-lyft-induced-congestion-give-a-preview-of-driv-1838489742 also see: https://theconversation.com/safe-efficient-self-driving-cars-could-block-walkable-livable-communities-103583

VMT analysis

92- VMT Screening

The DEIR determines:

"Per San Jose Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis."

This determination is omitting key parts of the policy and misreading the parts it applies.

The policy exception seemingly applied by the analysis is the following

"Through Lanes: Addition of roadway capacity on local or collector streets provided the project substantially improves conditions for pedestrians, cyclists, and/or transit" (Appendix K, p. 7).

Yet, the policy only speaks of roadway capacity on [meaning existing] streets. As the analysis itself state, the project will provide a new connection, not add on to an existing (also see discussion of Alternative B – widening of Montague or Brokaw). Considering the building of a new connection as adding capacity on a local or collector street is false interpretation of the policy.

Further the City policy itself states:

- *"However, most other roadway projects, including* ***building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future,*** *may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree. […]Therefore, projects that* ***will likely lead to additional vehicle travel should not be presumed to have less-than-significant impacts.****" (Transportation Impact Analysis Handbook).*

In conclusion, the project needs to include a complete VMT analysis under CEQA based on City guidelines and is not screened for a detailed CEQA transportation analysis.

93- Sphere of Influence

- "The sphere of influence of a project is defined as the area in which driving patterns are expected to change due to the project." *(City of San José Transportation Analysis Handbook, p. 53)*

There is no explanation why a 1.5 mile radius was chosen as a sphere of influence. It seems to argue that the project will have no impact on travel from Berryessa to North San José or beyond the radius into Santa Clara. There is no evidence to support this assumption.

VMT analysis Sphere of Influence analysis seems to include highways 101 and 880. There is no explanation on why traffic on these highways is relevant to the project.

The analysis itself later assumes a 2 mile radius as Sphere of Influence. (p. 44)

It should also be noted that the threshold for general plan amendments is any increase in "VMT per service population over current 2040 General Plan conditions".

- *State guidance on VMT analysis seems to indicate that using a "multiplier" would be a more appropriate way of determining additional VMT than the transportation demand model (TDM) used here. "OPR recommends applying elasticities directly from the academic research in order to assess induced*

VMT. Doing so not only bypasses the model noise and impact area dilemmas described above, it also captures the effects of land use change as required by CEQA and which travel demand models cannot capture." (California Senate Bill 743 Implementation Assistance Project Using Vehicle Miles Traveled to Evaluate Transportation Impacts in CEQA: Case Study Examples and Insights - Summary of SR 210 Case Study, p5)

94- Lane miles added

Please explain how the 1.0 lane miles were calculated. As discussed above, the length of the total project seem to be closer to 0.5 than 0.6 miles. Since roadway already exists between Paragon and O'Toole as well as on Silk Wood Lane. The actual lane miles added seem to be about 0.56 miles.

95- Total lane miles added

Please provide a source for the statement that Santa Clara County will add 170 miles of roads.

96- Increase for roadways in Santa Clara County

The analysis fails to analyze the impact on roadways in Santa Clara County as demanded by Transportation Analysis Policy. The VMT analysis should cover both Sphere of influence Total VMT and the Countywide Total VMT.

97- Total lane-miles within a 1.5-mile radius

The report needs to specify which lane miles exactly were counted, e.g. was internal circulation in Casa del Lago counted for this purpose and why would that be relevant to the analysis.

98- Negligible increase in VMT

"The model results show that the proposed Charcot extension would result in only a ***negligible*** *increase"* (p. 16).

Please define negligible as the project will add approximately 16 million VMT to San José's street between now and 2040.

99- Significance criteria in City of San José Transportation Analysis Handbook

The VMT significance criteria used for the project are based on the SJ Transportation Analysis Handbook. The criteria in the TA handbook are based on "*Plan Bay Area 2040, the long-range Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) for the San Francisco Bay Area*"[47]

The California Air Resource Board "*Staff Report on Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets*" illustrates that Regional Transportation Plans and Sustainable Communities Strategies will fall short of achieving the GHG reductions research says are needed to achieve climate stabilization, so OPR recommends not basing transportation project thresholds on those documents.[48]

The significance criteria used in the DEIR therefore might not comply with state goals for GHG reductions.

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[47] http://www.sanjoseca.gov/DocumentCenter/View/76537, p. 52

[48] See "TECHNICAL ADVISORY - ON EVALUATING TRANSPORTATION IMPACTS IN CEQA", OPR April 2018

Roadway segments

100- Roadway segment analysis

The analysis needs to be finer grained so that the impact of the project can be adequately assessed. Traffic volumes for the following roadway segments are missing:

- Montague between Trimble and Seely
- Brokaw east and west of Ridder Park
- Brokaw Montague east west of 880
- Dado street

The HOV lane on Montague should be analyzed independently of the general purpose lanes as speed, vehicle and passenger volumes are likely to be different.

101- Traffic east of Oakland

The analysis fails to include any evaluation on the impact of the roadway network east of Oakland Road for example Ringwood, Wayne, McKay, Trade Zone. Some of these roads were even included in the traffic counts but excluded from the further analysis without explanation.

102- Roadway connections outside of the immediate area

A comparison of ADT by travel direction on parallel roadways suggests that each day many more people travel westbound than eastbound.

	westbound ADT	eastbound ADT	Diff
Charcot east of Junction	5,100	2,500	**2,600**
Brokaw east of Junction	21,700	15,100	**6,600**
Trimble east of Junction	12,700	10,900	**1,800**
Montague east of Seely	29,600	23,000	**6,600**
Total	**69,100**	**51,500**	**17,600 (25%)**

It is improbable that every day 25% of the vehicles who enter North San José from the East don't return. It is more likely that they use alternative travel routes such as Tasman Dr, 237, 101 to return. This shows that travel patterns are much more regional than suggested by the traffic analysis.

This further means that drivers who currently use Tasman to travel eastbound might switch back to Charcot if it improves their travel time. Therefore, a much wider area of roadway segments needs to be analyzed to understand the full impact of the Project.

103- Charcot between SR 87 and N 1st

"The information about project-related changes in traffic volumes along all segments of Charcot Avenue is contained in Section 3.17, Transportation" (Appendix B, Response 22.1)

Statement is not true. The segment of Charcot Avenue between SR 87 and N 1st street (as addressed in the comment *"Can you comment on additional traffic connecting Charcot using this extension coming from 87 (the other end of Charcot)."* is not contained in Section 3.17, Transportation.

104- Freeway on ramps

"The improvement of access to and from I-880 also would provide minimal benefit to operations along Brokaw Road and Montague Expressway due to congestion on the freeway mainline that restricts flow onto the freeway." (Appendix K - p. 43)

There seems to be no evidence in the project's traffic study, VTA CMP reports, CalTrans data, Google Map data or personal observation that freeway on-ramps to 880 from Montague or Brokaw are close to being congested to a point where it would restrict traffic on those roads. Please provide data to support this statement.

It should also be noted that congestion on freeway on ramps might be caused by outdated design standards not compatible with current higher speed limits.[49]

105- Impact on 880

Since a main purpose of the project is to improve traffic flow across as well as to and from and 880, segments of 880 including on- and off-ramps need to be included in the roadway segment analysis.

106- Segment 11

Segment 11 is described as Montague Expressway between I-880 and Oakland Road. Figure 10 indicates the measurement as taken at the I-880 location – not east of it. This traffic count could be significantly affected by merging and on- and off-ramp movements and measurements need to be re-taken at a more appropriate location in that segment.

107- Inconsistency with Traffic Analysis for San José General Plan

The traffic analysis for the Charcot Extension states an ADT of 45,200 for Brokaw Road west of Oakland Road in 2040 (p. 36).

In the traffic analysis prepared for the 2016 General Plan update (http://www.sanjoseca.gov/DocumentCenter/View/62223) the same segment (there described as Brokaw Road between I-880 and Ridder Park) is estimated to have an ADT of 81,500 (p.16). This is inconsistent and requires further explanation. Other roadway segments analyzed in both documents show similar inconsistencies.

108- Inconsistency with other traffic studies

The traffic analysis for the Charcot Extension states an ADT of 23,500 for Oakland Road between Brokaw Road and Silk Wood Lane.

A 2019 traffic study states ADT for Oakland north of Brokaw as 24,500.[50] This is a difference of almost 5%. If traffic volumes are indeed 5% higher than stated on all road segments this would also influence other parts of the EIR especially noise and air quality. The discrepancy needs to be further examined.

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[49] "I'll say that most interchanges in San Jose are horribly designed. they were all designed for a time when we had 80% less people and 40mph speed limits. that means inefficient cloverleafs, short merges, quick exits after interchanges, etc. they're all bad here", https://www.reddit.com/r/SanJose/comments/crwtik/worst_freeway_merge_in_bay_area/exab7p9/

[50] https://sanjose.legistar.com/View.ashx?M=F&ID=6991589&GUID=4162B631-2102-40B8-817A-985D33F1002A, p. 9

109- Year 2025 Conditions (p. 8)

"The Year 2025 traffic volumes were developed via interpolation of existing and forecasted Year 2040 General Plan Buildout traffic volumes."

Please describe the interpolation used in detail. The data in the analysis seems to suggest that a non-linear interpolation was used.

110- Peak hour volumes

The analysis uses arbitrary peak volume numbers for e.g. Montague. The volume chosen is neither during the most congested time nor the highest volume during the day.

111- Focus on peak hours

The focus of the traffic analysis on peak hour traffic is inadequate according to SJ Streets Design Guidelines:

- *"Additionally, designing to accommodate only peak hour delay should be used carefully since it can result in intersections* ***being overdesigned for the other non-peak hours of the day*** *and weekends when there are lower levels of traffic and, often, higher levels of walking and biking activity. For delay analysis, peak period (not peak hour) and off-peak period traffic movements should be analyzed. In addition, multimodal factors of person delay, reliability, safety, and comfort shall be analyzed."*

The Project for Public Spaces writes:

- *"Worse yet, many designers size a road or intersection to be free-flowing for the worst hour of the day. Sized to accommodate cars during the highest peak hour, such streets will be "overdesigned" for the other 23 hours of the day and will always function poorly for the surrounding community."*[51]

112- Direction of travel

The analysis provides data only on roadway volumes but for most parts omits information on the distribution of these volumes per direction. Given that regional traffic pattern through the area are highly imbalanced an analysis per direction is necessary to evaluate if the assumed traffic volumes can be realistically handled by the infrastructure. E.g. a PM peak hour volume of 3,390 vehicles on a two-lane roadway (Charcot East of Junction, 2040) seems improbably high given typical max lane capacities as identified by National Association of City Transportation Officials (NACTO)[52].

[51] https://www.pps.org/article/levels-of-service-and-travel-projections-the-wrong-tools-for-planning-our-streets
[52] https://nacto.org/publication/transit-street-design-guide/introduction/why/designing-move-people/

113- Jump in volume within a corridor

The data by direction is also necessary to understand sudden jumps in traffic volumes along corridors as for example

Intersection	First	Zanker	Junction	Paragon	Oakland
Volume between intersections	2,390	1,480	2,050	1,490	
		(-910)	(+570)	(-560)	
	WEST		← CHARCOT →		EAST

#	Roadway	Location	AM Year 2040	AM Year 2040+ Project
1	Charcot Avenue	East of 1st Street	2,150	2,390
2	Charcot Avenue	East of Zanker Road	920	1,480
3	Charcot Avenue	East of Junction Avenue	1,020	2,050
4	Silkwood Lane	West of Oakland Road	120	1,490

This is also required by the SJ TIA "Uneven lane demand and usage"; (Transportation Analysis Hand-book, p. 28)

114- Volume to capacity ratio in east-west corridors

The analysis seems to assume wildly varying volume to capacity ratios for the roadway segments especially on Montague, Brokaw and Charcot under 2040 conditions. This is improbable and requires further explanation (Appendix K, p. 36)

For example, Charcot East of Junction as a 2-lane road will supposedly handle traffic volumes similar to Trimble or Brokaw which are 6-lane roadways.

Segments west of Oakland	Volume PM Peak 2040	# of lanes	Volume / lane
Charcot	1,720	2	860
Brokaw	3,630	6	605
Montague	5,560*	8	695

Segments east of Junction	Volume PM Peak 2040	# of lanes	Volume / lane
Charcot	3,390	2	1,695
Brokaw	3,940	6	657
Trimble	3,990	6	665

115- Comparison to Montague and Brokaw

"The use of the proposed extension is expected to be minimal outside of a two-mile radius since other roadways, including Montague Expressway (8-lane roadway) and Brokaw Road (6-lane roadway) will continue to provide greater capacity and speed limits than the proposed two-lane roadway extension." (p. 44)

This statement confuses theoretical capacity with actual traffic volumes. According to the traffic counts for this project Montague carries less than 700 cars/h on all of its three to four[53] eastbound travel lanes combined. The traffic analysis assumes a much higher vehicle volume for Charcot at the same time. Meaning Charcot will supposedly have a greater capacity than Montague Expressway.

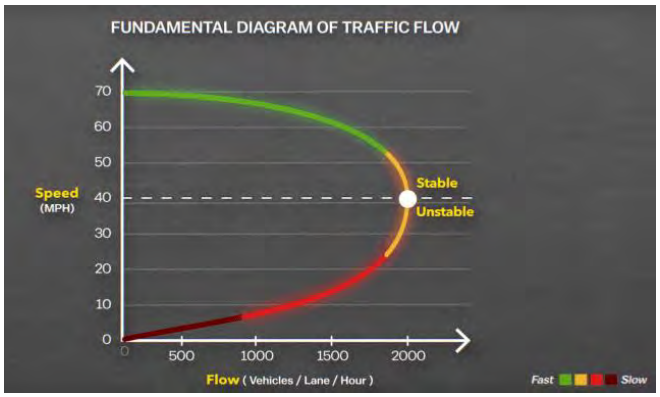
Although Montague may theoretically provide a higher speed and speed limit, the traffic count shows that eastbound traffic on Montague is crawling at less than 5.7 miles per hour during the commute time (5-6PM). Since the DEIR assumes an average travel speed of 25 miles per hour for the Charcot Extension (source: Air Quality Analysis), 1-lane Charcot would supposedly provide not only higher eastbound traffic capacity but also higher speeds than 4-lane Montague.

This seems unrealistic and should be re-evaluated. It is also inconsistent with the statement above.

116- Traffic data for 2040 for Montague Expressway

Travel speed and road way capacity/flow are dependent on each other. Traffic moving at roughly 40 mph provides the greatest capacity for a road/highway. In case of slower moving traffic (congestion) roadway capacity shrinks dramatically (see Graph "Fundamental Diagram of Traffic Flow" below).

- *"the fundamental defining relationship of our field, the speed-flow curve. This shows that the more traffic uses a road, the slower it goes, the effect becoming more and more severe as the traffic flow approaches the maximum capacity of the network, until finally overload is so extreme that all vehicles are unable to move."*[54]



Source: Washington State Department of Transportation[55]

The current traffic counts shows average speeds on Montague are dropping dramatically during peak hours (5-6pm): the road becomes congested.[56]

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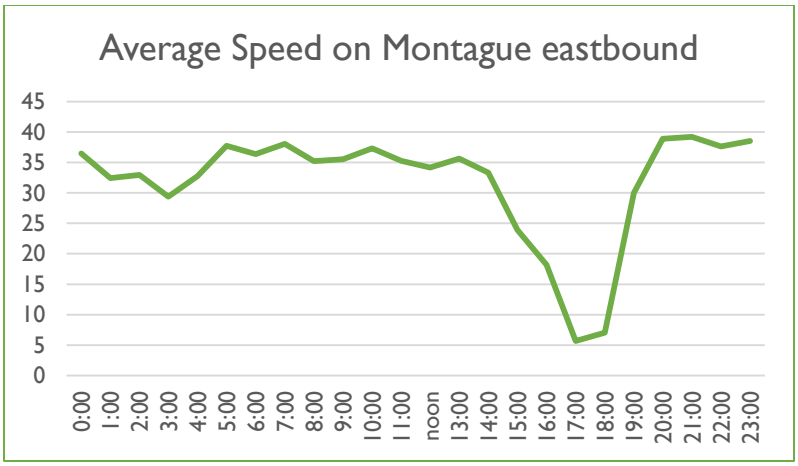
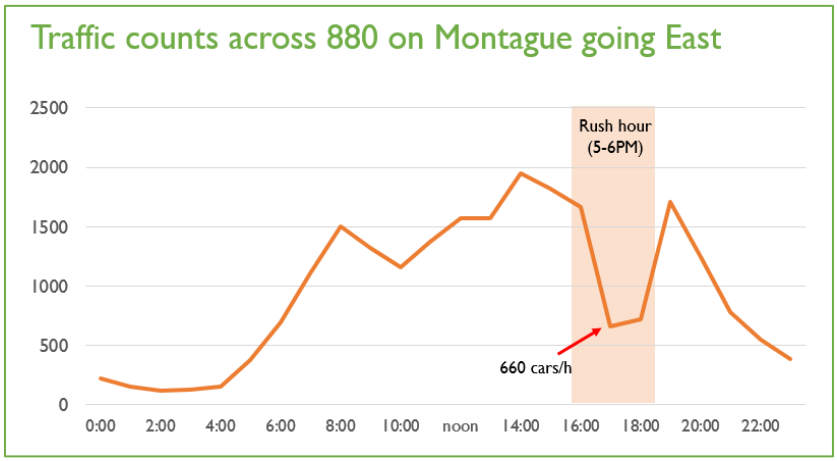
[53] Depending on Expressway location.
[54] From: P B Goodwin "Inaugural Lecture For The Professorship Of Transport Policy University College London" https://discovery.ucl.ac.uk/id/eprint/1244/1/2004_22.pdf p. 2
[55] Also see: http://cityobservatory.org/backfire_wider_worse_traffic/
[56] The following analysis focuses on eastbound traffic from NSJ towards Milpitas and Berryessa.



Given the relationship between speed and flow discussed above, flow/capacity on Montague drops dramatically as well.



This implies that if the Project is able to improve conditions on Montague (i.e. faster flow), traffic volumes would increase, since flow improves.

Yet, the traffic analysis postulates the opposite. The traffic analysis says with the Project volumes on Montague during peak hour will fall even below current levels.[57]

Also, the analysis projects a doubling of traffic during peak hours on Montague. It is unclear how the Expressway is able to handle volume in 2040, given that it is not able to handle volume now.[58] The same is true Brokaw.

[57] This in turn suggests that traffic would be crawling at an even slower speed.
[58] It seems that the current maximum capacity of Montague Expressway EB seems to be roughly below 2000 cars/hour. Adding vehicle above this numbers lead to breakdown of traffic and a dramatic reduction in speed, flow and capacity.

This questions the validity of the traffic model itself since the model seems to operate with theoretical capacity limits that are significantly above the capacity limits experienced in practice.

- *"The practical experience with widening I-5 shows that eliminating bottlenecks in one place simply leads to the more rapid congestion of the next downstream bottleneck, and ironically, lower throughput on the freeway system. It might seem paradoxical that highway engineers would allow this to happen, but if you're more interested in generating excuses to build things, rather than actually managing traffic flows, it makes some sense. As we've argued before, it seems as if highway engineers treat the sisyphean aspects of perpetually chasing bottlenecks, not as a bug, but as a feature. To them, the fact that widening one stretch of freeway to eliminate one bottleneck simply creates another one is a guarantee of permanent employment, not a fundamental flaw in engineering practice."*[59]

117- Traffic from South Bay Islamic Association (SBIA)

Heavy traffic on Friday afternoons coming from presumably the South Bay Islamic Association (SBIA) at 2345 Harris Way, San Jose, CA 95131 coincidences with school end times. The impact of this potential conflict outside of typical peak hours needs to be assessed.

118- Increase in traffic on Paragon Drive south approach

The intersection analysis projects an increase in traffic at the Paragon Drive south approach. This is a driveway. Please specify why the model would assume an increase at this location since there seems to be no connected development or land-use change projected at this location.

A possible explanation of the change might be different circulation in the business park due to the projects impact. If that is the case, please provide a more detail local circulation analysis.

119- Projected truck traffic

"Truck traffic on the proposed Charcot extension is anticipated to be limited to only those trucks originating from or bound for destinations along Charcot Avenue between Oakland Road and Zanker Road." (p. 44).

Statement omits trucks originating from or bound for destinations along Oakland Road between Montague and Brokaw.

It also requires further explanation why truck drivers would behave differently from other drivers and not try to use the extension if the extension could provide time savings – even if it increases travel distances.

The truck traffic analysis also fails to acknowledge any change in traffic patterns due to the relocation of the Super Micro Loading dock that will be necessary because of the project.

And while the extension might not provide direct access to US 101, I-680 or I-880, it does provide direct access to SR 87.

Instead of using average truck traffic in the area as baseline, it might be more accurate to use the truck traffic percentage of roads connecting to Charcot (such as O'Toole, Paragon) to estimate future truck traffic on the Extension.

[59] http://cityobservatory.org/backfire_wider_worse_traffic/

120- Truck traffic volumes

The report should note that roadways adjacent to the project's western limit (segments 3, 23, 24, 25) have on average a much higher truck traffic volume than other roadways. (p. 142)

121- Projected speeds

*"Therefore, an evaluation of **projected** ADT and **speeds** on roadway segments in the project area also was completed using existing and projected traffic volumes without and with the proposed roadway extension."*

This evaluation of projected speeds on roadway segments is not included in the analysis and needs to be added.

122- Response 24.1 – Beneficial LOS impact

"In general, the proposed project would have beneficial impacts on the level of service for existing roadways in the project area"

This is not an environmental impact under CEQA and should not be considered as part of the DEIR.

123- ADT Conclusion

*"The **evaluation of roadway segment ADTs indicate** that the Charcot extension **will result in additional roadway system capacity** and reduce traffic volumes **and congestion** on parallel roadways."* (DEIR, p. 154)

ADT is neither a measurement of capacity or congestion. Statement is therefore incorrect.

Road design

124- Shoulder/bike lanes

The figures on pages 3 and 4 (Appendix K) don't distinguish between shoulders and bike lanes. Shoulders and in this case protected bike lanes are two distinctly different roadway features that should not be grouped together. They should be more clearly shown in the overcrossing section of the map in Appendix K and on page 7 of the DEIR.

125- Traffic improvements

Please explain why the overpass requires 4 feet shoulders and the remainder of the project doesn't.

Since the overpass includes 4ft wide shoulders, this results in visible space of 16' travel lanes, in turn resulting in likely very high speeds. How will this impact travel speed?

- *Previous research has shown various estimates of relationship between lane width and travel speed. One account estimated that each additional foot of lane width related to a 2.9 mph increase in driver speed*[60]

See also

- *Ingrid Potts, Douglas W. Harwood, and Karen R. Richard, "Relationship of Lane Width to Safety on Urban and Suburban Arterials," (paper presented at the TRB 86th Annual Meeting, Washington, D.C., January 21–25, 2007).*
- *Kay Fitzpatrick, Paul Carlson, Marcus Brewer, and Mark Wooldridge, "Design Factors That Affect Driver Speed on Suburban Arterials": Transportation Research Record 1751 (2000):18–25.*
- *Macdonald, Elizabeth, Rebecca Sanders and Paul Supawanich. The Effects of Transportation Corridors' Roadside Design Features on User Behavior and Safety, and Their Contributions to Health, Environmental Quality, and Community Economic Vitality: a Literature Review. UCTC Research Paper No. 878. 2008*

Is this the reason that City staff believes that "*Eastbound traffic on the future four lane arterial will likely be traveling downhill at a high rate of speed approaching the [...] street crossing to the school site." (SJ City Staff memo to Planning Commission, February 19, 2004)?*

126- Impact of shoulders on overpass on safety.

This assumption is further supported by the fact that on many roads in the area (e.g. Trimble) the actually measured speed is much higher than the posted speed limit (table p. 33).

A more detailed assessment of the road design on likely speeds is necessary.

127- Impact of noise walls on speed

Since noise walls will make it difficult for drivers to assess if children are present on school grounds, speeds will likely violate stated limits ("25 mph when children are present").

[60] https://nacto.org/publication/urban-street-design-guide/street-design-elements/lane-width/

Impact school

128- Access to the school

"Therefore, it is not anticipated that the proposed Charcot Avenue extension would have an adverse effect on the school's access." (p. 44)

The analysis assumes a car-centric view of "access". The SJ General Plan requires special consideration of pedestrian access to schools:

- *"Coordinate the planning and implementation of citywide bicycle and pedestrian facilities and supporting infrastructure. Give priority to bicycle and pedestrian safety and access improvements at street crossings and near areas with higher pedestrian concentrations (school, transit, shopping, hospital, and mixed-use areas) (TR-2.1)"*

Also,

- *"Coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San Jose (TR-2.10)".*

Not providing safe and attractive pedestrian access to schools, generally leads to increased driving and potentially more congestion.

- *"The National Household Travel Survey in 1969 revealed that 41 percent of children ages 5-18 walked or bicycled to school, with 48 percent of younger children (ages 5-14) walking or biking. By the 2000s, estimates of younger children walking or bicycling to school was less than 14 percent. In the same time period, the use of passenger vehicles for the trip to and from school has increased from 12 percent in 1969 to 50 percent in the 2000s."*[61]

- *"According to independent research using the NHTS data series, distance is one of the major factors in the shift in mode to private vehicle by schoolchildren. This research also found that safety and security concerns are significant factors in parents' decision to let their children walk to school, especially girls."*[62]

129- Existing use of Silk Wood Lane

The report fails to mention that Silk Wood Lane and the access gate on Silk Wood Lane are also used heavily by students walking to school from the residences along Silk Wood Lane as well as the mobile home park Casa del Lago north of Rock Ave. (see page 147)

This omission underlines that pedestrian activity in the area has not yet been properly analyzed.

130- Revised drop-off plans

"It is recommended that Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods." (p. 166)

A review of drop-off/pick-up plans for the school should focus primarily on the safety of students not ease of vehicle traffic.

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[61] https://lbpost.com/news/education/walking-to-school-why-most-kids-arent-doing-it-these-days
[62] https://nhts.ornl.gov/briefs/Travel%20To%20School.pdf

131- Staggered dismissal times at the school

The transportation analysis suggests: "*Staggered arrival and dismissal schedules should be considered given the physical limitations of the use of public streets and school parking lots to accommodate the current demand of the school.*" (p.50).

School start times are already staggered. Is the City hereby proposing to cover any costs associated with any further staggering of school operational hours?

Is the city working with businesses in the area to offer staggered working hours to their employees, metering of Montague expressway or congestion pricing in order to reduce peak hour demand considering the physical limitations of the use of public streets?[63]

132- Trip diversion from limiting northbound access to Oakland Road parking lot

The discussion of alternatives in the DEIR (p. 192, DEIR) suggests that some of the proposed alternatives will limit access to the school's Oakland Road parking lot. This in turn suggests that access to business east of Oakland would be similarly impacted.

The traffic analysis needs to include a trip diversion analysis resulting from these potential impacts especially for trucks with wide turn radii.

133- Effect on school drop-off Silk Wood Lane

"With the Charcot Avenue Extension in place, it would no longer be possible for cars to illegally stop/park along the south side of Silk Wood Lane to drop-off, pick-up, or wait for students." (p. 166)

This statement requires further explanation. Why would it "no longer be possible"? It seems that it would continue to be illegal, but that doesn't make it impossible.

134- Silk Wood Lane Traffic Diversion

It is possible that parents will continue to use the residential neighborhood on Silk Wood Lane as drop-off location for students. Since left turns on Charcot are restricted, these parents would make U-turns on Silk Wood Lane to go back to Rock Ave. This impact on the neighborhood needs to be considered.

Traffic analysis tables 8/9/10 do not reflect the use of Silk Wood Lane as a new drop off location.

135- Orchard School parking lots

"Orchard School is currently served by three driveways along Fox Lane that provide access to two onsite parking lots" (p. 146)

Only two driveways provide access to parking lots. One driveway is an exit-only driveway.

136- 15 mph speed limit near Orchard school.

Similar to other schools in San José (see map) or around the state[64], the City should consider a 15mph speed limit on all roads adjacent to Orchard school.

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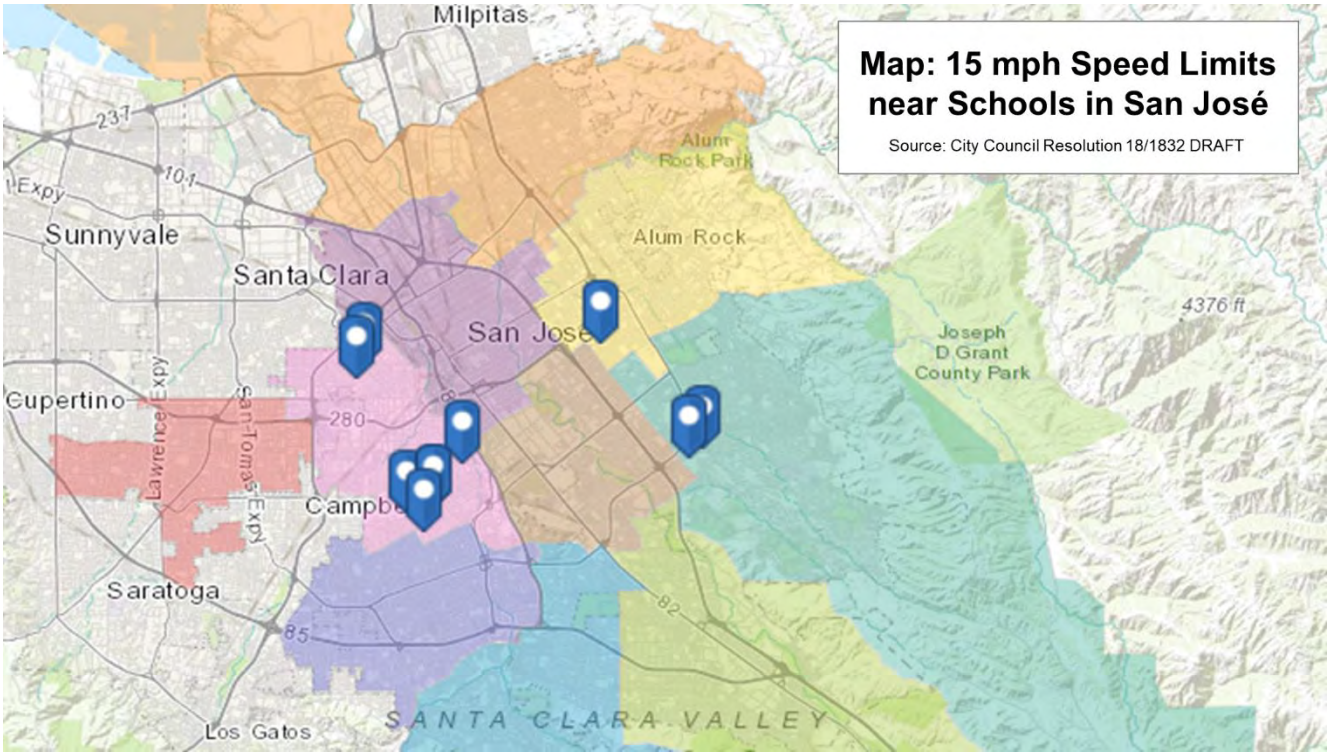
[63] See e.g. https://www.economist.com/leaders/2018/08/25/the-right-way-to-handle-congestion

[64] https://cal.streetsblog.org/2019/06/05/city-of-sacramento-reduces-speed-limits-near-schools-to-15-mph/



137- Closing the Charcot Overpass for school drop-off and pick-up times

Similar to approaches piloted in European cities[65] the city should consider blocking the Charcot Overpass for through traffic during school drop-off and pick-up times.

[65] https://usa.streetsblog.org/2018/11/27/the-european-answer-to-school-drop-off-chaos/

Intersection analysis

138- Intersection analysis

According to the SJ TIA (p. 39):

- *"Study Intersections: If a project is expected to add 10 vehicle-trips per hour per lane to a signalized intersection that meets any of the following conditions, the intersection is included in the intersection operations analysis:*
- *Within a ½-mile buffer from the project's property line;*
- *Outside a ½-mile buffer but within a one-mile buffer from the project AND currently operating at D or worse;*
- *Designated Congestion Management Program (CMP) facility outside of the City's Infill Opportunity Zones (defined in Section 4.9);"*

Based on these criteria the analysis should also include at least the following intersections:

- Oakland Road and Rock Ave
- Oakland Road and Fox Lane
- Oakland Road and McKay
- Oakland Road and Brokaw
- Oakland Road and Montague
- McKay and Ringwood
- Brokaw and 880
- Trimble and Montague
- Lundy and Murphy
- Junction and Charcot

Given the significant increase in traffic volume between 2025 and 2040, a queueing and LOS analysis for 2040 conditions is required in addition to the analysis under 2025 conditions. The analysis already seems to indicate that PM peak queueing from Charcot/Paragon would go back in to Charcot/Junction intersection; queueing from Charcot/O'Toole would block access to the overpass; queueing from Charcot/Oakland would reach back through the pedestrian crosswalk.

The 2015 consultant agreement with BKF (right) also includes a number of additional intersection for which data should be provided. This data should be disclosed in the DEIR.

1	Zanker Road and Trimble Road
2	Cadence Place and Montague Expressway
3	McCarthy Boulevard and Montague Expressway
4	Oakland Road/Main Street and Montague Expressway
5	Zanker Road and Charcot Avenue
6	Junction Avenue and Charcot Avenue
7	Oakland Road and Silk Wood Lane
8	Zanker Road and Brokaw Road
9	Junction Avenue and Brokaw Road
10	O'Toole Avenue and Brokaw Road
11	I-880 NB Off Ramp and Brokaw Road
12	Oakland Road and Brokaw Road
13	Paragon Drive and Charcot Avenue
14	Junction Avenue and Trimble Road
15	1st Street and Charcot Avenue
16	Oakland Road and Fox Lane
17	O'Toole Avenue and Paragon Drive
18	O'Toole Avenue and Charcot Avenue

139- Intersection analysis 2025

"An intersection level of service (LOS) analysis was undertaken for the weekday AM and PM peak hours at five study intersections located in the immediate project area. LOS was calculated for both existing and year 2025 conditions with the project in place." (p. 153).

A Queueing and LOS analysis for 2040 conditions is required in addition to the analysis under 2025 conditions, given that:

a) 2025 is likely to be within one or two years of opening of the extension and therefore not a medium-term analysis
b) the data for the 2025 is not generated independently but only a extrapolation of the 2040 model data anyway.

140- Alternative Lane Configurations at Oakland Road

The analysis does not describe Alternative H as a studied alternative lane configuration (p. 29). Alternative H needs to be included.

The intersection analysis should also include data for Alternative E.

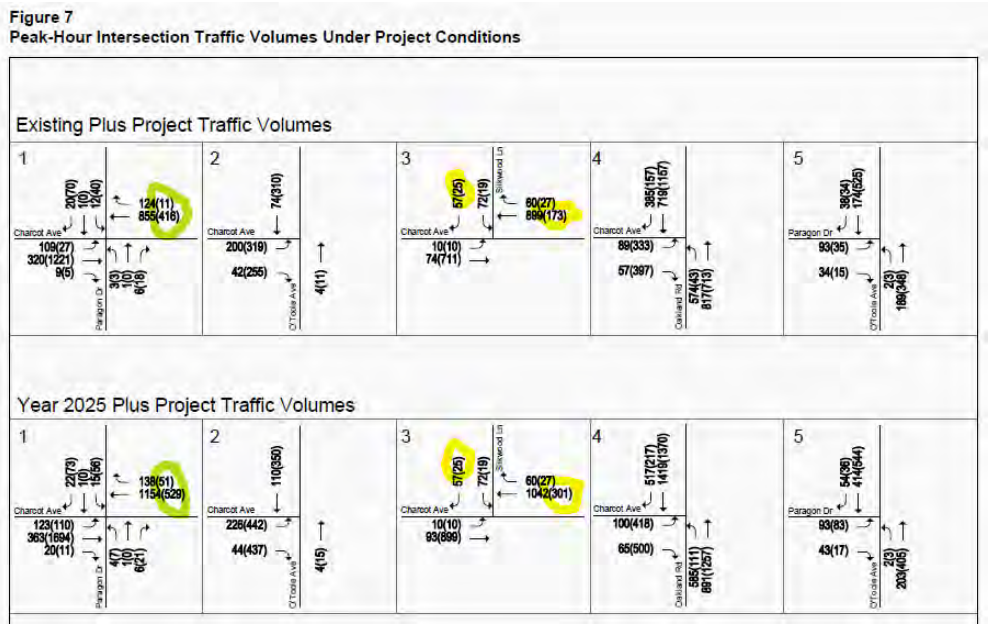
141- Description of Oakland/Silk Wood intersection

"The existing unsignalized intersection of Silkwood Lane and Oakland Road will be replaced by a new signalized intersection. The proposed lane configurations at the intersection consist of one left-turn and one shared left-right turn lane on Charcot Avenue and two northbound left-turn lanes and six through lanes on Oakland Road" (p. 5)

The description of this intersection omits bike lanes on Charcot and Oakland as well as new crosswalks at the intersection.

142- Figure 7 – Peak-Hour Intersection Traffic Volumes Under Project Conditions

Since there is no driveway or intersection for vehicle traveling west on Charcot between Silk Wood Lane east of I-880 and Paragon Drive west of I-880, the number of vehicles going up the overpass (Intersection 3, marked in yellow in the graphic below) should be identical to the number of vehicles coming down the overpass (Intersection 1, marked in green). Yet this is not the case. Following the flow of traffic along other intersection also produces inconsistent data.



PM Peak hours existing conditions

Cars going on the overpass (Fig. 3)		Cars coming down the overpass (Fig. 1)	
Going straight on Charcot Ave	*173*	*Going straight on Charcot Ave*	*416*
Turn right from Silk Wood Lane	*25*	*Turn right into Paragon Dr*	*11*
Total	**198**	**Total**	**427**

PM Peak hours 2025 conditions

Cars going on the overpass (Fig. 3)		Cars coming down the overpass (Fig. 1)	
Going straight on Charcot Ave	*301*	*Going straight on Charcot Ave*	*529*
Turn right from Silk Wood Lane	*25*	*Turn right into Paragon Dr*	*51*
Total	**326**	**Total**	**580**

The traffic analysis suggests therefore that the overpass will make cars appear out of nowhere just above 880. Could you please provide more information how this is achieved?

143- Response 48.1 – Oakland vs. Paragon

"The Charcot Avenue extension will be a 2-lane facility except at its intersection with Oakland Road. The four lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at this intersection. Oakland Road receives more cars than smaller streets toward the west end of Charcot simply because Oakland Road is a large 6-lane arterial. By definition, larger streets accommodate more traffic and therefore they "attract" more cars, as compared to smaller streets."

The response seems to argue that the Oakland side of the project will see more traffic than the Paragon side and therefore needs more turn lanes. Generally though, it can be assumed that number of cars on both sides of a bridge is identical at all times. Response seems illogical.

Also, response is inconsistent with the traffic analysis which – similarly illogical – actual shows more vehicles going down towards Paragon Drive than enter on the Oakland side (see comment above).

144- Response 13.1 – Four lanes on Oakland needed

"The four lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at this intersection."

Statement inconsistent with the reports traffic analysis that shows that even with two lanes any vehicle delay would be within acceptable limits.

145- Response 33.4 – Fox vs. Silk Wood

"The Charcot Avenue extension will be a 2-lane facility except at its intersection with Oakland Road. The "extra" lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at this intersection. Note that if Fox Lane were the chosen alignment, the lane requirements at the Fox Lane/Oakland Road intersection would be similar because the traffic demand on Fox Lane would be roughly the same as the traffic demand on Charcot Avenue."

This statement requires further explanation as the current traffic volumes on Fox Lane (ADT: 6,100) and Silk Wood Lane (ADT: 700) are not "roughly the same" but vary greatly. Please quantify "roughly the same".

146- Response 34.6 – Changes Oakland intersection 2025 to 2040

"With the extension in place, the projected number of vehicles that will turn left from Oakland Road to Charcot Avenue in year 2025 will be as follows: 567 vehicles during the AM peak-hour and 260 vehicles in the PM peak-hour. In year 2040, these volumes will be 554 and 568 during the AM and PM peak-hours, respectively."

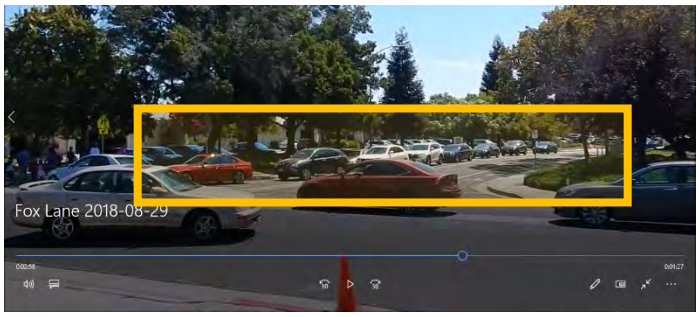
Given that traffic volumes will generally and significantly increase between 2025 and 2040, a reduction in turn movements from 567 to 554 (AM) requires further explanation and seems inconsistent with the data in the traffic analysis.

147- Response 34.20 – gaps in traffic flow on Silkwood

"Such turns [right turns from Silk Wood Lane to westbound Charcot] will be accommodated during gaps in traffic flow. The upstream traffic signal at Oakland Road will create those gaps as it cycles through various phases." (p. 24)

DEIR does not include any analysis that supports this statement. It is just as likely that alternating left- and righ-turns from Oakland into Charcot will be blocking any access from Silk Wood Lane especially considering the additional delay from the HAWK signal.

Traffic gaps on Fox Lane which has a similar configuration are very infrequent at times and can lead to substantial backed up traffic (see picture, delay for right turn shown was 90+ seconds)



Queuing on Ridder Park
at T-intersection with Fox Lane

148- Response 34.11 – access points for industrial businesses on Oakland Road

"The project will not alter or close any access points for industrial businesses on Oakland Road."

Please provide more detailed explanation on how access from southbound Oakland Road to industrial business on the eastern side Oakland will not be altered by the proposed project or any alternatives. This seems inconsistent with the described limited access to the school's Oakland Road parking lot because of the project and/or its alternatives.

149- Signal warrant

Similar to approaches in cities like Seattle[66] that measure warrants after an improvement has been made the project should consider a traffic signal at Silk Wood Lane and future Charcot Avenue despite seemingly not meeting current warrants.

[66] https://usa.streetsblog.org/2019/02/05/seattle-tosses-out-the-rulebook-to-protect-pedestrians/

Other

150- Roadway improvements under 2040 conditions

The analysis needs to include a detailed list of roadway improvements made by 2040 in order for the public to assess the validity of the analysis

For example the map on page 39 *"Year 2040 Conditions"* does not include the planned Zanker/4th street overcrossing over 101.

151- Year 2025 Conditions (p. 6)

Given the rapid planned development in North San José, t is not clear what changes to the existing land use or transportation network have been considered for the 2025.

The analysis needs to clearly state any assumptions made for 2025.

152- Inconsistency with Traffic Analysis for NSJ

The traffic data is also inconsistent with traffic data in the NSJ EIR (e.g. volumes at 880 gateways).

153- Response 34.10 – Schedule for other projects

"There is no schedule or construction staging plans for those projects [Montague-Trimble-Flyover, Montague-McCarthy grade separation, Brokaw widening], so it would be speculative to try to estimate how much traffic – if any – would chose to use Charcot during their construction."

Given the collective professional experience at the City's Department of Transportation and the sophistication of the Traffic Demand Modell used for example for this EIR, it is surprising that no professional estimate ranges can be given.

154- Plan Bay Area 2040, Congestion Management Program Document, Valley Transporation Plan

Inclusion in the Plan Bay Area 2040, Congestion Management Program Document, or Valley Transportation Plan (p. 149) was done without a project-level analysis of project-specific impacts.

There is no documentation that any of these plans would be significantly affected should the project be build or not.

155- Goal of San Jose's transportation system – Bicycle, Transit and Pedestrian Facilities

"San Jose desires to provide a safe, efficient, fiscally, economically, and environmentally-sensitive transportation system". (p. 11)

The sentence should likely read: "San Jose desires to provide a safe, efficient, fiscally-, economically-, and environmentally-sensitive transportation system"

Also, this relates to the overall transportation system not only the section about the pedestrian, bicycle and transit facilities that it is placed in. For example, building the Charcot Extension is not fiscally-sensitive.

156- Response 34.2 – Truck ban

"Truck Ban: The City's ban on select trucks over a certain tonnage is only applicable for residential streets and is not intended for Charcot Avenue."

Statement is inconsistent with San Jose Municipal Code 11.96.010-100[67] which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.

General Plan Transportation Diagram

Photo of truck ban sign on McKay Dr

"Charcot will serve as a direct connector to numerous industrial and commercial businesses west of I-880. As such, a sign prohibiting trucks on this roadway would not be effective, as it would not legally ban local trucks from using it to access area businesses."

Statement is untrue as only trucks that deliver directly to business on the Charcot Extension would be allowed to use the Extension. As there are no business along the extension, neither between Oakland Road and 880 nor 880 and Paragon Drive ("Between Paragon Drive and O'Toole Avenue, access to adjacent commercial properties from Charcot Avenue would not be provided. Access would be via other existing streets."), truck traffic could be legally banned next to the school with the few exceptions enumerated in the Municipal Code.

"There are no plans to ban trucks on Charcot Avenue as existing businesses along the Charcot corridor require trucks to support their daily operations."

Business along Charcot Avenue successfully operate under current condition without the overpass. Banning truck traffic on the overpass would therefore not be an impediment to their operations either.

Banning trucks on Charcot Avenue would be important not only from a safety perspective but also from an air pollution perspective:

- *"Heavy-duty diesels spew out nearly 60 percent of smog-forming oxides of nitrogen (NOx) emissions and more than 80 percent of fine diesel particulate matter (PM 2.5) emitted in California from all on-road sources. Diesel exhaust contains more than 40 known cancer-causing organic substances and gaseous pollutants, including volatile organic compounds and NOx, a key ingredient in ground-level ozone, otherwise known as smog."*[68]

157- Response 34.24 – Construction Plan

"A Construction Management Plan will be developed and implemented to ensure the safety of all persons that will be affected by construction."

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[67] https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.96LAVERO
[68] https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/

Construction activity on Charcot will likely block a major pedestrian access route, yet the impact is not properly assessed.

158- Traffic signals

Figure 14 fails to include the planned traffic light at Paragon Dr/Charcot.

159- Residential cut-through traffic

The DEIR fails to assess if the expected residential cut-through traffic generated by the project should be considered significant under applicable City policies.

- *"Neighborhood Streets General Plan policies discourage inter-neighborhood movement of people and goods on neighborhood streets. Streets are to be designed for vehicular, bicycle and pedestrian safety. Neighborhood streets should discourage both through vehicular traffic and unsafe speeds.*
- *Unacceptable Impacts of Mitigation: For purposes of this Council Policy, an LOS Traffic Improvement has an unacceptable impact if the TIA demonstrates that the improvement would result in a physical reduction in the capacity and/or a substantial deterioration in the quality (aesthetic or otherwise) of any other planned or existing transportation facilities (such as pedestrian, bicycle and transit systems and facilities). The following are examples of the kinds of impacts that would be considered unacceptable:*
- *[…] encouraging substantial neighborhood cut-through traffic […]" (San Jose Transportation Impact Policy)*[69]

160- VTA Congestion Management Program Analysis

Does the project warrant a Congestion Management Program Analysis of the VTA since it generates more than 100 net new peak hour trips?

161- Cumulative Impact

As the DEIR mentions multiple times, the Extension is one of several roadway improvements in the North San José Area and in the general plan. Since plan level analysis for both the general plan as well as NSJ project a significant increase in VMT, the project's impact take together with the other developments and roadway project should be considered significant.

162- Conclusion

Based on comments provided above the conclusion of the traffic analysis needs to be updated to incorporate the necessary changes.

[69] http://www.sanjoseca.gov/DocumentCenter/View/3870

Hazards and Hazardous Materials

163- Transport of Hazardous Materials

Although all public roadways might be constructed in adherence to design standards and regulation, the City of San José nevertheless reserves the right to restrict commercial traffic which might or might not carry hazardous materials on many of its roadways (Municipal Code 11.96.010-100) for various reasons.

The California Department of Education states that *"experience and practice indicate that distances of at least 2,500 feet [to schools] are advisable when explosives are carried and at least 1,500 feet when gasoline, diesel, propane, chlorine, oxygen, pesticides, and other combustible or poisonous gases are transported."*[70]

Given the nature of the businesses west of 880 (e.g. KinderMorgan Oil Terminal, Univar) it is very likely that trucks accessing the area will carry hazardous materials close to classrooms, playgrounds and residential buildings.

The City also needs to adhere to California Public Resources Code 21151.4.

TOP: Sources of potentially significant truck traffic

RIGHT: Hazmat crews cleaning up a spill from a leaking Univar truck on a 880 on-ramp near Hayward (August 2018). Both north- and southbound lanes on 880 needed to be closed because of the spill. A shelter-in-place order was issued for an ~137 acre area next to the incident site. Trucks would be travelling about 50ft away from classrooms.

https://sanfrancisco.cbslocal.com/2018/08/24/leaking-tank-acid-shuts-down-southbound-880-hayward-traffic/

164- MM HAZ-2.1: Site Management and Removal Plan

Given the proximity of the site to sensitive receptors at school and residential area, it is unclear if a adequate mitigation such as a Site Management Plan or Removal Action Plan can be developed.

It is currently not evaluated if mitigation is possible, this is therefore a significant, unavoidable impact

165- Emissions of Hazardous Materials Within One-Quarter Mile of School.

As described in chapter 3.9.2.2 of the DEIR, construction work might release hazardous materials other than air pollutant emissions. The impact of this on the school has not been evaluated and poses significant, unavoidable impact.

[70] School Site Selection and Approval Guide Prepared by School Facilities Planning Division California Department of Education

166- Interference with Emergency Plans

The DEIR fails to analyze the impact of the project on emergency plans at the school including for example the capacity of the proposed gate to function as an emergency exit and if there is sufficient assembly room outside of the school.

167- Increase in hazards due to design features or incompatible uses

"The proposed Charcot Avenue Extension has been designed to comply with current highway design standards" (p. 152)

The Project needs to comply with the City's street design guidelines. It's compliance with these guidelines needs to be analyzed and presented.

168- Response 34.2 – Truck ban

"Truck Ban: The City's ban on select trucks over a certain tonnage is only applicable for residential streets and is not intended for Charcot Avenue."

Statement is inconsistent with San Jose Municipal Code 11.96.010-100[71] which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.

General Plan Transportation Diagram

Photo of truck ban sign on McKay Dr

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"There are no plans to ban trucks on Charcot Avenue as existing businesses along the Charcot corridor require trucks to support their daily operations."

[71] https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.96LAVERO

Business along Charcot Avenue successfully operate under current condition without the overpass. Banning truck traffic on the overpass would therefore not be an impediment to their operations either.

Banning trucks on Charcot Avenue would be important not only from a safety perspective but also from an air pollution perspective:

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[72] https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/

"On that Monday afternoon, Abigail Blumenstein and her mother, the actress Ruthie Ann Miles, had been crossing 9th Street with two friends, Lauren Lew and her 1-year-old son, Joshua. They had a WALK signal. A woman named Dorothy Bruns was waiting in her car across Fifth Avenue, and for whatever reason — the Daily News reported that she said she'd had a seizure — she drove through the red light. She hit the two mothers, the two kids, and another man. In the worst nightmare imaginable, the car continued on for about 350 feet, dragging the stroller, eventually crossing the median lines and crunching into a parked car. The two children died at the scene."

("What New York Should Learn
From the Park Slope Crash That Killed Two Children",
New York Magazine, March 30, 2018)

Visual Impact

General comments

169- Draft

The analysis is marked "Draft" throughout the document. Visualizations used in the analysis differ significantly from the ones used in the presentation at the community meeting[73]. The report misses key elements in the visualization (e.g. HAWK signal – see below).

It seems that similar to the appendices for air quality and noise that the City published an outdated version of the appendix. Therefore, the DEIR needs to be recirculated.

Top: Visualization in the DEIR; Bottom: Visualization used at community meeting

[73] https://mailchi.mp/bkf.com/past_meetings

170- Methodology used for visual assessment

The *"Visual Impact Assessment for **Highway Projects published** by the Federal Highway Administration (FHWA) **in March 1981**"* method (p. 1) is not an appropriate method to determine visual impacts of a City multi-modal street project or to assess the aesthetics of a school playground or the impact of 6+ feet high sound walls on a first grader. The guidelines are also 38 years old.

The use of other guidelines should be considered and explained why the guidelines chosen are the most appropriate.

171- Key Viewpoints

The EIR also needs to consider the following Key Viewpoints (in reference to map on p. 6).

- People (drivers, bicyclists, pedestrians) entering the Charcot Extension from Oakland Road
- Students on the school's playfield (at children's eyelevel)
- Residents/pedestrians on the remaining part (north-south direction) of Silk Wood Lane

172- Super Micro Segment

"No motorists and few or no sensitive viewer groups are present to be affected" (p. 10)

Can you please explain how no motorists can be present in this roadway segment? Are there few or no viewer groups present? Are there no bicyclists or pedestrians that would be considered sensitive viewer groups?

173- Mitigation Measures

The full analysis recommends a number of mitigation measures in addition to MM AES-3.1 and MM AES 3.2. The report needs to discuss why those have not been incorporated.

174- Sun glare

Will the rising sun impact visibility of the crosswalk for drivers going eastbound in the morning?

175- Visual impact of construction

In addition to the impact of the built project, the aesthetic impact of the construction of the project needs to be considered.

Impact on Motorists

176- Charcot Avenue

"In the westernmost Charcot Avenue segment, motorist viewer numbers are low." (p. 10)

Statement seems inconsistent with data from traffic analysis which expects a high number of motorists in this segment.

"Exposure to this very short length of the project (less than one block) is brief and fleeting" (p. 10)

Statement potentially incorrect. Given potentially congestion on this roadway exposure might be less than brief and fleeting.

177- Super Micro Motorists

Super Micro Right-of-Way – looking northeast.

Appendix D, p. 8

"In the Super Micro segment, there are no current motorists and thus no affected baseline viewers." (Appendix D, p. 11)

As described earlier in the analysis *"Super Micro Campus. In the segment immediately east of the freeway, the proposed right-of-way occupies an approximately 100-foot-wide corridor between office park buildings (Super Micro Inc.), including a 360-foot-long paved truck loading area." (Appendix D, p. 5)*

Parking and a truck loading dock indicate that motorists are present in this area. Also the pictures on page 8 show a road on the Super Micro Campus with a stop sign. Another indication for the presence of motorists in the area.

178- Visual impact I-880 Segment

"The principal affected viewers of this portion of the project would be freeway motorists on I-880." (p. 18)

It is much more likely that the principal affected viewers of this portion would be people travelling on the Extension (motorist, bicyclists, pedestrian).

179- Visual impact O'Toole Avenue

"Effects on motorists on O'Toole Avenue would be essentially similar to those of freeway motorists."

Statement not adequately supported by analysis as motorists on slower moving O'Toole Avenue (85th percentile speed: 24mph for section south of Charcot, Appendix K, p. 33) have not been considered in the prior segments of the analysis.

180- Silk Wood Lane Motorist

"In the Silk Wood Lane segment, motorists are currently few, limited mainly to residents on this portion of Silk Wood Lane." (p.11).

Statement is inaccurate. A high portion of motorists on Silk Wood Lane are parents at Orchard School their level of concern with the visual quality of the school is very high.

The description also neglects that with the project the number of motorists would be high.

"Overall, viewer response of motorists on Silk Wood Lane is thus considered to be moderate." Based on explanations above, this assessment is not supported by facts.

Impact on other viewers

181- Impact on office workers

"Three adjoining service buildings of Orchard School are completely screened by existing dense tree planting and have no views facing the right-of-way. Overall viewer response in this segment is thus low". (Appendix D, p. 11)

Statement not true. Buildings (shown in the picture above) are not utility buildings but classrooms. Tree planting is not dense. Right of way visible from inside the class room buildings. Students in these buildings are not office workers as indicated by the heading of this paragraph.

182- Impact on bicyclists and pedestrians

The visual impact of the project on bicyclists or pedestrians on Charcot is not adequately assessed.

183- Impact on playground users

The analysis fails to adequately incorporate its own finding of *"Young children and accompanying adults using the play structures would thus have high exposure and high overall viewer response to the project" (p. 11-12)*

Impact on Silk Wood Lane

184- Impact of glare and light from new traffic signals

The impact of the HAWK signal shining into a residential bedroom on Silk Wood Lane is not identified or assessed. .

The impact to residents by the new traffic light on Charcot and Oakland is also not assessed.

185- Vividness of Silk Wood Lane

The analysis describes that "*the trees provide a vivid element*". The analysis neglects to analyze if the school playground and students or afternoon school activities on the school site that are visible from the road also contribute to the vividness of the road.

186- Degradation of Existing Visual Character of Silk Wood Lane

There is no evidence to support the statement that the construction of noise barriers will lead to a Less Than Significant Impact. Quite to the contrary the installation of noise barriers is in itself a significant, unavoidable impact.

- *"Because of their size and conspicuousness, noise barriers and noise embankments often set their mark on the environment in which they are placed."*[74]
- *"If these barriers are not designed for each individual location, they are likely to remain dull, contrived visual elements and diminish landscape character and landscape quality."*[75]

The noise barriers will also impact passing motorist on Oakland Rd and especially motorist turning into Charcot Avenue from Oakland. The impact has not been evaluated.

187- Soundwall

The project plans to introduce 6+-foot-tall sound walls. Given that the road and the school's playfield are not at grade, is the height of the sound walls measured from road level or school level? If from road level, does the additional increase in height alter the visual impact especially on small children?

What is the basis for the statement *"With these proposed walls, the impacts to residents and school viewers would be moderate, and the potentially substantial visual impact to the tot lot would be reduced to a moderate or moderately low level."* Please provide studies that show that sound walls improve the aesthetics of a residential neighborhood and playground and recreational area.

The San José General Plan seems to disagree with this statement as it prefers setbacks and natural boundaries to sound walls.

Also see:

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[74] UC Davis: "Noise Barrier Design: Danish and Some European Examples", Hans Bendtsen, 2009. Also see: Knauer, H. S., Pedersen, S., Lee, C. S. Y. and Fleming, G. G., FHWA Highway Noise Barrier Design Handbook (Report No. FHWA-EP-00-005), US Department of Transportation, Federal Highway Administration, Washington, DC, February 2000.,

[75] Technical Report 2017-02 State of the art in managing road traffic noise: noise barriers", CERD, 2016

- *"A major consideration in the design of a noise barrier is its visual impact on the surrounding area. A tall barrier near a one-story, single family, detached residential area can have a negative visual effect."*[76]
- *"Very few of these walls can be considered a visually successful complement to the community. Most of the noise barriers along highways are an intrusion into the environment, blending neither with the highway nor with the surrounding neighborhood for which they were built. […]When placed in the landscape and viewed as part of the total environment, a barrier such as this seems out of place, visually oppressive, and overly dominant."*[77]

Visualizations

The visualizations in the analysis differ from the ones used during the community meeting (see above). Comments below can refer to either of them. The visualization do not accurately depict the visual impact of the project. (see below)

188- Missing traffic lights

The visualizations miss pedestrian signals on Silk Wood Lane as well as the full traffic signal on Paragon Drive.

189- Trees

The visualizations show trees on the school side of the noise walls. Since the project will require cutting down the existing trees, is this intended to show trees planted as mitigation measures?

The visualization from the community meeting also shows trees as part of the sidewalk. How would they impact the usable width of the sidewalk for all users (e.g. in wheelchairs, large strollers)?

On the Western side the visualizations shows three large trees in the background (marked with yellow arrows below). Are these existing trees or replacement trees? It seems unlikely that they would be visible from this viewpoint.

[76] https://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/keepdown.pdf
[77] https://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/visql/visql02.cfm

Cumulative Impacts

As mentioned in the report *"The existing and new bicycle facilities associated with this Project would also provide a connection opportunity to the planned pedestrian/bicycle trail along Coyote Creek, which crosses under Charcot Avenue just west of Paragon Drive."* (p. 10).

The cumulative impact of the Charcot Extension Project and the planned trail access to Coyote Creek needs to be considered.

The report also *mentions "Charcot Avenue is identified as a Parkway between U.S. 101 and Coyote Creek immediately west of the project corridor in the NSJDG."* (Appendix D, p. 13). The implementation of this designation will also lead to aesthetic changes that need to be considered as cumulative impact.

"Every day I have a layer of pollutants on my car that we have to dust off. This [project] was set up in 1994. This is a blatant disrespect for human life.

I have to deal with this every day. I have to keep my windows closed, [...] to think to add more pollution [...] it's terrible.

We have a lot of old people in our park. there are a lot of respiratory problems."

(Resident of Casa del Lago mobile home park,
Charcot Community meeting, September 26, 2019)

Air Quality

Existing conditions

190- Existing conditions

All air quality assessments used in the DEIR are based on theoretical models, not actual measurements on site. Sporadic actual measurement on site (see Attachment E – "Air Quality Measurements taken at school site") have shown higher exposure rates than what the theoretical models seem to show especially for PM2.5. It raises the question, whether cumulative effects of the existing environment and project conditions still meet legal limits.

Similar to the traffic and noise analysis it is necessary to scientifically establish current conditions on site. The DEIR fails to discuss why the methodology used was chosen and its justification.

Recent studies have underlined the need for a more granular approach to measuring and evaluating air pollution:

- *"EDF's advanced air-pollution sensors found that NO2 levels within neighborhoods varied by more than 8 times from block to block. Some of the areas with elevated levels were truck routes or abutted businesses that attracted trucks."*[78]

Also see:

- *"Indoor and outdoor air quality at Harriet Tubman Middle School and the design of mitigation measures: Phase I report", Portland State University*[79]
- *South Coast Air Quality Management District (SCAQMD) "Air Quality Issues in School Site Selection Guidance Document"*[80]

191- Sensitive receptors

"Some groups of people are more affected by air pollution than others. The State has identified the following people who are most likely to be affected by air pollution: children under 16, […] These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, and elementary schools." (DEIR, p. 36)

Air pollution near schools has for example been linked to a significant increase in paediatric asthma as well as psychological issues:

- *"For example, the insights EDF gathered from hyperlocal monitoring proved critical to understanding pollution in West Oakland, CA. Sandwiched between two highways and a major container port, this*

[78] "Traffic pollution causes 1 in 5 new cases of kids' asthma in major cities: How data can help" http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/

[79] https://s3.amazonaws.com/arc-wordpress-client-uploads/wweek/wp-content/uploads/2018/07/05143206/Tubman-PSU_HTMSReport_Phase1-Outdoor-Monitoring_Final.pdf

[80] http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/school_guidance.pdf

neighborhood's rate of emergency room visits due to asthma is more than double the state average. Almost 25 percent of the student body in the West Oakland Middle School has asthma or other breathing problems."[81]

- *"A major new study has linked air pollution to increased mental illness in children, even at low levels of pollution. The new research found that relatively small increases in air pollution were associated with a significant increase in treated psychiatric problems. It is the first study to establish the link but is consistent with a growing body of evidence that air pollution can affect mental and cognitive health and that children are particularly vulnerable to poor air quality."*[82]

Also see:

- *"Global, national, and urban burdens of paediatric asthma incidence attributable to ambient NO2 pollution: estimates from global datasets", Pattanun Achakulwisut, PhD, Prof Michael Brauer, ScD, Perry Hystad, PhD, Susan C Anenberg, PhD, April 2019*[83]
- *Kim, J. et al. (2004) "Traffic-related air pollution near busy roads: the East Bay Children's Respiratory Health Study." American Journal of Respiratory and Critical Care Medicine. 170: 520-526*
- *Gauderman, J.W., et al (2004) "The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age." The New England Journal of Medicine. 351, pg. 1057-1067*
- *Wilhelm, Michelle, et al. (2008) "Environmental Public Health Tracking of Childhood Asthma Using California Health Interview Survey, Traffic, and Outdoor Air Pollution Data". Environmental Health Perspectives. 116. 9. 125-1260*
- *Heinzerling A et al. (2016) "Respiratory Health Effects of Ultrafine Particles in Children: A Literature Review" Water, Air, and Soil Pollution.*

The EIR should discuss whether the studies cited raise the question of impacts from pollution at lower levels than the current regulatory framework.

- *"A group of scientist advisers dismissed by the Trump administration has concluded that national limits on fine particles of air pollution aren't strong enough to protect people. […]"Based on full consideration of the overall body of scientific evidence, we unequivocally find that the current standards for fine particulate matter do not protect public health and must be revised," said Chris Frey, a scientist from North Carolina State University who chaired the group. "There is no way for EPA to spin this otherwise." ("Scientists fired by Trump warn particle pollution standards don't protect people", Guardian, October 22, 2019)*[84]

192- Residential receptor at 1942/1954 Oakland Rd

The analysis fails to discuss impact on residential receptors at 1942/1954 Oakland Rd.

193- BAAQMD CARE community

The analysis fails to acknowledge that the project area is identified as a CARE community by BAAQMD.

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[81] http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/

[82] http://bmjopen.bmj.com/content/6/6/e010004.full see also: https://www.theguardian.com/environment/2016/jun/13/air-pollution-linked-to-increased-mental-illness-in-children

[83] https://www.thelancet.com/journals/lanpla/article/PIIS2542-5196(19)30046-4/fulltext

[84] https://www.theguardian.com/us-news/2019/oct/22/scientists-warn-fine-particle-pollution-standards-dont-protect-people

- *"In many cases, air quality conditions in impacted communities result in part from land use and transportation decisions made over many years. BAAQMD believes comprehensive, communitywide strategies will achieve the greatest reductions in emissions of and exposure to TAC and PM2.5. BAAQMD strongly recommends that within these impacted areas local jurisdictions develop and adopt Community Risk Reduction Plans, described in Section 5.4. The goal of the Community Risk Reduction Plan is to encourage local jurisdictions to take a proactive approach to reduce the overall exposure to TAC and PM2.5 emissions and concentrations from new and existing sources. Local plans may also be developed in other areas to address air quality impacts related to land use decisions and ensure sufficient health protection in the community."* [85]

And that the BAAQMD recommends to:

- ***"Consider alternatives such as increasing public transit or improving bicycle or pedestrian travel routes before funding transportation improvements that increase VMT."***[86]

194- Bay Area 2005 Ozone Strategy

The report fails to acknowledge that the Bay Area Air Quality Management District (BAAQMD) adopted the Bay Area 2005 Ozone Strategy on January 4, 2006. The Bay Area 2005 Ozone Strategy updates vehicle miles traveled (VMT) and other assumptions in the 2000 Clean Air Plan (CAP) related to the reduction of ozone in the atmosphere and serves as the current CAP for the Bay Area. This is a significant change to the ambient and regulatory requirements regarding air quality that happened since the approval of the 2005 NSJ FPEIR.

195- General conditions in Bay Area

The EIR fails to acknowledge and include relevant background information for the Bay Area.

- *"The San Francisco Bay Area still exceeds federal standards for ozone and fine particulate matter, which are responsible for approximately 2,500 premature deaths each year" (Mayor Sam Liccardo, 29 October 2019)*[87]

- *"Santa Clara County experiences many exceedances of the PM2.5 standard each winter. This is due to the high population density, wood smoke, industrial and freeway traffic, and poor wintertime air circulation caused by extensive hills to the east and west that block wind flow into the region."*[88]

San José specifically seems to have made little progress in reducing O3 pollution between 2010 and now.[89]

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[85] http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en
[86] http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en
[87] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Liccardo%20-%20Testimony.pdf
[88] http://www.baaqmd.gov/in-your-community/santa-clara-county
[89] https://www.thoracic.org/about/newsroom/press-releases/conference/2019/health-of-the-air2.pdf, p. 76

196- California

The EIR fails to acknowledge and include relevant background information for California. [90]

- *"California has the worst air quality in the nation. That's bad news for everyone – but especially bad for hundreds of thousands of Bay Area residents the American Lung Association says are particularly vulnerable to the pollutants we're spewing into our air. They are our patients, kids and neighbors living with heart or lung disease or asthma. They are those living in impoverished neighborhoods crisscrossed by freeways, or near ports, warehouses and freight hubs where diesel big rigs are commonplace. And when it comes to air pollutants from mobile sources, heavy-duty diesel trucks are a primary culprit."*[91]

Increasing frequency and severity of wildfires in California are likely to worsen background conditions further.[92] Their impact has not been evaluated in the DEIR.[93]

Progress in battling air pollution especially in California has stalled in recent years[94] and air quality especially fine particle matter is expected to get worse.

- *"More than 90 percent of Californians live in areas impacted by unhealthy air and the transportation sector is by far the leading source. So it should come as no surprise that 32 of California's 58 counties received an F grade in American Lung Association 2019 State of the Air report for ozone pollution while another 28 counties received an F for particle pollution. Unfortunately, Alameda, Contra Costa and Santa Clara counties earned Fs for both categories of unhealthy air days."*[95]

- *"Particulate matter concentrations are expected to significantly increase in California due to climate change. According to Cooley et al., vulnerable communities in areas exceeding state standards for PM2.5 levels in 2050 are expected to be concentrated in Southern California (i.e., Los Angeles, Orange, and Imperial counties) and along the San Francisco Bay (i.e., Santa Clara, San Francisco, and Alameda counties)." (Mapping Resilience, p. 30)*[96]

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[90] For more background on the strategy for achieving California's 2030 greenhouse gas target see ARB "California's 2017 Climate Change Scoping Plan"

[91] https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks

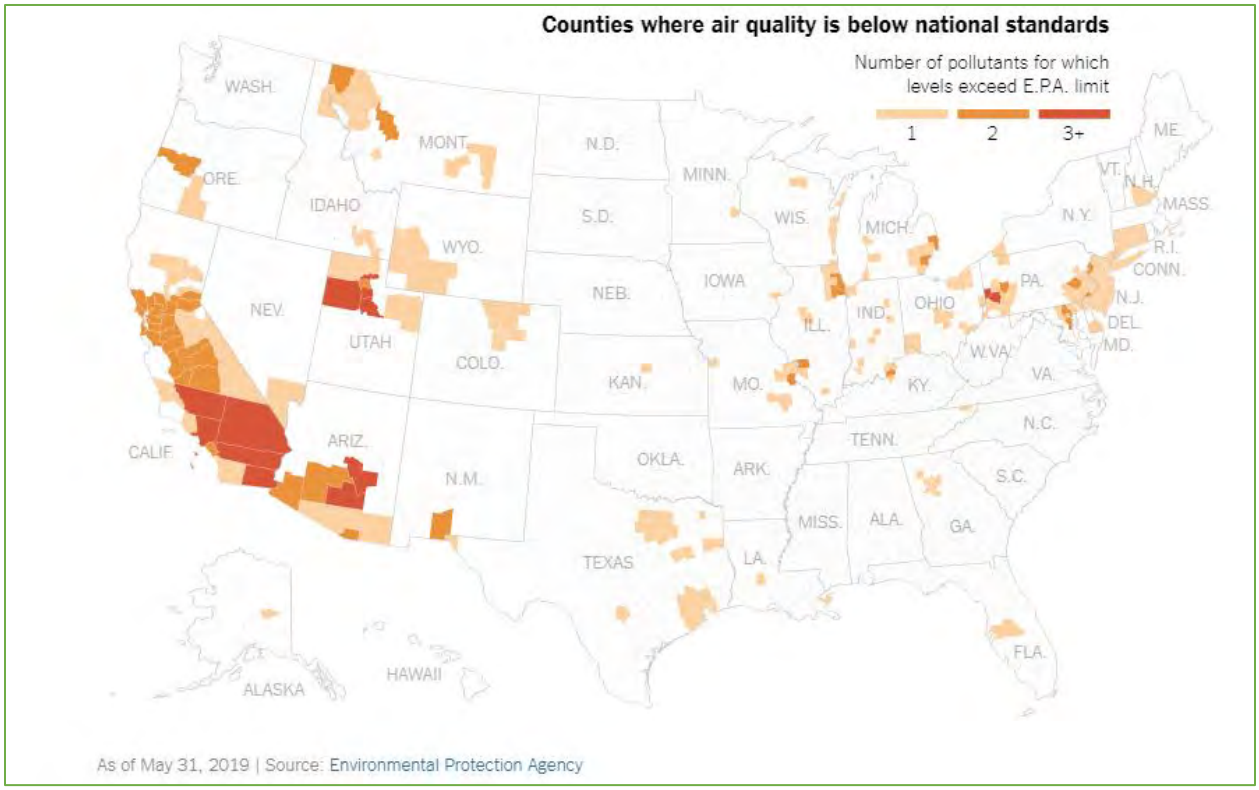
[92] https://www.sfchronicle.com/bayarea/article/Wildfires-warmer-weather-leave-Bay-Area-air-13790007.php

[93] Also see: https://medicalxpress.com/news/2019-05-reductions-pm-decade-health-ozone.html

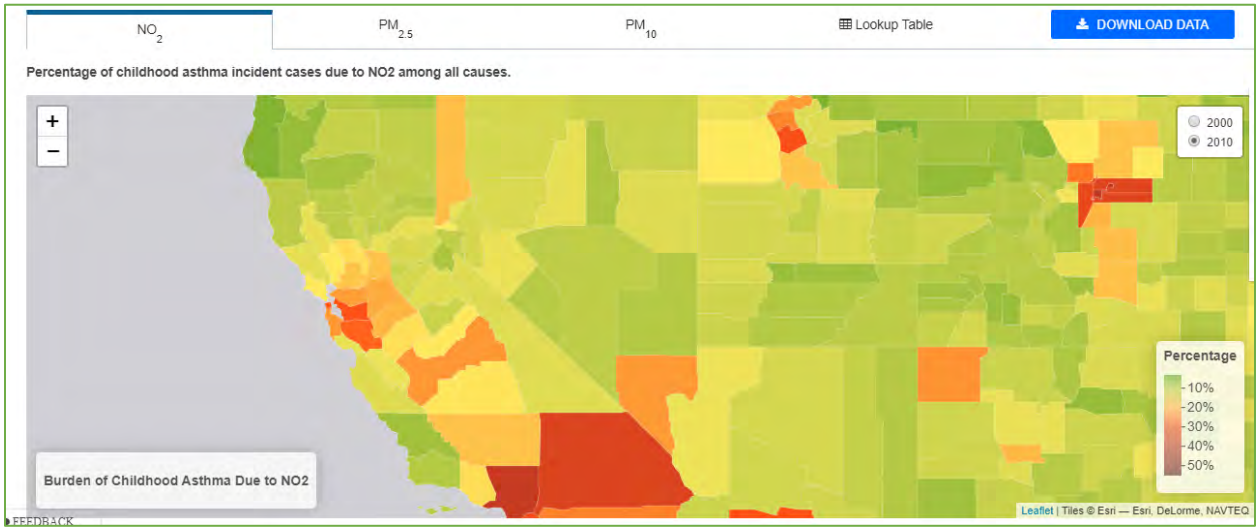
[94] Trends in Excess Morbidity and Mortality Associated with Air Pollution above American Thoracic Society–Recommended Standards, 2008–2017, https://healthoftheair.org/uploads/324/27b2db2b11644bfda45fd50f9e7dfc3c.pdf . See also: https://www.latimes.com/local/lanow/la-me-smog-southern-california-20190701-story.html

[95] https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/ also see: https://www.lung.org/our-initiatives/healthy-air/sota/

[96] https://apen4ej.org/wp-content/uploads/2019/07/APEN-Mapping_Resilience-Report.pdf and Cooley, H., E. Moore, M. Heberger, and L. Allen (Pacific Institute). 2012. Social Vulnerability to Climate Change in California. CEC-500-2012-013. Sacramento, CA: California Energy Commission



97 https://www.nytimes.com/interactive/2019/06/19/climate/us-air-pollution-trump.html



- *Source: Traffic Related Air Pollution and the Burden of Childhood Asthma in the Contiguous United States in 2000 and 2010, Raed Alotaibi , Mathew Bechle , Julian Marshall , Tara Ramani , Joe Zietsman , Mark Nieuwenhuijsen , Haneen Khreis*[98]

97

98 https://carteehdata.org/library/webapp/trap-asthma-usa

197- Air quality has worsened from 2016 to 2018

Study: US air pollution deaths increased by 9,700 a year from 2016 to 2018[99]

- *"New data reveals that damaging air pollution has increased nationally since 2016, reversing a decades-long trend toward cleaner air. An analysis of Environmental Protection Agency data published this week by researchers at Carnegie Mellon University found that fine particulate pollution increased 5.5 percent on average across the country between 2016 and 2018, after decreasing nearly 25 percent over the previous seven years.*
  "After a decade or so of reductions," said Nick Muller, a professor of economics, engineering and public policy at Carnegie Mellon, and one of the study's co-authors, "this increase is a real about-face."
  The research identified recent increases in driving and the burning of natural gas as likely contributors to the uptick in unhealthy air, even as coal use and related pollution have declined. In the West, wildfires contributed to the rise in particulate matter."[100]

The reversal in air quality needs to be considered as a cumulative impact.

Additionally, the DEIR fails to discuss the impact of sources outside of California on existing and cumulative impacts.[101]

198- Spare the air days

The report needs to note and discuss the increasing number of "Spare the Air" alerts[102] (e.g. because of increased pollution from wildfires) and how this relates to the cumulative impact.

Assumptions made for the analysis

199- Input traffic data

Traffic data for the analysis was based on a memorandum provided by Hexagon Transportation Consultants on November 12, 2018. The traffic analysis was not finalized till April 2019 (title page of Appendix K). The analysis should use the finalized traffic data and not preliminary numbers.

For example the value of ADT for Oakland Road used in the Air Quality analysis (41,450 ADT, p. 28) does not match the ADT for the road provided in the Traffic Analysis (p. 36)

Also the percentage of truck traffic needs to be adjusted to be consistent with the traffic analysis.

200- Traffic data

The traffic data for the air quality analysis is in many instances inconsistent with the data from the traffic analysis.

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[99] https://www.vox.com/future-perfect/2019/10/24/20927103/air-pollution-study-deaths-elderly-obama-trump?fbclid=IwAR3_LfD3NITV51IktRJBLg2BXPyiYuUmN3XOfhYGLVTJcodEl0lNIfVruvk
[100] https://www.nytimes.com/interactive/2019/10/24/climate/air-pollution-increase.html
[101] See: https://www.npr.org/sections/thetwo-way/2017/03/03/518323094/rise-in-smog-in-western-u-s-is-blamed-on-asias-air-pollution
[102] http://www.sparetheair.org also see https://www.mercurynews.com/2019/10/30/latest-spare-the-air-ties-the-bay-area-record

Data in air quality analysis inconsistent with data in transportation analysis

No Project	VMT 2025	VHT 2025	Speed 2025	VMT 2040	VHT 2040	Speed 2040
Transportation Analysis	1,821,479	104,144	25.22	2,659,078	185,249	14.35
Air Quality Analysis	4,789,277	209,093	22.90	6,080,580	340,160	17.88
Project	**VMT 2025**	**VHT 2025**	**Speed 2025**	**VMT 2040**	**VHT 2040**	**Speed 2040**
Transportation Analysis	1,823,272	103,460	25.28	2,661,463	183,620	14.49
Air Quality Analysis	4,787,047	205,279	23.32	6,092,019	336,012	18.13

Cars/h	Peak AM 2025	Peak PM 2025	Peak AM 2040	Peak PM 2040	Average speed
Transportation Analysis	1240	1250	1490	1720	TBD*
Air Quality Analysis	776	818	1026	1082	25 mph

201- Traffic data peak hour traffic

The analysis (e.g. p. 113) assumes not only different peak hour traffic volumes than the traffic analysis, the air quality analysis also assumes traffic volumes are identical in both directions at all times, which is likely to be incorrect given regional travel patterns.

202- Assumed speed on Charcot

Speed on Charcot is assumed to be 25 mph. Given the volumes expected on the road and average speeds in the area that are much lower than during peak hours, this value is not properly justified and requires further analysis. The impact of a HAWK signal at the Silk Wood Lane intersection and the merging necessary in case of the 4-lane alternative are not adequately considered.[103]

The analysis assumes identical speeds for both 2- and 4-lane alternative. It seems improbable that the same traffic volume will travel at the same speed regardless of the number of lanes and this requires further explanation. (p. 134)

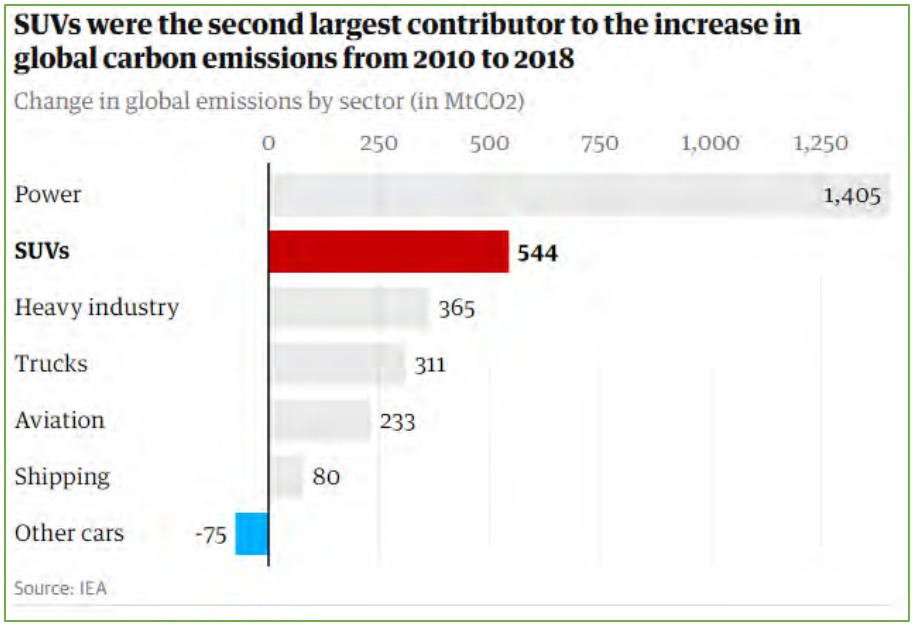
203- SUVs

The air quality fails to incorporate the rising number of SUVs on our streets which have a significantly different air pollution profile than smaller cars.

- *"Growing demand for SUVs was the second largest contributor to the increase in global CO2 emissions from 2010 to 2018, an analysis has found. In that period, SUVs doubled their global market share from 17% to 39% and their annual emissions rose to more than 700 megatonnes of CO2, more than the yearly total emissions of the UK and the Netherlands combined."*[104]

[103] "A recent study found that the concentration of airborne nanoparticles at red traffic lights are as much as 29 times higher than concentrations seen while the car is cruising. One study found that pollution levels inside cars due to congested traffic around intersections are up to 40 percent higher than when traffic is moving." https://blog.aclima.io/how-traffic-affects-your-short-term-pollution-exposure-a3b6bae8b71b

[104] https://www.theguardian.com/environment/ng-interactive/2019/oct/25/suvs-second-biggest-cause-of-emissions-rise-figures-reveal



204- Street orientation

The analysis describes traffic being north- or southbound on Charcot (p. 23) and Charcot as having a northwest/southeast orientation (e.g. p. 113). Yet especially near Oakland Rd the orientation of the road is east-west. This could significantly impact exposure levels on and needs to be analyzed more specifically using the correct road orientation or worst-case scenario. [105]

It is also plainly inconsistent to speak of north/southbound traffic on an east/west connection.

205- "Area-Wide Daily Emission"

The report needs to specify what is meant with *"area wide"* and why that radius was chosen. (Appendix E, p. 18)

206- Impact of I-880

The analysis fails to consider increasing traffic volumes that are expected for I-880 by 2040. Especially since Caltrans has indicated that I-880 might be widened (Appendix C, p. 96 and Appendix B p. 4). The analysis needs to take this into account.

207- Sources of pollution

The DEIR limits itself to modeling permitted sources in the area. It fails to identify other and/or especially non-permitted sources of pollution in the area (e.g. Union Pacific Railroad, industrial use and truck traffic/idling east of Oakland Rd, loading docks). This needs to be corrected and/or supplemented with air quality measurements of current conditions.

Fox Lane will have an ADT of 7,800 in 2040 and should be included in the analysis as well.

[105] See for discussion of particle counts in relation to wind direction: Rundell, K. W., Caviston, R., Hollenbach, A. M., & Murphy, K. (2006). Vehicular air pollution, playgrounds, and youth athletic fields. Inhalation toxicology, 18(8), 541-547.

208- Cumulative Impact / 10 hours

The analysis assumes that children spend up to 10 hours at the school and are therefore exposed to the air pollution only for this timeframe.

The report neglects that the living situation for many of the students at Orchard (the remaining 14 hours a day) also include significant exposure to air pollution (e.g. students living at Casa del Lago next to 880 or mobile home parks on Oakland near 101/880 interchange).

The analysis needs to incorporate air pollution exposure for 24 hours not just 10.

209- Impact of construction and operation

The report fails to adequately present the impact of construction and operation on employees working at the offices of Super Micro and the business along Charcot Avenue west of I-880.

210- CO emissions

"CO impacts, which are expressed in parts-per-million, are described subsequently in this report." (Table 3.3-4, p. 40)

CO impacts are not adequately discussed. As the report states:

"Congested intersections with large traffic volumes have the greatest potential to ***cause high localized concentrations*** *of CO." (p. 40)*

As concentrations of CO are highly localized, an area wide assessment as in the DEIR provided is inadequate. Localized analysis similar to e.g. PM2.5 is necessary.

The analysis states that the legal threshold for operational CO emissions is 9.00 ppm (8-hour average) or 20.0 ppm (1-hour average).[106] Yet, the analysis does not show if the project will meet these thresholds.

This is also required as part of the Consultant Agreement with BKF:

- CO Hot Spot Analysis. Conduct a qualitative Hot Spot CO analysis based on the screening guidance provided by BAAQMD that is based on traffic volume.

211- Attachment 2: Operational Emissions Analysis – CT-Emfac2014 (p. 86)

Length for "Build 2025 – second row" (21400) described as 0.12, which is inconsistent with the length for the other scenarios (0.18).

212- Project length

Worksheet in Attachment 1 (Road Construction Emissions Model) uses a project length of 0.09 miles. Further explanation needs to be provided.

213- Release height

The analysis does not seem to factor in that the project starts to be elevated resulting in a higher release heights west of Silk Wood Lane.

[106] Also see BAAQMD "CEQA Air Quality Guidelines"

214- Questions marks in table

The report needs to explain the question marks in the first table of attachment 1 in the row "Concrete Mixer Trucks".

215- Roll-back of Federal Air Quality Standards

The DEIR fails to adequately consider the impact of the announced roll-back of federal air quality standards. [107]

- *"The proposed roll back of several Clean Air Act regulations and the proposed roll back of the greenhouse gas standard for automobiles will make it hard for communities to maintain their air quality, and even harder for cities with poor air quality to clean up"*[108]

216- Construction emissions calculations

Table 3. Construction Period Emissions *PM10:* ***0.18t*** (Appendix E, p. 16)	"*The Roadway Construction Emissions Model provided total annual PM10 exhaust emissions (assumed to be DPM) from the off-road construction equipment and worker, vendor and hauling trucks used for the proposed road construction (both the bridge and roadwork)* ***of 0.1286 tons*** *(257 pounds) over the construction period.*" (Appendix E, p. 19/20)
Table 3. Construction Period Emissions *PM2.5:* ***0.14t*** (Appendix E, p. 16)	"*Fugitive dust PM2.5 emissions were also computed and included in this analysis.* ***The model predicts emissions of 0.4464 tons (893 pounds) of fugitive PM2.5*** *over the construction period..*" (Appendix E, p. 20)

Please explain the discrepancies.

[107] https://cal.streetsblog.org/2019/06/06/federal-unsafe-rollbacks-would-have-dire-consequences-for-california-air-quality/

[108] https://medicalxpress.com/news/2019-05-reductions-pm-decade-health-ozone.html

Other

217- Air Quality Management District recommends larger bugger zone

- *"A general buffer zone of no less than 500 feet (150 m), and possibly as much as 1,000 feet (300 m), between major roadways and school sites should be considered to protect the health of students and school employees and meet state guidelines on location of mobile source emissions."*[109]

The DEIR should include and discuss this recommendation.

218- Supplemental Analysis: Alternative Designs

Data in Table 10 is partially inconsistent with data in Table 7. This needs to be corrected.

219- Ozone

The analysis should disclose the increase of ozone in the area because of the project and compare it to federal and state standards.

- *"Ozone, which is formed when sunlight reacts with chemicals emitted from cars, is getting worse as we drive more and it gets hotter. […] If you live in a city with high ozone levels for a decade, the results are similar to smoking a pack of cigarettes daily for three decades."*[110]

Also see

- Association Between Long-term Exposure to Ambient Air Pollution and Change in Quantitatively Assessed Emphysema and Lung Function, Meng Wang, PhD; Carrie Pistenmaa Aaron; Jaime Madrigano, ScD (https://jamanetwork.com/journals/jama/fullarticle/2747669?guestAccessKey=cfba7399-ed6b-4ff3-abcd-260039916cd9)

220- Impact to Montague and I-880

In a January 2019 meeting it was indicated that the project would reduce air pollution in the I-880/Montague interchange area (northwest corner of Casa del Lago). Does DEIR support this statement?

221- Cumulative impact

As discussed above because of the inconsistency of the General Plan and the NSJADP with the City's GHG reduction goals the cumulative impact of the project together with the build out of the General Plan and the NSJADP is therefore significant.

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[109] http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/school_guidance.pdf, p. 8
[110] https://www.fastcompany.com/90388917/breathing-dirty-city-air-is-as-bad-for-your-lungs-as-smoking

> “the General Plan alone is not enough
> to meet the State’s [or City’s] carbon commitments,
> let alone align with the decarbonization rates
> implied by the Paris Agreement”
>
> (“Climate Smart San José”)

Greenhouse Gas Emissions

222- Climate Smart San José

Climate Smart San José (p. 77) also includes detailed goals for mode share. The impact of the project on these goals is not discussed and needs to be added.

223- Construction GHG emissions

The construction GHG emissions modelled seem to include only direct GHG emissions at the site, but not for example for the production of materials (e.g. concrete) or relative lifecycle emissions from construction equipment. This needs to be added.

224- Operational GHG emissions

The data used to calculate operation GHG seems inconsistent with data from traffic analysis. This is not acceptable and needs to be corrected.

225- Cumulative impact

As discussed above because of the inconsistency of the General Plan and the NSJADP with the City's GHG reduction goals the cumulative impact of the project together with the build out of the General Plan and the NSJADP is therefore significant and irreparable.

Construction GHG emissions

226- Direct and indirect GHG emissions

The construction GHG emissions modelled seem to include only direct GHG emissions at the site, but not for example for the production of materials (e.g. concrete) or relative lifecycle emissions from construction equipment. This needs to be added.

- *"The U.S. added an average of 31,000 highway lane miles per year over the last decade, Shill reports adding about 109 million metric tons of carbon dioxide to the air annually just from the construction. The social cost of that, using standard formulas, is about $4 billion, he says."*[111]

Operational Greenhouse Gas Emissions

Analysis fails to acknowledge the effect of induced demand as described in the San José TIA:

- *"Shortly after the project becomes operational, induced VMT may occur where road users respond to an initial appreciable reduction in travel time. With lower travel times, the modified facility becomes more attractive to travelers, resulting in four short-run trip-making changes: (1) longer trips; (2) changes in route choice; (3) changes in mode choice; and (4) newly generated trips. Longer trips may occur because the ability to travel a long distance in a shorter time increases the attractiveness of destinations that are further away, increasing trip length and VMT. Changes in route choice may occur immediately when faster travel times on a path attract more drivers to that path from other paths, which can increase or decrease VMT depending on whether it shortens or lengths trips. Changes in mode choice may also occur in the near-term when travelers respond to a reduction of personal motorized vehicle travel time by*

[111] https://usa.streetsblog.org/2019/03/06/heres-how-driving-is-encouraged-and-subsidized-by-law/

shifting toward personal motorized vehicle use from other modes. Newly generated trips may occur when an individual who previously did not have a travel need might have one because of increased speed and decreased travel time. The short-run effect of a project on induced VMT, measured in percent change in total VMT, is evaluated for a project." (TIA, p. 49)

227- Operational Greenhouse Gas Emissions – increased speeds

The analysis fails to adequately consider that impacts on GHG due to increases in speed vary vastly between for example speed improvements at low speeds and improvements at higher speeds. An analysis based solely on average speeds does not adequately capture these effects, making a more detailed analysis necessary.[112]

228- Reduction of congestion

"Decrease [in GHG] is the result of the reductions in congestion" (p. 79)

No data in the DEIR allows for the conclusion that the project would lead to a reduction in congestion. Statement needs to be substantiated. It also inconsistent with research.[113]

- *"Capacity, demand, and vehicle based emissions reduction strategies are compared for several pollutants employing aggregate US congestion and vehicle fleet condition data. We find that congestion mitigation does not inevitably lead to reduced emissions; the net effect of mitigation depends on the balance of induced travel demand and increased vehicle efficiency that in turn depend on the pollutant, congestion level, and fleet composition. In the long run, capacity-based congestion improvements within certain speed intervals can reasonably be expected to increase emissions of CO2e, CO, and NOx through increased vehicle travel volume." (Transportation Research Part D: Transport and Environment, Volume 17, Issue 7, October 2012, Pages 538-547, Transportation Research Part D: Transport and Environment, Congestion and emissions mitigation: A comparison of capacity, demand, and vehicle based strategies, Alexander Y.Bigazzi, Miguel A.Figliozzi)*[114]

- *"[Batterman's] 2011 study, evaluated how much carbon was released by cars under different conditions: rush hour congestion, work zones, and free flow conditions. The "emissions density" is worse in congested rush hour conditions, because a lot of cars are sitting around idling, which is not surprising. But that finding does not support the popular conclusion that widening highways would reduce emissions, Batterman says in his letter. That's because highway widening tends to lead to more driving — a phenomenon known as induced demand. He wrote: For example, an expansion adding four lanes to the existing eight lanes that soon reach capacity would represent a 50-percent increase in volume or [vehicle miles traveled], all things being equal. The change in the VMT would likely to be larger than the changes in the emission factors, and thus would offset any benefits of free flow conditions."*[115]

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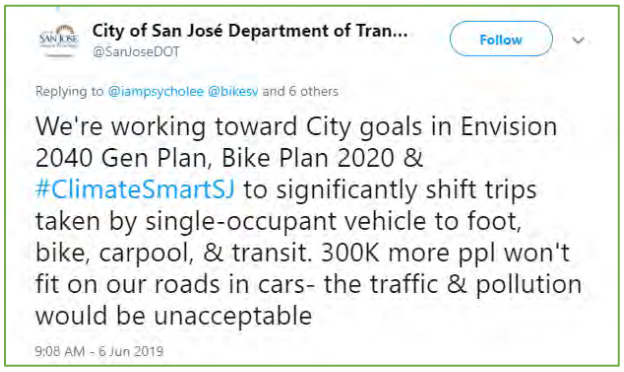
[112] "Vehicle emissions in congestion: Comparison of work zone, rush hour and free-flow conditions" (https://sph.uth.edu/kaizhang/files/2014/02/Zhang-2011-AE.pdf)
[113] http://cityobservatory.org/urban-myth-busting_idling_carbon/
[114] https://www.sciencedirect.com/science/article/pii/S1361920912000727
[115] https://usa.streetsblog.org/2019/06/06/what-happened-when-larry-hogan-tried-to-claim-wider-highways-would-help-the-climate/

229- Mode share

"The Extension includes bicycle and pedestrian improvements, including a new bike/ped connection over I-880, which will facilitate those modes of travel. Trips made by non-motorized modes instead of by motor vehicle have a direct benefit in terms of fewer GHG emissions." (p. 79/80)

The impact of the project on mode share has not been analyzed. Statement needs to be substantiated.

- *"What if we rethought the purpose of our streets. Are they really just meant for cars to get from A to B? Or can we see them as a place to walk and cycle, where children play and neighbours meet? By removing cars from cities, you are not just reducing emissions – there are countless other benefits"*[116]



[116] https://europeansting.com/2018/08/11/what-would-happen-if-we-removed-cars-from-cities/

Noise

230- Vibration Source Levels for Construction Equipment

Since construction occurs as close as 30 feet away from sensitive structures, Table 3.13-7 (p. 118) should be updated to portray data at 30 feet instead of 50 feet.

"A review of the anticipated construction equipment and vibration level data provided in Table 3.13-7 by the acoustical engineers who prepared the project's noise and vibration analysis concluded that vibration levels generated by the proposed activities and equipment would be below the 0.2 in/sec PPV criteria when construction occurs at distances of 30 feet or greater from sensitive structures." (p. 119)

Calculations or supporting evidence for this statement and especially for cumulative impact of simultaneous use of various equipment needs to be provided.

231- California Department of Transportation threshold

The California Department of Transportation considers sound at 50 decibels in the vicinity of schools to be the point at which it will take corrective action for noise generated by freeways. (See Streets and Highway Code sections 216 and 216.1.) This should be noted in the DEIR.

232- Vibration during construction

"Construction will occur only during the daytime hours, reducing the potential for annoyance to residences during evening and night hours of rest and sleep." (p. 119)

The report fails to acknowledge that most construction would occur during school operating hours and business hours of nearby offices. The impact of vibration on these receptors will therefore be significant.

233- Vibration during operation

The DEIR fails to discuss the potential impact of vibrations during operation (heavy trucks passing close to classrooms) as discussed for example in "Mitigation of Highway Traffic-Induced Vibration".[117]

234- Cumulative Increases in Traffic-Related Noise

The table 3.13-8 (p. 121) and subsequently the report fails to acknowledge and further analyzes significant impacts to receivers S2, S3 and S4 as all these receivers will see an increase of 5 dBA DNL or more where the project will contribute 1dBA DNL or more.

235- Interior noise levels

The City's standard for interior noise levels should be applied to this project, specifically at the school.

236- Appendix – Calculations

The calculation input documents provided to the public are - according to a phone conversation with John Hesler, Principal Project Manager for David J. Powers & Associates, Inc. -illegible and he was not sure how useful they are.

Meaningful, transparent records for all calculations need to be provided, especially given the many typos and inconsistencies in other work sheets.

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[117] http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.509.3322&rep=rep1&type=pdf

237- Traffic data

Based on the information provided, it seems as if the noise study was completed only for existing traffic conditions but not 2040 conditions. An analysis for 2040 conditions needs to be done as well.

238- Accuracy of noise levels

"Close to the noise source, the models are accurate to within about plus or minus 1 to 2 dBA." (p. 2).

The margin of error should be included in the presentation of all results affected, especially since a number of results are close to or at "Normally Acceptable Levels" (see e.g. Table 7, S1, S5, ST-3, R2, R4) or other applicable thresholds.

Inaccuracy likely also affects the calculation of existing noise levels. This potential error is not identified in the EIR.

- *"it is important to recognize the correlation between the precision of measurements and the confidence in the impact assessment. Especially in a Detailed Noise Analysis, avoid using less precise methods of measuring existing noise just for the sake of convenience or expediency. The use of less precise methods must be clearly justified."*[118]

239- Regulatory Background - California Collaborative for High Performance School (CHPS)

The report should include information on the California Collaborative for High Performance School (CHPS).[119] The Acronym CHPS (p. 22) should be explained at first use

240- Difference in calculated DNL for ST-3 and S2

Table 5 shows a difference of 10dB under existing conditions between ST-3 and S2 which are in close proximity to each other. This requires further explanation and the calculated value for S1-S5 should be compared to measurements on site.

241- Difference in calculated DNL for S2 and S5

Table 5 shows a difference of 8dB between S2 and S5 which are in close proximity to each other. This requires further explanation and the calculated value for S1-S5 should be compared to measurements on site.

242- Super Micro

The report fails to evaluate the noise impact to the employees at Super Micro.

243- Traffic distribution across lanes

"Traffic was evenly distributed across EB/WB and NB/SB lanes on each side of intersections since turning lane volumes at intersections were not available."

Given the regional commute patterns, an evenly distribution of traffic seems unrealistic. The report needs to be re-evaluated and its analysis based on updated more detailed traffic data.

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[118] "Transit Noise and Vibration Impact Assessment Manual", FTA, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, p. 92

[119] See e.g. http://www.sanjoseca.gov/DocumentCenter/View/86115 "Harker School Project Environmental Noise And Vibration Assessment"

244- 130 days of construction

A construction period of 130 days (p. 28) seems widely unrealistic given that similar projects that were recently build have either taken much longer than this or are anticipated to take much longer. It is also inconsistent with data provided in other parts of the DEIR.

245- Gap in noise barrier

"To be effective, barriers must be constructed with a solid material and without any gaps in the face of the wall or at its base. Openings or gaps between noise barrier materials or the ground substantially decrease the acoustical effectiveness of the barrier."

The report should evaluate how this statement relates to the gap in the barrier created by the access gate to the school site.

246- Noise barrier west of classrooms

It is not clear how or if noise barriers will continue west of the school buildings. Please provide a correct and more detailed map.

R LOCATIONS

247- Impact of construction noise and vibration

The report fails to adequately present the impact of construction noise and vibration on the offices of Supermicro and the business along Charcot Avenue west of I-880.

248- Union Pacific Railroad

The analysis fails to identify the UPPR as a significant source of noise.

249- Residential receptor at 1942/1954 Oakland Rd

The analysis fails to include a residential receptor at 1942/1954 Oakland Rd.

Public Services

250- Increase in public services

The DEIR states that the project will have no impact on public services. It fails to consider that any increase in VMT is correlated with an increase in crashes which will require public services (police, fire, health).

The project will also require general funding for maintenance, potentially impacting other public services by reducing the funding available for them.

251- Crime near noise barriers

*"The City is **not aware of any study that establishes a correlation between roadway construction and crime rates**. In any event, this is a social impact that is not covered under CEQA."*

(Appendix B, Response 3.2)

- *"Another consideration related to the design of barrier overlap sections [similar to the gate to the school site] is the potential for increased crime in the immediate areas surrounding the overlapping sections, particularly where a pedestrian overpass is also located nearby. To address this concern, safety measures, including additional lighting or a modified overlap design to provide more open visibility, may need to be implemented."*

(FHWA Highway Noise Barrier Design Handbook) [120]

The increased need for public services (i.e. police) is an impact that needs to be evaluated under CEQA.

- *"Collective Point 6 is a cooperative of feminist architects, sociologists and urban planners who have been trying to build equality into Barcelona's streets for a decade. Visibility is key, says member Sara Ortiz, but there's more to it than lighting. "In well-lit places where there is no activity, no eyes on the street, people are not going to feel safe anyway," she says. "Eyes on the street" means both activity on the streets in terms of footfall and what's going on in the buildings that line them. "Whether it's commercial [properties] or not," Ortiz says, "there should be transparency." **From inside you can see outside, and vice versa. After all, violence against women often happens behind closed doors. Affluent neighbourhoods can be the worst offenders in this respect, with high walls shielding homes so that the streets feel like a tunnel**." ("What would a city that is safe for women look like?" The Guardian, 13 December 2018)*[121]

The impact of noise walls on safety and walkability in the area needs to be discussed in the DEIR.

252- No road closures

"During the construction phase of the project, no full roadway closures/detours would be needed." (p.128)

[120] https://www.fhwa.dot.gov/ENVIRonment/noise/noise_barriers/design_construction/design/design09.cfm
[121] https://www.theguardian.com/cities/2018/dec/13/what-would-a-city-that-is-safe-for-women-look-like

Can you please expand how the Charcot Extension will be built without a roadway closure of Silk Wood Lane between Oakland Road and the future intersection at Charcot and Silk Wood Lane on the eastern end or of the existing Charcot Ave at the western end?

The statement is also inconsistent with response 20.6 which states that detours might be needed.

Consultant Agreement with BKF also states that consultants are required to:

- *"Lane Closure Report: Consultant will obtain 7 day 24 hour traffic counts from Caltrans. If the counts are not available, perform 7 day 24 hour traffic counts at mainline and for all ramps where closures are required, including local streets."*

This has not been discussed.

253- Impact of noise walls on emergency access

The report needs to evaluate how the noise walls will impact emergency access to both the school and residences on Silk Wood Lane.

254- Cumulative impact

The EIR argues that the Extension is an important part of development in North San Jose which will *"provide for the development of 26,700,000 square feet of industrial uses, 300,000 square feet of commercial uses, and 32,000 residential dwelling units in North San José. […] the Charcot Avenue Extension is identified as one of the infrastructure projects in the NSJADP, its construction will facilitate the planned growth in North San José that is identified above."* (p. 179).

If this development will only happen with the Extension project then this cumulative impact would mean a significant increase in the need of all public services.

This is a significant, unavoidable impact.

255- Impact on school scores

"Based on the analyses contained in this EIR, there is no reason to conclude that the construction of the project would result in a demonstrable degradation of the school's programs and their competitiveness." (Response 20.7)

It needs to be specified which part of the analyses contained in the EIR the statement is based on.

Research has shown that increased air pollution can significantly impact student learning:

- *Victor Lacy, Avraham Ebenstein, and Sefi Roth study the impact of short-term ambient air pollution on Israeli students' test scores and find "a robust negative relationship with test scores" which "suggest[s] that the gain from improving air quality may be underestimated by a narrow focus on health impacts."*[122]

- *Wes Austin, Garth Heutel, and Daniel Kreisman look at the rollout of school buses in Georgia that have had their engines retrofitted to be cleaner and "find that retrofitting districts see significant test score gains in English and smaller gains in math."*[123]

[122] https://www.nber.org/papers/w20648
[123] https://www.nber.org/papers/w25641

Also see

- "Something in the air? Air quality and children's educational outcomes", Economics of Education Review, Volume 56, February 2017, Pages 141-151 https://www.sciencedirect.com/science/article/abs/pii/S0272775716303703
- "Air pollution: A systematic review of its psychological, economic, and social effects", Current Opinion in Psychology, Volume 32, April 2020, Pages 52-65, https://www.sciencedirect.com/science/article/pii/S2352250X19300673
- "Indoor air quality and academic performance", Journal of Environmental Economics and Management, Volume 70, March 2015, Pages 34-50,
- https://www.sciencedirect.com/science/article/abs/pii/S0095069614001016
- Brockmeyer, S., & D'Angiulli, A. (2016). How air pollution alters brain development: the role of neuroinflammation. Translational neuroscience, 7(1), 24-30.
- "Does Pollution Drive Achievement? The Effect of Traffic Pollution on Academic Performance", Jennifer Heissel, Claudia Persico, David Simon, NBER Working Paper No. 25489, Issued in January 2019, https://www.nber.org/papers/w25489
- Air Pollution Exposure Harms Cognitive Performance, Study Finds, https://www.npr.org/2018/08/27/642321572/scientists-link-air-pollution-exposure-to-cognitive-decline
- Air pollution and detrimental effects on children's brain. The need for a multidisciplinary approach to the issue complexity and challenges; Lilian Calderón-Garcidueñas, Ricardo Torres-Jardón, Randy J. Kulesza, Su-Bin Park and Amedeo D'Angiulli, https://www.frontiersin.org/articles/10.3389/fnhum.2014.00613/full
- The role of neuroinflammation in developmental neurotoxicity, tackling complexity in children's exposures and outcomes, Advances in Neurotoxicology, Volume 3, 2019, Pages 223-257 https://www.sciencedirect.com/science/article/pii/S2468748018300274?via%3Dihub
- Prenatal and Childhood Traffic-Related Pollution Exposure and Childhood Cognition in the Project Viva Cohort (Massachusetts, USA), Environ Health Perspect. 2015 Oct; 123(10): 1072–1078, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4590752/
- The impact of exposure to air pollution on cognitive performance, Xin Zhang, Xi Chen, and Xiaobo Zhang, https://www.pnas.org/content/115/37/9193
- Sunyer, J. et al. (2015) "Association between Traffic-Related Air Pollution in Schools and Cognitive Development in Primary School Children: A Prospective Cohort Study."
- Pastor et al. (2004) Reading, writing and toxics: children's health, academic performance, and environmental justice in Los Angeles
- Byoung-Suk Kweon, Paul Mohai, Sangyun Lee, and Amy M Sametshaw. 2016. "Proximity of public schools to major highways and industrial facilities, and students' school performance and health hazards. "Environment and Planning B: Urban Analytics and City Science Vol 45, Issue 2, pp. 312 – 329
- "Air Pollution Around Schools Is Linked To Poorer Student Health And Academic Performance", Paul Mohai, Byoung-Suk Kweon, Sangyun Lee, and Kerry Ard https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2011.0077
- Air pollution rots our brains. Is that why we don't do anything about it?, James Bridle, https://www.theguardian.com/commentisfree/2018/sep/24/air-pollution-cognitive-improvement-environment

Recreation

256- Regulatory framework

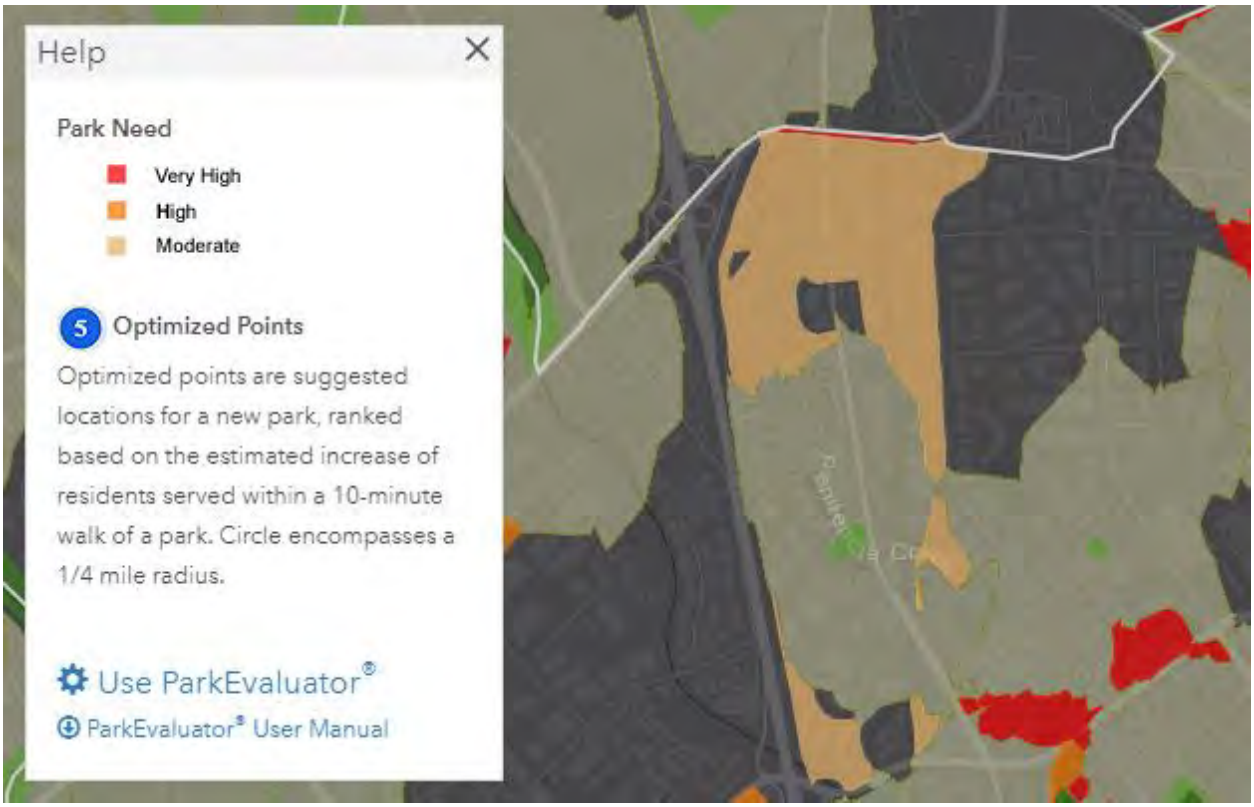
Staff has indicated that the project will apply for federal funding. (VTA Board of Directors Meeting April 4th, 2019). If so compliance with NEPA and especially section 4(f) will be necessary. This needs to be considered and acknowledged in the EIR.

257- Impact of Construction

The DEIR fails to describe the impact on the recreational areas at Orchard School during construction both because of easements needed for construction as well as limitations in use due to construction activities.

258- Existing condition

The DEIR should discuss existing conditions in neighborhood in terms of access to parks relative to needs.



Source: ParkServe ParkEvaluator[124]

259- Cumulative Impact

Cut-through traffic from and to the Extension along McKay might lead to increased traffic volumes next Gran Paradiso Park which in turn could limit activities at this park. This impact needs to be analyzed.

[124] See e.g. https://parkserve.tpl.org/mapping/index.html?CityID=0668000

Cultural Resources

260- Sensitivity of the location

"The entire project alignment has a high to highest potential for buried prehistoric archaeological deposits, with the highest being at the eastern and western ends of the project alignment." (p. 58)

*"An Extended Phase 1 included excavation of eight exploratory trenches and six exploratory cores at 14 different locations within the project alignment. The subsurface investigation identified a cultural feature at a depth of approximately 10-12 feet below ground surface in one of the trenches. The age, nature, and depth of materials found in this feature s**uggests that a potentially important prehistoric archaeological site is buried in the general vicinity of the trenching location** where this feature was identified."(DEIR, p. 58)*

Given the stated highest potential for an important prehistoric site, further studies should be undertaken to fully assess the potential impact.

Further discussion is needed to evaluate the impact of construction on the important prehistoric site, the value of further examining the site before construction, the impact of vibrations from construction and operation of the roadway.

Hydrology and Water Quality

261- Bioretention area

"These bioretention areas would be located throughout the project as landscape strips along the back of curb, which collect surface runoff directly from sidewalk and roadway"(DEIR, p. 94)

Please explain how bioretention area located next to the sidewalk along the back of the curb can collect surface runoff from the roadway. Given the raised profile of these areas, it requires further explanation how water can flow up the curb to the bioretention area.

262- Groundwater

There is insufficient discussion of how the groundwater level at 5 feet impacts the project.

Utilities and Service Systems

263- Construction impact/Solid waste

The report fails to adequately describe the expected amount of waste resulting from construction activities.

V. Inconsistency with City plans

The project is inconsistent with a number of General Plan policies and other City policies.

Fiscally strong City

- *"MAJOR STRATEGY #8: FISCALLY STRONG CITY*
  The General Plan establishes a land use planning framework that promotes fiscal balance of revenue and costs to allow the City to deliver high-quality municipal services. The Fiscally Strong City Major Strategy was created in part to counteract the negative fiscal consequences of past land use patterns.

- *Land Use and Fiscal Health*

- *Past land use patterns have resulted in a predominance of low-density, single-family residential uses (43 percent of the City's land area) compared to only approximately 15 percent of job-generating employment land. The remaining land is higher density residential, public, or other uses. Low-density sprawl results in a disproportionate cost to the City due to high capital investments and ongoing operations and maintenance for infrastructure, serving less people and businesses than the City otherwise could in a higher-density built environment."*

- *"The Circulation Element of the Envision San José 2040 General Plan includes a set of balanced, long-range, multi-modal transportation goals and policies that provide for a transportation network that is safe, efficient and sustainable (minimizes environmental, **financial**, and neighborhood impacts)."*

The EIR does not assess the financial impact of the project or its alternatives. This omission needs to be corrected.

- *"New roads encourage environmentally destructive transportation and land use; they're also a bad deal that has led the country into a road maintenance crisis. Existing road miles outnumber new ones 99 to 1, but states spend more money making those incremental additions than taking care of the rest."*[125]

264- Maintenance Costs

According to the most recently adopted City budget San José does not have sufficient funds to bring its street pavement into overall "Good" condition (PCI 70). [126]

Adding an additional road and bridge structure to the system will only increase maintenance costs, potentially impact the General Fund and make delivery of other public services more difficult.[127] This impact needs to be discussed and disclosed.

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[125] https://slate.com/business/2019/02/portland-oregon-is-expanding-a-highway-says-it-will-be-good-for-the-environment.html

[126] "San José's street system consists of 2,434 miles of pavement and is rated overall in "Fair" condition with a Pavement Condition Index (PCI) rating of 66 on a scale of 0-100, with 100 being a new street. The City would need to invest $102 million annually for 10 years to improve the City's streets into overall "Good" condition (PCI 70) and significantly reduce the $539.1 million backlog of deferred pavement maintenance. With average ten-year funding levels estimated at approximately $87.2 million per year, the City falls short of the total amount of needed funding by $14.8 million annually." http://www.sanjoseca.gov/DocumentCenter/View/86326, V-776

[127] http://lgc.org/wordpress/docs/events/first_thursday_dinners/ftd_2013_Protecting_Transportation-june.pdf

San José Climate Smart

265- Consistency of General Plan and NSJADP with San José Climate Smart

"Further, the proposed roadway extension is included in the adopted Envision San José 2040 General Plan roadway network and the planned roadway network for the North San José Area Development Policy, both of which are consistent with the City's GHG Reduction Strategy." (p. 80)

Statement is inconsistent with staff memo for City of San José Transportation and Environment Committee October 7, 2019:

- *"the climate implications of building out the General Plan and finds that the General Plan alone is not enough to meet the [City's or] State's carbon commitments, let alone align with the decarbonization rates implied by the Paris Agreement"*[128]

And with staff memo:

- *"Mobility accounts for 54% of GHG emissions in San Jose today. The City supports the Paris Agreement and is developing an Environmental Sustainability Plan that establishes a technically robust "pathway to Paris" that aligns with the Agreement's 2 degrees Celsius goal. Implementing the General Plan is a necessary but insufficient part of that pathway. To realize our GHG-reduction goals, the City must use a metric like VMT that supports smart land use and transportation choices and reduce the need to travel by car."*[129]

California in general is not on track to meet its climate goals:

- *"While positive gains have been made to improve the alignment of transportation, land use, and housing policies with state goals, the data suggest that more and accelerated action is critical for public health, equity, economic, and climate success. […] California will not achieve the necessary greenhouse gas emissions reductions to meet mandates for 2030 and beyond without significant changes to how communities and transportation systems are planned, funded, and built." (California Air Resources Board, California's Sustainable Communities and Climate Protection Act, Progress Report November 2018)*[130]

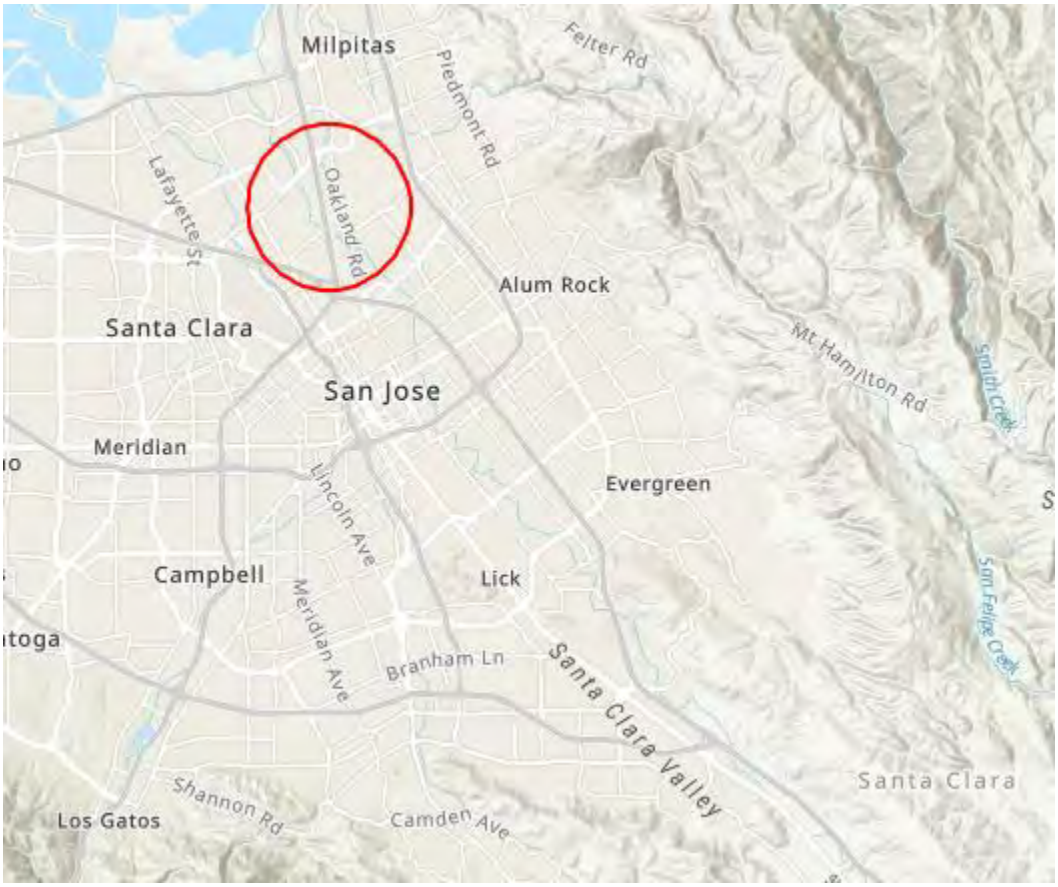
266- Traffic analysis data suggests significant increase in VMT

DEIR seems to indicate that VMT in San José will actually increase significantly by 2040 as the project area alone will see an increase of 1.4 million VMT per day.

	2015	2025	2040
Daily VMT in study area[131]	1,263,080	1,821,479	2,659,078
Increase vs. 2015		+44%	+111%

[128] https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96
[129] http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2795&meta_id=667835
[130] https://ww2.arb.ca.gov/resources/documents/tracking-progress also see https://cal.streetsblog.org/2018/11/26/report-california-efforts-to-reduce-transportation-emissions-are-not-working/
[131] Appendix K – Transportation Analysis, p16

Given an increase of this magnitude – roughly 11% of total City VMT[132] – in this relative small area of San José (see map) raises questions how a reduction of 43% by 2040 for the City as whole can be achieved.



[132] City wide VMT is estimated to be 12.5 million per day (Source: SJ DOT, October 2019)

San José Bike Plan 2020

The DEIR should note that the Bike Plan 2020 designates the Charcot/880 overcrossing as a Bike-/Pedestrian Only-Overcrossing and that the proposed project is therefore inconsistent with the Bike Plan 2020, and a significant impact.

Complete Streets Design Guidelines

The DEIR fails to acknowledge the City's Complete Streets Design Guidelines and the compliance or non-compliance of the project with this plan.

Vision Zero

The DEIR fails to acknowledge the City's Vision Zero plan and the compliance or non-compliance of the project and alternatives with this plan.

- *"Vision Zero Principle 2: Human life and safety takes priority over mobility"*[133]

[133] Vision Zero San Jose http://www.sanjoseca.gov/DocumentCenter/View/74828

San José Transportation Analysis Policy 5-1

The DEIR (p. 149) does not accurately interpret San José Transportation Analysis policy 5-1, the transportation analysis does not meet the standards of policy 5-1 and the construction of the project is therefore not consistent with this policy.

The analysis determines:

"Per San Jose Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis."

This determination is omitting key parts of the policy and misreading the parts it applies.

The policy exception seemingly applied by the analysis is the following:

- *"Through Lanes: Addition of roadway capacity on local or collector streets provided the project substantially improves conditions for pedestrians, cyclists, and/or transit" (p. 7).*

Yet, the policy speaks of roadway capacity ON [meaning existing] streets. As the analysis itself state, the project will provide a new connection, not add on to an existing (also see discussion of Alternative B – widening of Montague or Brokaw). Considering the building of a new connection as adding capacity on a local or collector street is false interpretation of the policy.

Further the City policy itself states:

- *"However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree. […]Therefore, projects that will likely lead to additional vehicle travel should not be presumed to have less-than-significant impacts." (Transportation Impact Analysis Handbook).*

In conclusion, the project needs to include a complete VMT analysis under CEQA based on City guidelines and should not be screened from a detailed CEQA transportation analysis.

Public Outreach Policy For Pending Land Use And Development Proposal

267- Notice of Preparation and Scoping

The Project seems to be in violation of the City's "Public Outreach Policy For Pending Land Use And Development Proposals"[134]

- This is a project of significant community interest and yet
    - Notification radius inadequate
    - No On-site notice

The notification radius for example was smaller than the notification radius for when the adjacent residential development was approved (Permit GP03-04-01) providing further evidence that the notification radius was too limited. Please provide a list of owners notified to verify.

268- Community meeting:

"An important aspect of staff's role at community meetings is to understand and record public comment so that staff can transmit community input to the decision-makers" (p. 3).

Staff did not record public comment at the community meetings in 2018 and indicated that they won't record verbal public comments at the September 2019 meeting either.

In contrast, comments at the community meeting organized by Orchard PTA on September 26, 2019 were summarized live by Orchard PTA and a full record of comments is available as the community meeting was recorded on tape. Record of the meeting has been submitted to the City as part of the commenting process to the DEIR. A summary of comments made can be found in Attachment D – "Notes from September 26, 2019 community meeting at Orchard School".

269- Location of the Community meeting

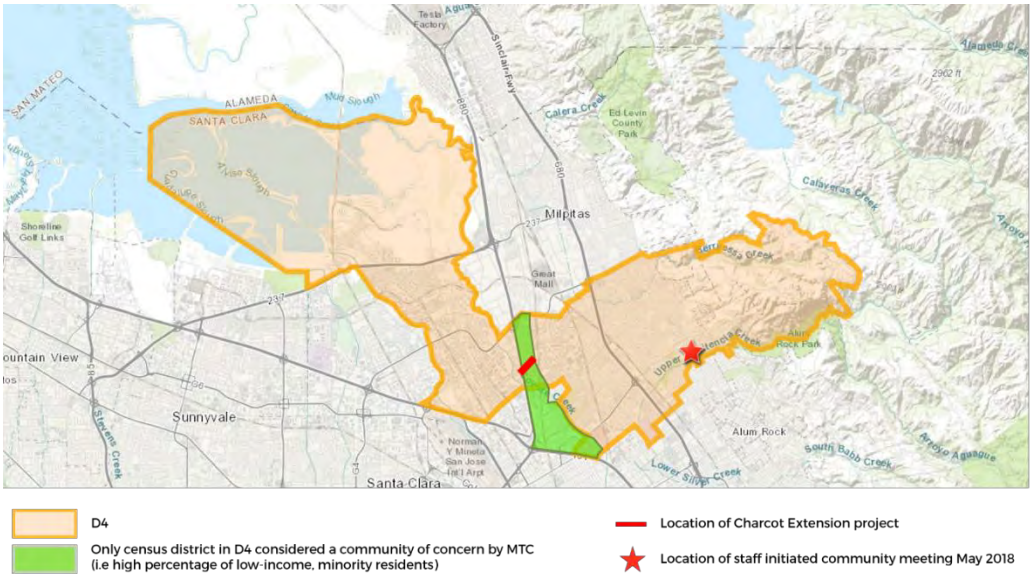
The EIR should also note that the City held a community meeting on the project in May 2017. While Orchard school was deemed an appropriate meeting place for the May 2017 meeting, staff initiated public meetings in 2018 and 2019 were at the Berryessa Library Branch – 25 minute away.

According to the EIR, *"The nearest branch library is the Joyce Ellington Library at 491 East Empire Street, which is located approximately one mile south of the project alignment."*

The EIR has been made available at the Educational Park Branch Library location which is also closer to the project site than the Noble Branch library where the community was held. This indicates that the location chosen for the community meeting was inadequate.

The location of the community meeting at the Noble Branch library is not a location that allowed the majority of the directly impacted community to adequately be informed about the project.

[134] https://www.sanjoseca.gov/DocumentCenter/View/3892



270- Inadequate responses to community concerns in Appendix B

Many community members expressed concerns about the project in written comments. The responses to these comments are often inadequate (see Attachment C – "Inadequate responses to NOP/scoping comments"). Responses often stated that comments are just noted for the record since they don't raise any environmental issues. Closer evaluation of the original comments shows that the comments did raise environmental issues, although not in "official EIR/planning" terminology. The City should respond to all comments equally, regardless of vocabulary used.

271- Sensitivity of reports

Why is the information contained in the following reports considered sensitive and what qualifications are necessary to view the report?

- Cultural Resources Report
- Tribal Cultural Resource Report
- Paleontological Report

272- Decision for EIR

Please describe when and by whom the determination to work on an EIR was made. Numerous statements indicate that substantial efforts for the EIR seem to have been made before a Notice of Preparation was issued. For example, a number of sources were last accessed before the NOP notice was circulated. One source was last accessed in July 2016. Two years before the NOP for the EIR was published.

273- Subcontractor used

The noise analysis was prepared by Illingworth & Rodkin, Inc. The subcontractor is not identified in the BKF consultant agreement (see below). Please provide documentation including the written approval by the Director on when the subcontractor was added to the agreement.

SECTION 7. USE OF SUBCONSULTANTS

7.1 **Authority to Use:** Whichever of the following is marked applies to this Agreement:

☐ The Consultant can *not* use any subconsultants without the Director's prior written approval.

☒ The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

	Subconsultant's Name	Area of Work
1.	David J. Powers & Associates, Inc.	Environmental Engineering
2.	Hexagon Transportation Consultants	Traffic Engineering
3.	Apex Strategies	Community Outreach
4.	Biggs Cardosa Associates, Inc.	Structural Engineering
5.	Parikh Consultants, Inc.	Geotechnical Engineering
6.	Alliance Engineering Consultants, Inc.	Electrical Engineering
7.	Gates + Associates	Landscape Architecture

Other approved EIRs

"Since being added to the General Plan in 1994, all traffic analyses for projects in the greater North San Jose area and environs have included the Charcot Avenue Extension as part of the planned roadway network. Examples include the 2004 EIR for the condos located on the northside of Silk Wood Lane, the 2015 EIR for the Super Micro Project, the 2007 EIR for the San Jose Flea Market Project, the 2018 EIR for the BART Project, and various revisions to the North San Jose Development Area." (Appendix B, Response 34.55)

Some of the EIRs mentioned do not identify Charcot as a transportation improvement included in their EIR. The statement therefore seems untrue. Furthermore, data from the EIRs were Charcot was included is inconsistent with data in this DEIR especially in regards to traffic data and projections.

The City has failed to adequately incorporate the Charcot Extension in its long-term traffic planning.

274- Milpitas Transit Area Specific Plan

The 2007 DEIR for the Milpitas Transit Area Specific Plan[135] had to undertake a detailed traffic study of the area between 237 and Brokaw Road. The DEIR failed to include the Charcot Extension as a future roadway in the analysis.

Since the Charcot Avenue Extension is an "important and established part" of the NSJADP, the San José General Plan, the NSJ Deficiency Plan, it is surprising that the City of San José in its comment to the DEIR[136] did not mention this oversight. Could you please elaborate, why the City of San José did not feel it to be necessary for the Project to be included in the Milpitas Transit Area Specific Plan EIR and why the City did not mention it in the official comment to Milpitas? Are there other EIRs were the City failed to adequately notify applicants of this future roadway?

275- Orchard School EIR

"Prior to that decision, the City advised the Board against building the school at this location due to its proximity to existing and planned roadways (Oakland Road and Charcot Avenue) and industrial businesses."

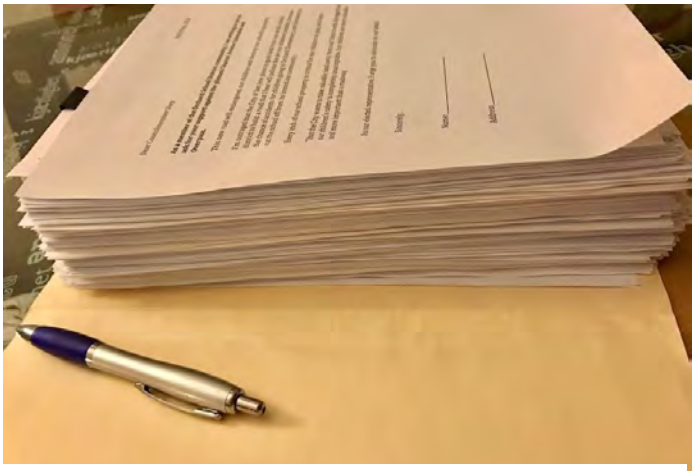
Email Meenaxi Ravel: *"The statement in Appendix B of the EIR is based on conversations with former staff members of the City's Planning Department and City Attorney's Office.* ***The staff expressed to the District staff in phone calls concern with constructing an elementary school in an industrial area and adjacent to major planned roadways (Oakland Road and Charcot Avenue)****, and that the District was subject to the City's General Plan land use designation and zoning designation, pursuant to state law, and the District Board needed to go through an override process to locate the school, despite the City's land use controls applicable to the site. […]."*

Regardless of staff expressing certain opinions to unidentified school staff, there is **no indication** that the SJ Planning Commission - who under Public Resource Code Section 21151.2 seems to be the appropriate decision making body for such concerns - indicated those concerns to the school district or **disapproved of the school site selection during the environmental review for the school site**.

[135] http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_draft.pdf
[136] http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_final.pdf

General planning process

"The City of San José updates its general plan on a regular basis, including comprehensive updates as needed to ensure that the plan reflects the latest vision of the community as well as economic and demographic trends." (DEIR, p. 3)



Picture of the over 600 letters collected in 14 days against the project (first page blank to protect privacy)

Given that the City is currently in the process of its regular general plan update, given the overwhelming opposition in the community that shows that this project does not reflect the latest vision of the community, and the general generational change under way,[137] the project should not move forward till at least after the general plan update. [138]

It should also be noted that there is now a statewide majority to update outdated plans:

- *"A strong majority of Californians (74%, 68% likely voters) also express support for encouraging local governments to change land use and transportation planning so that people can drive less."*[139]

276- Original planning for the Charcot Avenue Extension

"The City has planned the Charcot Avenue Extension for over 25 years."(p. vi)

"The Extension was first identified as an infrastructure improvement project needed to serve the planned growth in the North San José area in the San José Focus on the Future 2020 General Plan, which was approved in 1994." (p.3)[140]

Other infrastructure improvements identified at that time[141] have either never been finished (expanding Tasman Drive to 6 lanes across Coyote Creek) or are currently re-evaluated (Tasman Complete Corridor Study).

Additionally, other infrastructure improvements planned to accommodate growth and planned even before 1994 have since been deemed not feasible anymore.

- *"These included pre-1975 General Plan facilities such as State Route 87 extended north to State Route 237, the Commercial Street/Sierra Road Connection over Coyote Creek, etc. These improvements are no longer feasible due to developed land uses along the routes and will cause significant environmental impact. Based on this review, City staff concluded that no other viable, alternatives are available without significantly impacting land-use in the current General Plan designation." (1994 NSJ deficiency plan)*

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[137] https://usa.streetsblog.org/2018/11/13/millennials-unhappily-stuck-in-their-parents-transportation-system/

[138] For a discussion of a similar problematic also see: "The Inertia of Lines on Paper" https://www.strongtowns.org/journal/2018/10/8/the-inertia-of-lines-on-paper

[139] https://www.ppic.org/blog/californians-favor-stronger-efforts-to-reduce-greenhouse-gas-emissions/

[140] As a point of reference: The median price for a single family home in Santa Clara County was $257,520 at that time (September 1994).

[141] See https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/0136cf2d-6e3e-43d3-8e2a-b2b00635b9d4/20170322_PublicMeetingPresentation.pdf, p. 3)

It should also be noted that between 1994 and today, plans for Charcot itself have changed (e.g. reduction from four lanes to two lanes, Complete Streets Design).[142]

277- Orchard School opposition to General Plan 2020

The Charcot Avenue Extension was first identified as an infrastructure improvement project needed to serve the planned growth in the North San José area in the San José "Focus on the Future" 2020 General Plan, which was approved in 1994.

Further it should be noted that Orchard School District in a consortium with other schools urged and appealed to the City to not approve the General Plan 2020 and the EIR for it without further analysis of its impact schools such as Orchard (see Attachment I – "School opposition San José General Plan 2020"). The City declined the appeal and moved forward with the General Plan against the recommendation from the schools.

[142] See for example Response 34.56, Appendix B

"Classmates and teachers of Angel Garcia, the 6-year-old kindergartner who was struck by a car and killed along with his mother, marched about a mile from their school to the crash site Thursday to mourn them[...].

The children sang, "We love you, Angel, I'm going to let it shine," to the tune of "This Little Light of Mine" and placed candles at 26th Avenue and Foothill Boulevard, while about 200 neighbors, teachers and parents watched, many with tears in their eyes.

Garcia, his mother Alma Vasquez, 30, and Garcia's 20-year-old uncle were crossing the street at 26th Avenue and Foothill Boulevard a little before sunset on Saturday when they were struck in a hit-and-run."

("Classmates of boy killed in hit-and-run call on Oakland for safer street", East Bay Times, April 18, 2019)

General Plan Policies CD-1.24, CD-2.1, CD-4/11, CD-5.1, CD-5.3, CD-10.2, EC-1.1, EC-1.2, EC-6.5, EC-6.7, ES-3.9, MS-21.4, MS-21.5, TR-1.1, TR,-1.2, TR-1.3, TR-1.5, TR-1.9, TR-2.1, TR-2.3, TR-2.6, TR-2.10, TR-2.22

278- General Plan Policy CD-1.24

- *"Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest."*

The compliance of the project with this policy needs to be discussed in more detail.

279- General Plan Policy CD-2.1

- *"Create a comfortable and safe pedestrian environment by implementing wider sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles."*

The project does not implement wider sidewalks (10 feet is minimum according to SJ Complete Street Design Guidelines), shade structures, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles.

280- General Plan Policy CD-4.11

- *"Accomplish sound attenuation for development along City streets through the use of setbacks and building design rather than sound attenuation walls. When sound attenuation walls are located adjacent to expressways or freeways, or railroad lines, landscaping, public art, and/or an aesthetically pleasing and visually interesting design should be used to minimize visual impacts."*

Noise walls along City streets are to be avoided according to General Plan policy. They should therefore be considered a significant impact.

281- General Plan policy CD-5.1

- *"Design areas to promote pedestrian and bicycle movements, to facilitate interaction between community members, and to strengthen the sense of community."*

The impact of the project on this policy and especially of the noise walls is not adequately discussed.

282- General Plan Policy CD-5.3

- *"Promote crime prevention through site and building designs that facilitate surveillance of communities by putting "eyes on the street." Design sites and buildings to promote visual and physical access to parks and open space areas."*

The impact of the proposed sound walls has not been evaluated under this General Plan Policy. They represent a significant, unavoidable impact.

283- General Plan Policy CD-10.2

- *"Require that new public and private development adjacent to Gateways, freeways […] and Grand Boulevards consists of high-quality architecture, use high-quality materials, and contribute to a positive image of San José."*

Impact of noise walls needs to be considered under this policy. Given that sound walls have not been designed, impact cannot be accurately assessed. Also the architectural quality of the overpass in general should be evaluated as well.

284- General Plan Policy EC-1.1

- *"Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review"*

In accordance to San Jose General Plan policy EC-1.1, The report needs to acknowledge and incorporate California Streets and Highway Code sections 216 and 216.1. as relevant regulatory background.

California Streets and Highway Code sections 216 and 216.1. states that sound at 50 decibels in the vicinity of schools to be the point at which corrective action needs to be taken.

285- General Plan Policy EC-1.2

- *"The City considers significant noise impacts to occur if a project would: Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable."*

Table 3.13-6 shows increases of 11 and 6 dBA for receivers S2 and S3. The report subsequently fails to identify and discuss these significant impacts.

"While noise levels outside the Orchard School primary classrooms (S2 and S3) would be exposed to increases in traffic noise levels that are greater than five dBA DNL, the classrooms have been constructed with double-paned windows, insulation, and forced-air mechanical ventilation, therefore interior noise levels would still be maintained at 45 dBA DNL and the impact at this location would be less than significant. (Less Than Significant Impact)" (p. 116)

As stated in General Plan policy EC-1.2, an increase by five dBA DNL needs to be considered significant even when noise levels remain "Normally Acceptable".

The report further fails to analyze of mitigation measures for these noise receptors.

286- General Plan Policy EC-6.5

- *"The City shall designate transportation routes to and from hazardous waste facilities as part of the permitting process in order to minimize adverse impacts on surrounding land uses and to minimize travel distances along residential and other non-industrial frontages."*

The transportation of hazardous materials next to Orchard school and the residential area along Silk Wood Lane also conflicts with the City's General Plan:

287- General Plan Policy EC-6.7

- *"Do not approve land uses and development that use hazardous materials that could impact existing residences, schools, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses."*

Since the project is likely to increase the number of trucks passing the school while also bringing them into closer proximity to the school, the impact should be considered significant.

288- General Plan Policy ES-3.9

- *"Implement urban design techniques that promote public and property safety in new development through safe, durable construction and* ***publicly visible and accessible spaces****."*

The impact of the proposed soundwalls has not been evaluated under this General Plan Policy. They represent a Significant, Unavoidable Impact.

289- General Plan Policy MS-21.4

- *"Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it."*

The reports need to disclose how all feasible alternatives would conform to this policy and what reasonable measures haven been evaluated to preserve mature trees.

290- General Plan Policy MS-21.5

- *"As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy."*

The reports need to disclose how all feasible alternatives would conform to this policy.

291- General Plan Policy MS-21.5

- *"As a condition of new development, require the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines."*

The reports need to disclose how all feasible alternatives would conform to this policy and where the replacement trees are likely to be planted.

292- General Plan Policy TR-1.1

- *"Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT)."*

The report should not that the project is in violation of this goals as it increases VMT (Appendix K, p. 16).

293- General Plan Policy TR-1.2

- *"Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects"*

Or, as stated in the DEIR:

- *"Policy 1.2 of The Envision San Jose 2040 General Plan states that impacts on overall mobility and all travel modes should be considered when evaluating transportation impacts of new developments or infrastructure projects to encourage the use of non-automobile transportation modes to minimize vehicle trip generation and reduce VMT." (p. 5)*

The DEIR fails to analyze overall mobility and mode share use. This omission needs to be corrected.

294- General Plan Policy TR-1.3

- *"Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle."*

The EIR fails to disclose the impact of the project or its alternatives on mode share.

295- General Plan Policy TR-1.5

- *"Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences"*

The EIR fails to disclose the impact of the project and especially the proposed sound walls on attractive access and travel for pedestrians and bicyclists.

296- General Plan Policy TR-1.9

- *"Give priority to the funding of multimodal projects that provide the most benefit to all users. Evaluate new transportation projects to make the most efficient use of transportation resources and capacity."*

The DEIR fails to provide a cost-benefit analysis for the alternatives.

297- General Plan Policy TR-2.1

- *"Coordinate the planning and implementation of citywide bicycle and pedestrian facilities and supporting infrastructure. Give priority to bicycle and pedestrian safety and access improvements at street crossings and near areas with higher pedestrian concentrations (school, transit, shopping, hospital, and mixed-use areas)"*

The DEIR fails to address how different project alternatives would comply or not comply with this policy.

In violation of this policy the transportation analysis even suggests:

"Therefore, it is recommended that access to the school site be located near Oakland Road to discourage crossing of Charcot Avenue at points other than the Oakland Road intersection." (p. 30).

298- General Plan Policy TR-2.3

- *"Construct crosswalks and sidewalks that are universally accessible and designed for use by people of all abilities."*

The report should note that the project is in violation of this goals as the planned sidewalks do not meet minimum standards of the City's Street Design guidelines. The visualizations provided show trees planted on the sidewalk next to Orchard School. While useful as shade structures, this would limit the sidewalk width to an inadequate narrow path.

299- General Plan Policy TR-2.6

- *"Require that all new traffic signal installations, existing traffic signal modifications, and projects included in San José's Capital Improvement Plan include installation of bicycle detection devices where appropriate and feasible."*

The report should note that the project is in violation of this goals as the installation of bicycle detection devices is not planned.

300- General Plan Policy TR-2.10

- *"Coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José."*

While the City's Department of Transportation has collaborated with the Orchard School District to enhance safety for access to the school on Fox Lane, the project team has not collaborated with the Orchard School District to create a safer bicycle and pedestrian connection from Silk Wood Lane to the school.

301- General Plan Policy TR-2.22

- *"Collect and report pedestrian and bicycle counts, as part of routine manual traffic counts, along roadways and at intersections where bicycles or pedestrians are permitted. Quantifying pedestrian and bicycle activities will measure the amount of pedestrian and bicycle activities throughout the City and assist in determining and prioritizing infrastructure improvement projects."*

The location for the pedestrian counts (Oakland Road/Silk Wood Lane) does not match the main areas of pedestrian crossings and activity identified in the traffic study. (p. 49)

The pedestrian and bicyclist count is inadequate.

302- General Plan Policy TR-5.7

- *"Development projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements."*

Similar to private developers the City of San José should prioritize multimodal improvements that reduce VMT over automobile network improvements to mitigate development in North San José.

VI. Comments on overarching issues

Project objectives

For a more detailed discussion of transportation system deficiencies and potential alternatives to the project please see Attachment F – "Discussion of Context and Alternatives to Charcot Extension".

303- Purpose vs. objectives

The DEIR should make a clear distinction between the projects purpose and its objectives. The current descriptions are at least partly redundant.

*"The **purpose** of extending Charcot Avenue across I-880 is to **provide a safe multi-modal facility**, **improve connectivity** for vehicular, bicycle, and pedestrian travel routes, provide the opportunity to utilize alternative travel modes, and reduce travel time for the east-west travelers in the North San José Area."* *(DEIR, p. 13)*	*"The **objectives** for the proposed project are as follows:* ► ***Improve connectivity** between the east side of I-880 and the west side of I-880; […]* ► ***Provide a safe bicycle/pedestrian facility** over I-880, in compliance with San José's Complete Streets Policy; […]"* *(DEIR, p. 13)*

304- Change in project objectives since scoping

The objectives for the proposed project are as follows:

- ► Improve connectivity between the east side of I-880 and the west side of I-880;
- ► Increase the capacity for east/west travel across the I-880 corridor;
- ► Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete Streets Policy;
- ► Implement a programmed roadway network improvement project identified in the *Envision San José 2040 General Plan;* and
- ► Implement a planned major roadway improvement project, as set forth in the *North San José Area Development Policy* and the *North San José Deficiency Plan*.

(DEIR, p. 13)

The project objectives presented in the DEIR are inconsistent with the project objectives presented during the scoping process, the City's project website and the information in the initial site assessment. Please explain why additional objectives (i.e. compliance with City plans) were added, when and by whom.

Links
Upcoming Events
Past Meetings

Contact Us
City of San José
Department of Transportation
Josephine Kimura
Office: (408) 535-1293
Email: Josephine.Kimura@sanjoseca.gov

Overview

The City of San José Department of Transportation is leading the effort to extend Charcot Avenue over I-880, from Paragon Drive to Oakland Road by initiating the environmental clearance of the Project. The Charcot Avenue Extension was added to the City's planned roadway network in 1994 when the San José 2020 General Plan was adopted.

Objective

The purpose of the project is to provide a safe multi-modal facility to:

- Improve connectivity between the East side of I-880 and the West side of I-880
- Increase capacity for the East/West travel across the I-880 Corridor
- Provide safe bicycle/pedestrian facility over I-880 in compliance with the City of San Jose's Complete Streets Policy

Project Status

Project is in the environmental clearance phase and will be assessing and documenting project impacts. For more information, see the City's Environmental Planning page.

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Project website October 2019

BKF 100+ YEARS ABOUT

HOME / PROJECTS

CHARCOT AVENUE EXTENSION PROJECT

The Charcot Avenue Extension was added to the City's planned roadway network in 1994 when the San José 2020 General Plan was adopted. Its purpose is to provide a safe multi-modal facility to improve the roadway network connectivity in the area. Objectives include:

- Improve connectivity between residential areas on the east side of I-880 and the North
  San José commercial area on the west side
- Increase the capacity for east/west travel across the I-880 corridor
- Provide a safe bicycle/pedestrian facility over I-880

Additional Project Information

Location: San Jose
Market: Transportation

Contractor BKF website, October 2019

Slide from Community Scoping Meeting, May 2018

The EIR also needs to identify the initial transportation deficiency, the system strategies as defined in State, regional, and local plans, goals, and objectives, and the community values the project reflects as described in the 2015 Consultant Agreement with BKF:

- *„The primary purpose and need of the Project needs to be defined in order to initiate the geometric alternative analysis and establish if the traffic operations support the Project goals. The purpose and need will be collaboratively developed by the Consultant, the City, VTA and Caltrans to ensure concurrence.* ***Considerations in establishing the purpose and need include:***
- ***• Identify the Initial Transportation Deficiency; • Meet system strategies as defined in State, regional, and local plans, goals, and; objectives; • Reflect Community Values***
- ***Once the initial purpose and need is established, Consultant shall evaluate alternatives to; avoid or reduce environmental impacts and to select the alternative that causes the least; overall environmental damage and that satisfies the transportation purpose and need.;*** *The purpose and need may be modified by Consultant (with the approval of City) during the; course of the PSR/PDS development as other requirements and benefits arise."*

305- Connectivity

The original justification for including the project in the general plan has been capacity increase:

"The additional capacity at the eastbound approaches to I-880 […] is expected to attract slightly heavier traffic volumes and improve the screenline level of service from LOS E to LOS D" (GP 2020 EIR Traffic Analysis, p. 219).

Improved connectivity might be a benefit of the project but was not identified as an objective. Please provide any supporting material that shows that connectivity is an intended objective of the project. Also, connectivity in this context should be assumed as connectivity for people.

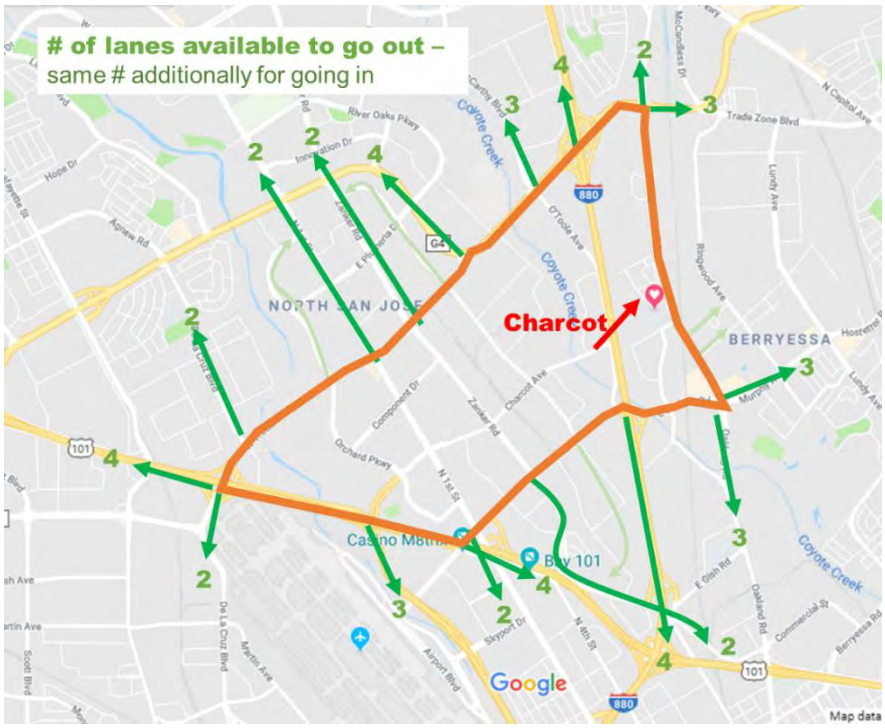
Generally, staff has argued that NSJ has a high degree of accessibility and connectivity.

- *"North San José provides a strategic location for job growth because of its proximity to the San José Norman Y. Mineta International Airport and the Downtown, along with a high degree of accessibility from several major freeways including Highway 101, Interstate 880, State Route 237 and State Route 87. The area is also well served by other transportation facilities including an existing light rail line and the Guadalupe River and Coyote Creek trail systems."* [143]

And although staff has compared the south end of NSJ to a "bathtub"[144], a detailed analysis of this[145] shows NSJ is connected to its surroundings by 49 vehicle lanes per travel direction or 98 lanes for both travel directions). Based on NACTO information[146] this provides access for over 940,000 vehicles per day - one-way.

As shown on the map, it is also unclear how Charcot would actually increase connectivity.

It should further be noted that many of the existing barriers blocking vehicle traffic are **freeways built to increase car mobility**.



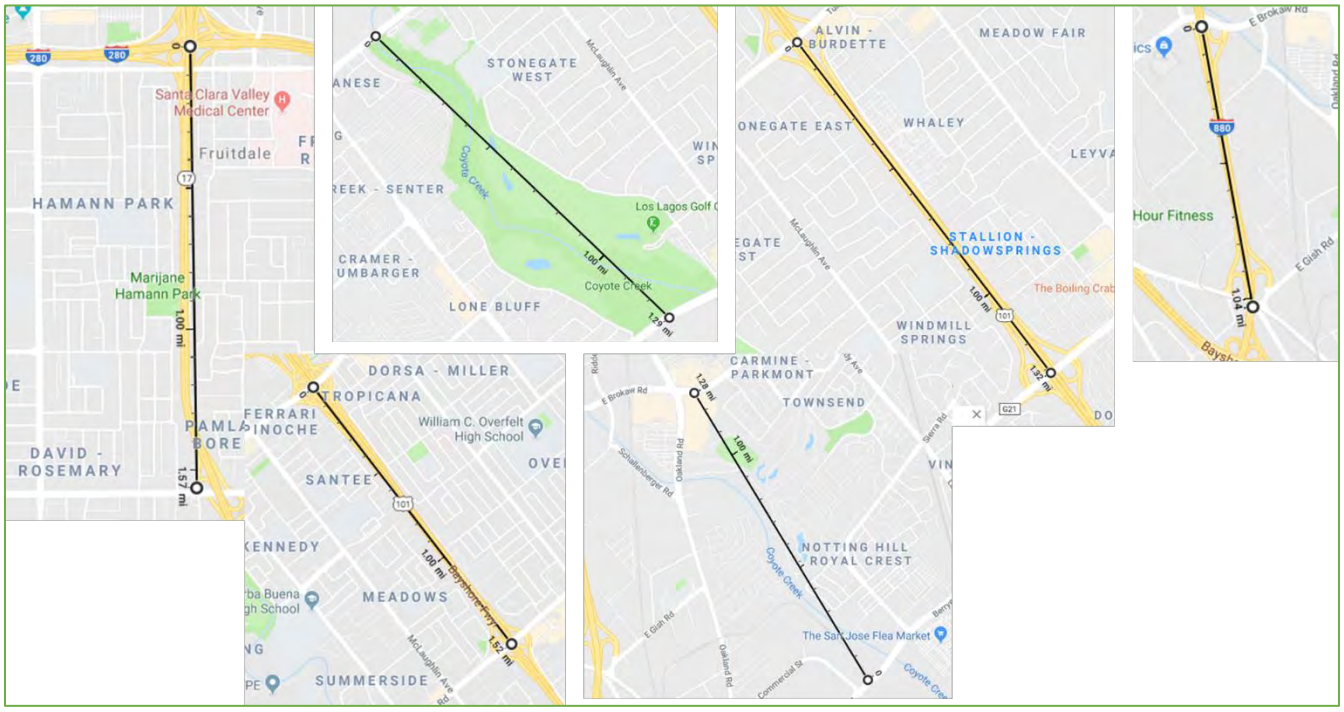
[143] North San José Area Development Policy, p. 7, http://www.sanjoseca.gov/DocumentCenter/View/43619 also: "**One of North San Jose's greatest strengths is its connection to the regional transportation infrastructure.** The area is located adjacent to the Norman Y. Mineta San Jose International Airport and is bounded by multiple major highways that provide direct access to the rest of Silicon Valley, San Francisco, and East Bay communities. Multiple VTA light-rail stations also connect area residents and workers directly to Downtown San Jose. Furthermore, the area has relatively easy access to two existing Caltrain stations and two future BART stations (Berryessa and Alumn Rock), all of which provide even greater regional connectivity." "NSJ Retail Strategy", http://sanjose.granicus.com/MetaViewer.php?meta_id=624592"

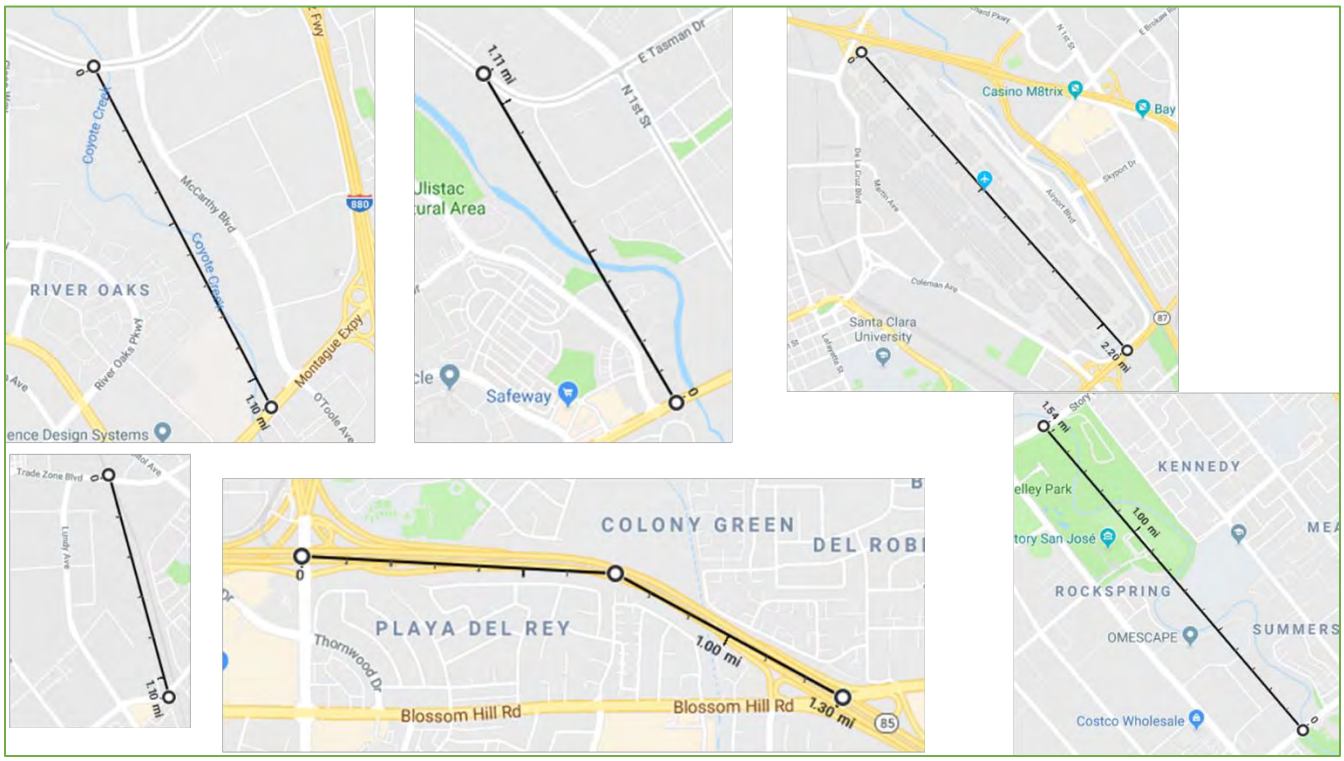
[144] Jim Ortbal, Director of Transportation at San José City Council, Jun 19, 2018, "6.5 18-837 Amendment to the Agreement with BKF Engineers for I-880/Charcot Avenue Extension Project."

[145] Comparable to a screenline analysis

[146] https://nacto.org/publication/transit-street-design-guide/introduction/why/designing-move-people/

It should further be noted that there are a number of similar barriers (longer than 1 mile) throughout San José including some very close to the project area that limited connectivity, yet there seem to be no plans to build any roadways across these barriers.

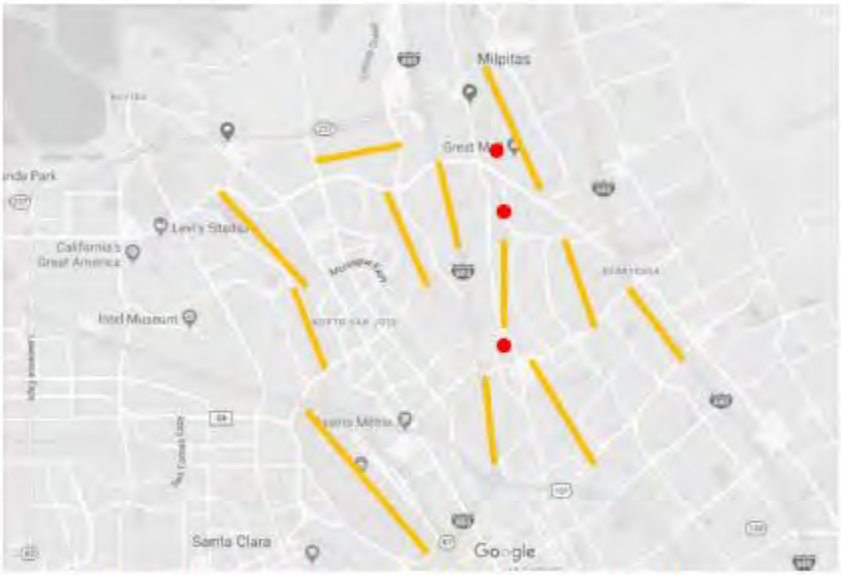




306- Existing east/west connections

There are also a number of other north-south barriers in the vicinity of the project that are maybe the underlying cause of congestion in the area and that are not addressed by the project (e.g. Coyote Creek, UPPR, Bart tracks). The focus on the I-880 crossing as a potential reason for congestion is arbitrary.

The project also does nothing to address remaining barriers.



Major barriers (i.e. ± 1 mile between crossings) and at-grade rail crossings between Berryessa, North San Jose and employment centers further west after Charcot is extended over 880.

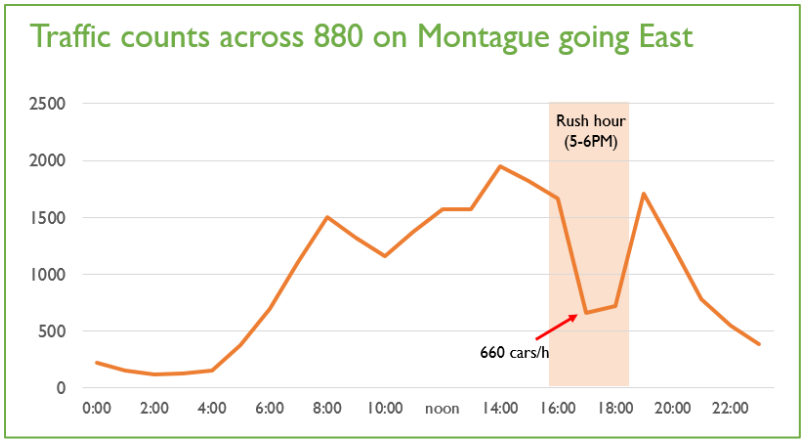
307- Time savings

The purpose of the project is to *"reduce travel time for the east-west travelers in the North San José area"* (p. 13).

Does the project fulfill this purpose? Please provide data to support the assessment. According to the data included in the DEIR any time savings seem to be minimal at best and might not even occur during peak travel hours. An appropriate focus of such an analysis would be a corridor analysis for Montague, Charcot and Brokaw for people travelling between 1st and the BART tracks between the Milpitas and Berryessa stations.

308- Capacity

The purpose of increasing capacity for east/west travel across the I-880 corridor is questionable given that traffic volumes on for example Montague eastbound (peak hour direction) sink dramatically (below 700 cars/hour on 4 lanes) and below levels seen during off-peak hours. This seems to indicate that this is not an issue of roadway capacity, but rather more complex.



309- State strategy

- *"Reducing congestion through strategies designed to encourage people to shift from cars to other modes of transportation. Funding active transportation options that contribute to the overall health of Californians and reduce greenhouse gas emissions, such as walking, transit, biking, and other active modes." (Executive Order Governor Newsom, September 2019)*[147]

The EIR should address how the project and the alternatives meet the cited state strategy.

310- Impact EN-1

"The project would not result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, during project construction or operation. (Less than Significant Impact)".

Since the City has not established that the project would provide a significant benefit especially compared to the alternative of the overpass for pedestrians and bicyclists only, the consumption of energy necessary for the project construction and operation is wasteful, inefficient and unnecessary and a significant impact.

[147] https://cal.streetsblog.org/wp-content/uploads/sites/13/2019/10/9.20.19-Climate-EO-N-19-19.pdf

"It is imperative that road expansions stop [...]

Over the years, many road expansion projects have been created through these deficiency plans, through mitigations for development agreements or through the California Environmental Quality Act (CEQA).

But local, regional and state policy goals have changed since these projects were proposed, and political leaders have come to embrace more compact, transit-oriented growth. VTA should work with its member agencies to update existing transportation mitigation programs and congestion management program deficiency plans to reflect these new policies. [...]

This approach could apply [...] to projects in the 2006 North San Jose Deficiency Plan"

(SPUR, "Freedom to Move - How the Santa Clara Valley Transportation Authority can create better transportation choices in the South Bay")

North San José planning

For a more detailed discussion of how Charcot relates to the development of North San José, please see Attachment A – "Background memo Charcot and Development in North San José".

311- Direct and indirect Growth

"Further, there are no pending or recently-approved projects whose construction is conditioned upon the implementation of the project."

(DEIR, p. 179)

"Chapter 5 of the NSJADP identifies the infrastructure improvements needed to serve the planned development. The Charcot Avenue Extension is listed as one of nine Major Roadway Projects"

(DEIR, p. 179)

Given the above cited inconsistency, the EIR needs to explain in more detail if development of North San José is conditioned upon the implementation of the project (statement right) or not (statement left).

Depending on the conclusion the DEIR will need to further address if the project will induce growth or not.

312- NSJ Evaluation at program level

"The environmental impacts of the Extension and other planned transportation improvements were evaluated at a program level in the San José Focus on the Future 2020 General Plan EIR (1994)." (p. 3)

"The environmental impacts of the nine Major Roadway Projects were evaluated at a program level in the North San José Development Policies Update EIR (2005)."(p. 8)

Given that evaluation criteria for transportation improvements have significantly shifted (LOS to VMT, SB 743)[148], any previous evaluation of the project is irrelevant or contradictory to today's standards.

The evaluation of the Charcot project on a program level for the North San José Development Policies Update EIR (2005) does not show any benefit of the project.

The NSJ deficiency plan itselfs states:

- *"the degree that individual projects identified in the North San Jose Deficiency Plan have the potential for creating ancillary (i.e. localized) impacts to the environment, such impacts will be evaluated as individual projects come forward for design and construction."*

The criteria used to suggest and develop transportation improvements changed between the 1994 approval of the "General Plan 2020" (criteria: screenline analysis) and the 2005 NSJ Development Policy (LOS intersection analysis). Given this shift in methodology between 1994 and 2005, it has not been evaluated if the 1994 transportation improvements are actually necessary under the 2005 methodology.

[148] As so much has changed since 2005. For example these companies or products didn't even exist in 2005: Uber, Instagram, Bitcoin, iPad, Snapchat, Apple Maps, Angry Birds, Kickstarter, GoFundMe, WhatsApp, Apple Watch, FB Messenger, Candy Crush, Pinterest, Alexa, Venmo, WeWork, WeChat, Tinder, Twitch, Siri, Square, Stripe, Slack

313- NSJADP

"The Charcot Avenue Extension has been included in each version of the NSPADP in 2005."(DEIR, p. 8)

It needs to be noted the inclusion in each version of the NSJADP happened without any evaluation of impact or benefits of the Charcot Extension.

314- North San José Deficiency Plan

"The City adopted the North San José Deficiency Plan in July 2005 to identify and implement a set of measures that will improve transportation conditions and air quality in North San José. Charcot Avenue Extension was identified as one of the projects on the Action List in the North San José Deficiency Plan."(DEIR, p. 8)

The North San José Deficiency Plan is based on LOS. In May 2019, City Council directed staff to:

- *"return to Council in early August with a workload and feasibility assessment of various options that forward the goal of advancing housing with an enhanced amount and incentives for affordable housing, including but not limited to the following options:[…] Commencing a new programmatic environmental impact study on North San Jose, utilizing statewide adoption of VMT to guide creation of a new development policy."*

This indicates that City Council is realizing the flaws of the current North San José Deficiency Plan and would like staff to re-evaluate the improvements in the plan. Staff has so far failed to follow through on council direction.

And although the plan intends to improve air quality there is no proof that infrastructure projects such as the Charcot Extension identified in the plan will improve air quality. Statement is also inconsistent with NSJ EIR that states:

- *"The proposed project will implement mitigation measures identified above to reduce impacts to regional air quality. The project as proposed will, however, result in near-term and long-term impacts to regional air quality. (Significant Unavoidable Impact)"*

315- North San José Deficiency Plan

"Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan." (p. 13)

The NSJ Deficiency Plan writes about the purpose of Charcot :

- *"The City of San Jose has identified several physical improvements to non-CMP intersections that will further offset CMP [i.e. LOS] deficiencies. […]: Charcot Avenue Extension" (p. 13-15 NSJ Deficiency Plan)*
- *"It is the objective of the NSJDP to set forth a comprehensive solution to LOS deficiencies at CMP intersections in North San Jose to avoid the need for strict adherence to LOS standards at CMP intersections for which no localized mitigation is feasible."(Hexagon Transportation Consultants)*[149]

It should be noted that the DEIR doesn't show any LOS intersection improvements at CMP intersections or otherwise because of Charcot.

[149] http://www.hextrans.com/featured-work

- *"For decades, most local, regional, and state governments have had a myopic approach to handling the transportation needs related to infill development: they require developers to add more street/road capacity. And this single-minded approach has produced exactly what one might expect: Lots of new, expensive roads that actually increase driving, and with it pollution, emissions, roadway deaths, and impediments for people trying to get around without cars." ("Modernizing Mitigation: A Demand-Centered Approach", State Smart Transportation Initiative (SSTI) and the Mayors Innovation Project (MIP)150)*

316- Timing in NSJADP

"The Area Development Policy establishes a specific procedure for the allocation and timing of development capacity within the policy area." (DEIR, p. 98)

The report fails to acknowledge that the Charcot Extension is a Phase 2 project under the policy. Phase 1 projects have not been completed or in some cases even started.

Statement needs to be amended to incorporate the fact that Charcot is not part of the current Policy phase. Moving it to the current phase is a significant impact demonstrated by the fact of City staff having numerous discussions with a large number of stakeholders including several reports to City Council about this potential change.

Arguing that the order can or should be changed admits that the specific procedure and timing of the policy has shown to be flawed and raises the question of additional flaws in the policy especially given new understanding of transportation impacts and the move from LOS to VMT.

[150] https://smartgrowthamerica.org/app/uploads/2018/10/Modern-Mitigation-A-demand-centered-approach-compressed.pdf

317- In-fill and compact development

"However, to the extent that the Extension supports in-fill and compact development within the TPA and PDA, it is consistent with the Plan." (p. 97).

There is no evidence that the Extension supports in-fill and compact development. Quite contrary road expansion projects have generally lead to more suburban development and sprawl.[151] [152] [153] [154] [155] For a detailed discussion also see: "Driving and the Built Environment The Effects of Compact Development on Motorized Travel, Energy Use, and CO2 Emissions" (Transportation Research Board)[156]

- *"We should not expect that adding capacity to the road network will provide more than short-run relief from traffic congestion. […]we should expect that transportation infrastructure leads to cities that are less dense, even if metropolitan area population increases" (Local Transportation Policy and Economic Opportunity Matthew A. Turner Brown University, January 2019)*[157]

The stated purpose of the project according to the 2020 general plan is to allow more access to North San José from suburban areas outside the area.

- *"The flight to the suburbs and the decentralization of American cities, the report says, was fueled not only by the commuting benefits that highways provided but by the desire of more affluent urbanites to escape the negative effects of increased noise and air pollution that these roads inflicted."*[158]

- *"Our congested commutes are the result of decisions that stretch back decades, to when Americans began to build their communities around cars. Today, the ways in which we plan and invest in transportation continue to contribute to problems like congestion, lack of accessible and affordable transportation options, and a sprawling, unsafe, and ecologically destructive built environment." ("Stop trying to solve traffic and start building great places")*[159]

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[151] "Maybe you are saying, "But at least in this way you can escape the hell of the city once the workday is over." There we are, now we know: "the city," the great city which for generations was considered a marvel, the only place worth living, is now considered to be a "hell." Everyone wants to escape from it, to live in the country. Why this reversal? For only one reason. The car has made the big city uninhabitable. It has made it stinking, noisy, suffocating, dusty, so congested that nobody wants to go out in the evening anymore. Thus, since cars have killed the city, we need faster cars to escape on superhighways to suburbs that are even farther away. What an impeccable circular argument: give us more cars so that we can escape the destruction caused by cars." http://unevenearth.org/2018/08/the-social-ideology-of-the-motorcar

[152] https://sanjosespotlight.com/fearer-the-elephant-in-the-room-is-san-joses-sprawl/

[153] "Equating mobility with building more roads nurtured a tendency towards increased motorisation, reinforcing an ever-increasing inclination to expand the road network. The result was a range of unintended adverse environmental, social and economic consequences. Most of these are rooted in the high priority given to private vehicles." https://theconversation.com/four-ways-our-cities-can-cut-transport-emissions-in-a-hurry-avoid-shift-share-and-improve-106076

[154] "The Commuting Principle That Shaped Urban History", https://www.citylab.com/transportation/2019/08/commute-time-city-size-transportation-urban-planning-history/597055/

[155] https://www.theatlantic.com/ideas/archive/2019/07/car-crashes-arent-always-unavoidable/592447/ also see: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3345366

[156] http://onlinepubs.trb.org/onlinepubs/sr/sr298.pdf

[157] https://www.brookings.edu/wp-content/uploads/2019/01/Turner_PP_web_20190128.pdf

[158] https://www.citylab.com/transportation/2019/07/freeway-revolts-interstate-highway-system-data-urban-history/594082/

[159] https://www.brookings.edu/blog/the-avenue/2019/03/20/stop-trying-to-solve-traffic-and-start-building-great-places/

In contrast, limiting car access to an area is much more likely to densify an area and result in compact, high-density, mixed-use neighborhoods.[160] [161]

- *"People who live in more compact and mixed used developments in cities tend to own fewer cars and take fewer trips compared to their suburban counterparts. These results show that traditional transport planning models are overestimating the traffic impacts and parking needs of new 'smart growth' schemes which may in turn be discouraging the spread of such developments. […]Guidelines for trip and parking generation in the United States come mainly from the Institute of Transportation Engineers (ITE). The ITE Trip Generation Manual and Parking Generation manuals are considered "bibles" in transportation planning. However, these manuals focus on suburban locations with limited transit and pedestrian access. As a result, they overestimate vehicle trips and parking demands generated at urban sites" [such as future NSJ].*[162]

- *"more cars make the city a less congenial place for strollers, bicyclists and people who take public transit to their destinations. The cars push out frolicking kids, quiet afternoons reading on a bench and sidewalk cafes. So we give up our public space, our neighbor-to-neighbor conversations and ultimately our personal mobility for the next car, and the next one."*[163]

Even adding thousands of residents to an area does not necessarily lead to an increase vehicle traffic:

- *"Seattle, almost alone among American cities, has managed to grow without putting more cars on its roadways. Average daily traffic has stayed flat, and even declined a little, as its hot economy added 116,000 new residents."*[164]

318- Financial impact of the project on development in NSJ

There is no evidence that the Extension supports any development of any kind.

The EIR itself states: *"the proposed roadway extension would not result in a population and housing impact."* (p.125)

To the contrary, the high and significant Traffic Impact Fees collected for this and other major transportation projects are a major obstacle to development in North San José. Reducing the costs of this and other projects might allow the City to reduce Traffic Impact Fees and with that spur development in San Jose.

Statement is therefore not supported by evidence and should be removed.

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[160] https://sf.curbed.com/2019/10/15/20916092/market-street-sf-ban-cars-vehicles-san-francisco-vote
[161] https://www.strongtowns.org/journal/2018/10/30/a-literal-bridge-from-the-past-to-the-future
[162] https://blogs.lse.ac.uk/usappblog/2018/12/14/transport-planning-bibles-overestimate-car-and-parking-needs-and-this-may-be-hurting-smart-growth-development/
[163] https://www.nytimes.com/2018/04/25/opinion/cars-ruining-cities.html
[164] https://www.politico.com/interactives/2019/what-works-next-2019-seattle-carless-city/

Equity

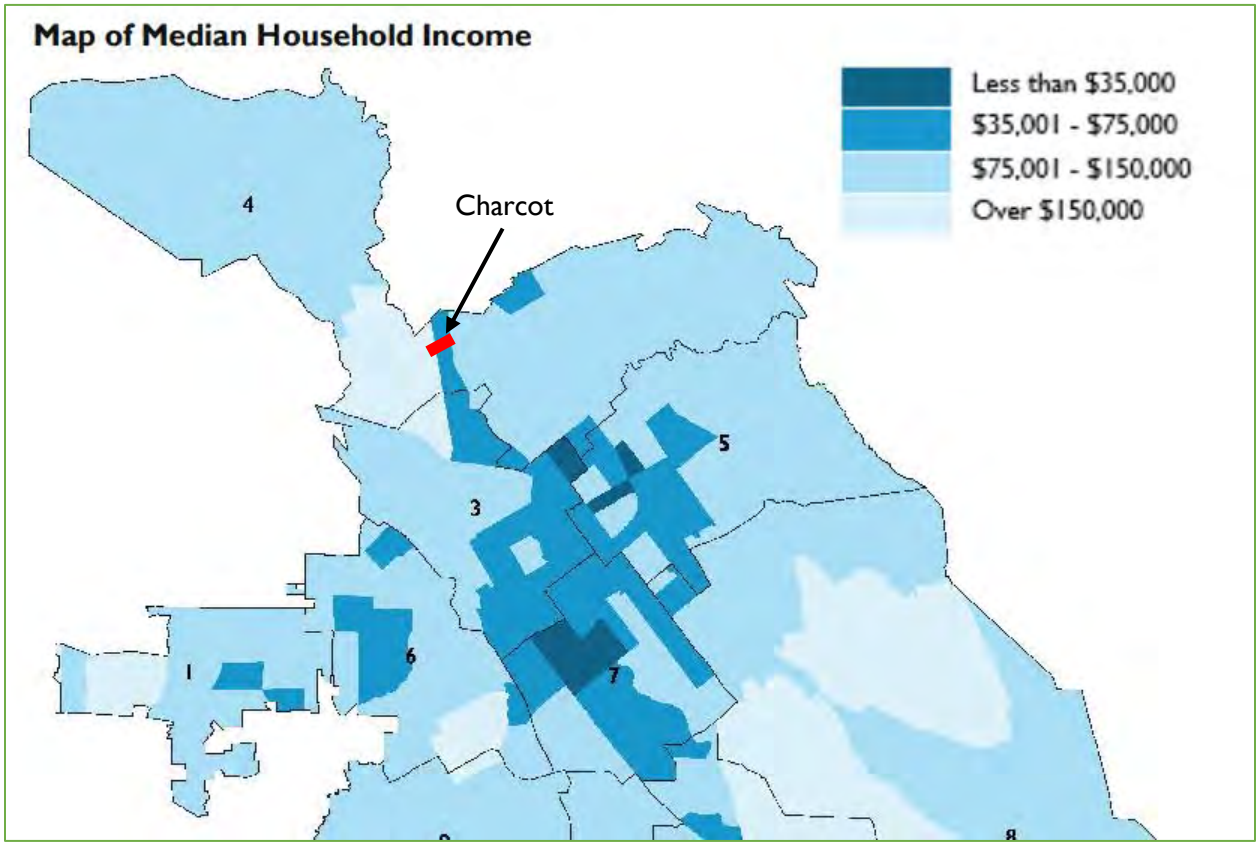
> *"We know it's a problem when we see much higher rates of asthma in low-income communities in the eastern part of my city where we know there are neighborhoods built closer to freeways. We know it's directly resulting from transportation, particularly automobiles. We know we have much farther to go. […]"As I experience children who simply cannot engage in daily activities because of asthma, as I see premature deaths, particularly in low income communities, caused by this kind of air, it makes me furious." (Mayor Sam Liccardo, 29 October 2019)*[165]

The EIR fails to consider equity as a City goal in its discussion of the project and the alternatives. Of particular concern are disparities in income and on different gender.

- *"If we truly want to tackle the issue of equity in our City, then everything we do should be done through an equity lens. We will not achieve systemic change without first truly understanding how inequity inherently makes its way into the systems, processes, and mechanisms that govern San Jose." (Memorandum from Peralez, Jimenez, Carrasco, Esparza, Arenas, June 7, 2019)*[166]

319- Low income neighborhood

The project will cut through a low-income neighborhood in order to connect richer suburbs with job rich areas west of it.



[165] https://sanjosespotlight.com/on-capitol-hill-san-jose-mayor-sam-liccardo-talks-pge-outages-clean-air/#.Xbi23xJ3hXw.twitter
[166] https://sanjose.legistar.com/View.ashx?M=F&ID=7297950&GUID=619210E1-FF17-41BC-A317-088B2BE38566

Map of Median Household Income San Jose - Auditors Report 2018, Charcot project in red

- *"Finally, children living in census block groups with a lower median household income had slightly higher percentage of attributable incident cases [of asthma] than children living in areas with a higher median income. Our results are in line with previously published data showing that, on average, households with lower income were more likely to live near high density traffic"*[167]

- *"There are powerful equity reasons to invest in walkability." That's because car-centered cities only cater to the two-thirds of Americans who can drive—excluding the elderly, the vision-impaired, and people who can't afford to have a vehicle in the first place. Cities with more transit choices demonstrate less income inequality and less overspending on rent, he writes, while better sidewalks make life easier for wheelchair users and seniors alike" (Jeff Speck*[168]*)*

- *"Researchers also have honed in on the pollution dangers children - particularly lower-income children - face when at school. A study assessing inner-city schoolchildren via personal exposure monitoring of schoolchildren with asthma showed that exposures to fine particulate matter increased same-day wheezing, shortness of breath and total symptoms. A national study found that approximately one in three U.S. public schools are located in "air pollution danger zones" within a quarter-mile or less of highways. A similar study of California schools found that 9.5 percent of schools were located within 450 feet of roads carrying at least 25,000 vehicles per day. The same California study also found that schools with higher levels of exposure to traffic were schools that disproportionately served economically disadvantaged and non-white students. Similar findings were reported in a study of Wayne County, Detroit, Michigan. The results showed 7.2 percent of schools were located in high-traffic areas and that more traffic exposure correlated with lower-income and minority populations. Looking abroad, studies in Canada and in Europe have also found that lower-income individuals live in and attend schools in neighborhoods that are located closer to busy roadways. (Safe Routes to School and Traffic Pollution)* [169]

- *"Study Finds Racial Gap Between Who Causes Air Pollution And Who Breathes It"*[170]

Also see:

- *Spira-Cohen, A, LC Chen, M Kendall, R Lall and GD Thurston. "Personal Exposures to Traffic-Related Air Pollution and Acute Respiratory Health among Bronx Schoolchildren with Asthma." Environmental Health Perspectives 119,4 (2011): 559–565*

- *Appatova, A S, P Ryan, G LeMasters and S Grinshpun. "Proximal exposure of public schools and students to major roadways: a nationwide US survey," Journal of Environmental Planning and Management 51,5 (2008)*

- *Green, Rochelle S, Svetlana Smorodinsky, Janice J Kim, Robert McLaughlin and Bart Ostro. "Proximity of California Public Schools to Busy Roads." Environmental Health Perspectives 112,1 (2004): 61–66*

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[167] https://www.sciencedirect.com/science/article/pii/S0160412018325388?via%3Dihub
[168] https://qz.com/1421323/for-the-good-of-all-humankind-make-your-city-more-walkable/
[169] http://saferoutespartnership.org/sites/default/files/pdf/Air_Source_Guide_web.pdf
[170] https://www.npr.org/sections/health-shots/2019/03/11/702348935/study-finds-racial-gap-between-who-causes-air-pollution-and-who-breathes-it

- *Wu Y-C and SA Batterman. "Proximity of schools in Detroit, Michigan to automobile and truck traffic." Journal of Exposure Science and Environmental Epidemiology 16 (2006): 457-470*
- *Amram, Ofer, Rebecca Abernethy, Michael Brauer, Hugh Davies and Ryan W Allen. "Proximity of public elementary schools to major roads in Canadian urban areas." International Journal of Health Geographics 10,68 (2011): 1–11*
- *Deguen, Séverine and Denis Zmirou-Navier. "Social inequalities resulting from health risks related to ambient air quality – A European review." European Journal of Public Health 20,1 (2010): 27–35.*
- *https://mass.streetsblog.org/2019/06/28/study-minorities-suffer-higher-health-risks-from-highway-pollution/*
- *http://cityobservatory.org/why-do-poor-school-kids-have-to-clean-up-rich-commuters-pollution/*

320- Gender equity

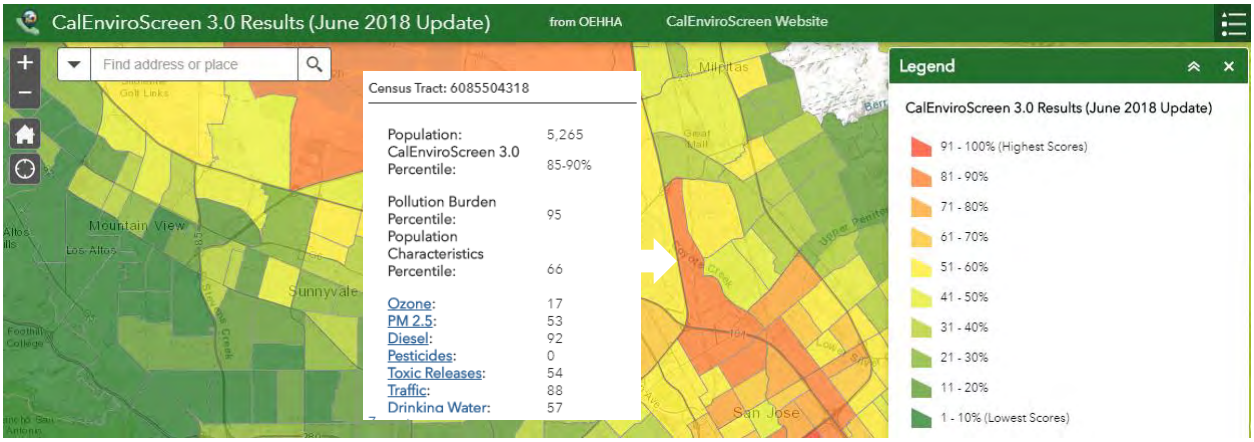
- *"Car-dominated environments particularly dissuade women from cycling, as well as other under-represented groups and people travelling with children."*[171]
- *"Transportation engineers — who by the way are overwhelmingly men — have long held up work commuting as the standard by which to base planning decisions. But women make many more trips than men daily, and they commute shorter distances on average. According to the American Enterprise Institute, they spend 31 percent less time commuting in the U.S. then men. In addition, they are often responsible for more caregiving and retail trips. U.S. transport planning has for ages privileged long trips over short. Big highway expansion projects that serve suburban commuters over more small scale projects that facilitate safer, faster short-distance travel."*[172]

[171] https://irishcycle.com/2019/07/04/reducing-cars-is-like-smoking-ban-people-wont-want-the-traffic-back-cycling-expert-tells-irish-politicians/
[172] https://usa.streetsblog.org/2019/08/29/all-the-ways-u-s-transport-system-is-biased-against-women/

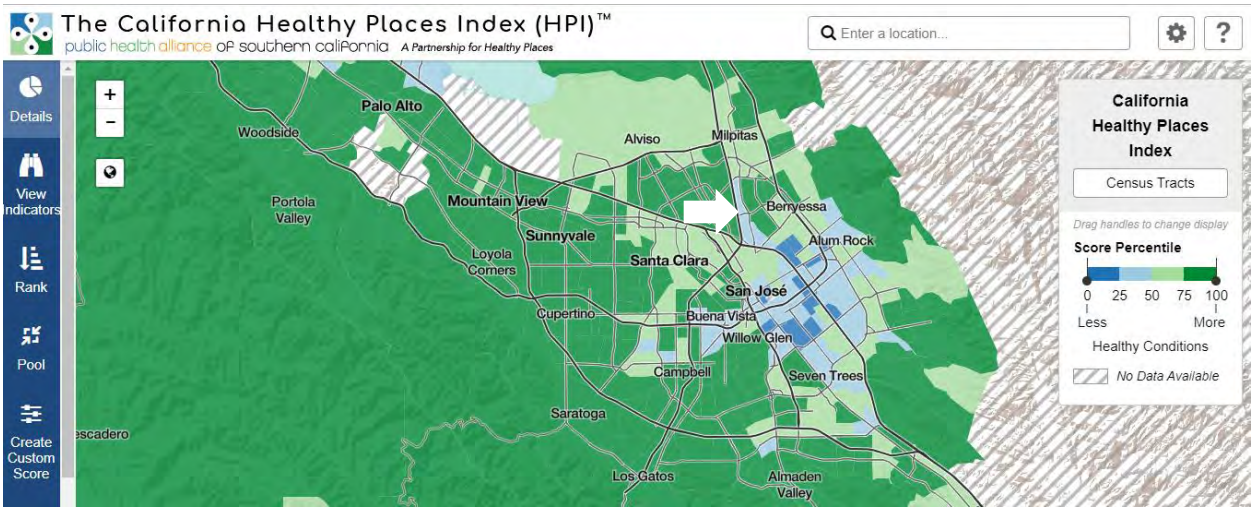
Cumulative Impacts

321- Cumulative impacts with overall existing conditions

The DEIR fails to adequately address and consider overall existing environmental conditions as documented by CalEnviroScreen 3.0



Or the California Healhy Places Index[173]



322- Impact on Charcot between Junction and Paragon Drive

The section of Charcot between Junction and Paragon Drive – which crosses Coyote Creek – will see the most increase in traffic of all roadway segments studied under existing and 2025 conditions. Impacts resulting from this increase have not been evaluated and but need to be assessed especially but not limited to air quality, noise, biological resources and impacts to Coyote Creek.

[173] https://map.healthyplacesindex.org/

323- Cumulative Impacts

"Cumulative air quality, energy, greenhouse gas, and noise and vibration analysis were evaluated in relation to pending and approved projects in the larger project area. These cumulative projects were accounted in the traffic modeling used for this project, which was used to derive traffic volumes in the larger project area."

Please provide a detailed breakdown which pending and approved projects were accounted for.

324- NSJADP to be considered as cumulative impact

Given that the DEIR sees the Extension project as an essential part of the NSJADP and the deficiency plan, any discussion of cumulative impacts in DEIR should consider the cumulative impact of Charcot and the NSJADP and the deficiency plan throughout the report. [174]

[174] Also see: https://records.sanjoseca.gov/Resolutions/RES72768.PDF

VII. Discussion of alternatives

For a more detailed discussion of transportation system deficiencies and potential alternatives to the project please see Attachment F – "Discussion of Context and Alternatives to Charcot Extension".

The discussion in this chapter needs to be revised based on errors and inconsistencies discovered.

Criteria used to evaluate alternatives

325- Alternatives are not infeasible

"The ultimate determination as to whether an alternative is feasible or infeasible is made by the lead agency's decision-making body, City of San José City Council. (See PRC Section 21081[a] [3].)" (p. 183)

All alternatives discussed should therefore be considered potentially feasible till a decision by the decision-making body.

326- Costs

Considering alternatives infeasible because of costs as for example for Alternatives A, B and C does not comply to CEQA as stated in the EIR itself:

"The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, ***even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly****."* (p. 183).

The EIR should provide a clearer cost-benefit analysis so that the decision-making body has the necessary information to evaluate alternatives. How does the DEIR define "significant" costs? Please provide cost estimates for all alternatives and the project.

327- Benefits

The DEIR should discuss how efficient the feasible and infeasible alternatives would be in terms of reducing congestion and travel times.

Additional alternatives to be considered

328- Evaluate the following additional alternatives

1. **Road diet on Brokaw**
2. **Bus express lanes on Brokaw and Montague**
3. **McCarthy grade separation**
4. **Trimble flyover**
5. **Roundabouts on Montague and Brokaw,** which could increase capacity on these roadways[175]

[175] https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/camutcd2014-part4-rev3-a11y.pdf p 827

It should be noted that studies have shown that smaller, slower street might be better equipped to handle larger traffic volumes.[176] And that

- *"two U.S. cities, Salt Lake City and Portland, Oregon, showed measurable progress in making traffic less frustrating. Both attacked the problem with a similar strategy, investing in sophisticated traffic light optimization, bike infrastructure, light rail, and reducing parking availability. It's a lesson all cities should take to heart. Make life easier for pedestrians, bikers, and mass transit users and encourage more commuters to shift modes and abandon their cars, and roads start to become unclogged."*[177]

329- Response 14.1

"This comment recommends an alternative roadway improvement to alleviate congestion along Brokaw Road. The suggested alternative serves to improve access to I-880 via a new ramp and improvements at Gish Road. However, improved access to I-880 is not the intent of the proposed Charcot Avenue extension. Rather, the extension aims to improve local access, generally the area surrounded by Montague Expressway, Oakland Road, and Brokaw Road, from the east and west sides of I-880. The extension will not provide access to I-880 and will have minimal effect on travel routes to and from I-880 in the area."

The alternatives suggested by the comment are similar in nature to the alternatives of widening Brokaw Road or the alternative of an overpass south of Brokaw. Both these alternatives are considered in the DEIR, therefore the alternatives suggested by the comment should be considered as well.

330- Alternative locations north of Montague or south of Brokaw

"The alternative of locating the crossing north of Montague Expressway or south of Brokaw Road would not meet goals listed in the first and third bullet [reduce traffic volumes along Montague Expressway and Brokaw Road] points listed above, as it would not be effective in alleviating existing and projected roadway congestion, since these two major arterials would continue to provide more direct access with wider lanes and greater speed limits across I-880."

Please provide the TDF data associated with this statement.

Alternative A – "Fox Lane alignment"

331- Alternative A

"From an environmental perspective, there would be substantial impacts to Orchard School's designated student drop-off/pick-up area on Fox Lane." (DEIR, p. 185)

As the EIR considers the impact of this alternative to the student drop-off/pick-up area on Fox Lane significant, a similar impact by the proposed project to the drop-off/pick-up area on Silk Wood Lane should also be considered substantial and significant.

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[176] Billy Riggs, an assistant professor at the University of San Francisco School of Management and a planner who consults on the future of transportation, says autonomous vehicles, and lower speeds, could allow cities to devote less room to cars by redesigning street infrastructure. "It's speed and uncertainty that requires such wide roads for human-operated cars," says Riggs. […]In other words, it's like that old Navy Seal adage: Slow is smooth, smooth is fast. That's also the idea behind "green wave" signal timing, which is now getting a pilot in New York City. Traffic flowing at 15 mph allows for fewer red lights. (https://www.citylab.com/transportation/2019/08/low-speed-limit-vehicle-safety-crash-data-traffic-congestion/588412/)

[177] https://www.curbed.com/2019/6/11/18661586/bike-train-traffic-transportation-congestion

Alternative B – "Widening of Brokaw/Montague"

332- Capacity constraints (ramp meters) at freeway ramps

"Widening of Montague Expressway and Brokaw Road also may not improve the eastwest travel due to capacity constraints at their connections to major regional freeways including their interchanges with I-880. It is likely that the capacity constraints (ramp meters) at freeway ramps and congestion on the freeway mainline could result in blockage of travel lanes on both roadways even with widening. The improvement of access to and from I-880 also would provide minimal benefit to operations along Brokaw Road and Montague Expressway due to congestion on the freeway mainline that restricts flow onto the freeway." (DEIR, p. 187)

There is no evidence provided that free ramp meters are restraining capacity on Brokaw or Montague or are expected to be. Statement therefore not substantiated.

Alternative C – "Overpass south of Brokaw"

333- Access to Lowe's

"It would also sever access to Lowe's"

At least two access points to Lowe's are more 500 feet distance from 880. It is unclear how those would be affected given that the planned overpass has a footprint of less than 500 ft on the western side of Charcot and continues to provide access and through-fare on O'Toole Ave.

Alternatively, as the proposed project severs access to several existing businesses on Charcot, this should then similarly be considered a significant impact.

334- Connection to Zanker

As argument against Alternative C it is mentioned that *"unlike the Charcot Avenue alignment, there would be no direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87."* (p. 187)

Alternative C could provide a convenient access to the new Zanker Road/4th street overcrossing if Junction Ave were to be extended towards that new 101-overcrossing.

335- Connection to SR 87

As mentioned in the previous comment *"unlike the Charcot Avenue alignment, there would be no direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87."*

Can you please expand why a connection to SR 87 is relevant in the context of the Charcot Avenue alignment since "The use of the proposed extension is expected to be minimal outside of a two-mile radius." (p. 161) and the Sphere of Influence for the project is defined as 1.5 miles which excludes any part of SR 87?

Alternative D – "No Project"

336- Alternative D

"The No Project Alternative would not, however, meet any of the project objectives. It would also be inconsistent with:

- *Policy TR-5.6 of the Envision San José 2040 General Plan, which states that the City should complete the buildout of the City's street system per its Land Use / Transportation Diagram, on which the Charcot Avenue Extension has been listed since 1994. […]*
- *The North San José Area Development Policy, which identifies the Charcot Avenue Extension as a key roadway improvement project needed to serve the planned development of North San José." (DEIR, p. 188)*

The report states that the no-project alternative would not meet any of the project objectives. And *"also be inconsistent with […] Envision San José 2040 General Plan […] North San José Area Development Policy".* (p. 188).

These statements seem to be left over from before consistency to the General Plan and NSADP were added to the overall project objectives. The statements are repetitive *to "would not meet any of the project objectives"* [as stated now] and superfluous. This also impacts discussions on other alternatives.

Alternative E – "New Overcrossing for Bicycles and Pedestrians Only"

337- Impact of improved bike and pedestrian facilities

"Traffic circulation for the Bicycle/Pedestrian Overcrossing Only would be the same as for the No Project Alternative under existing, year 2025, and year 2040 conditions, as described in Section 3.17." (p. 189)

This statement is inconsistent with statements in the DEIR and City plans that bicyle/pedestrians improvement will reduce traffic.

"Walkable and bikeable streets reduce the need for passenger car journeys and encourages active forms of transport, public transport infrastructure, and personalized mobility solutions. This reduces vehicle miles traveled (VMT), a metric of vehicular use which can be a proxy for traffic collisions, and the emissions associated with car journeys." (Climate Smart San José, p. 89)

"The project would provide a new bicycle and pedestrian crossing of I-880, which would facilitate those forms of non-motorized travel. The proposed project would also shorten pedestrian and bicycle travel routes and provide the opportunity to utilize walking and bicycling as an alternative travel mode, which would lead to a reduction in the number of vehicle trips." (DEIR, p. 66)

"By providing improvements that will facilitate bicycle and pedestrian use, the operational phase would reduce vehicle trips and thereby reduce energy consumption" (DEIR, p. 67)

338- Alternative E – consistency with objectives

The EIR does not state that the project objectives of capacity or connectivity must include capacity and connectivity for SUVs, trucks and other vehicles. As the Bike-/pedestrian overpass would improve connectivity and increase capacity for people to cross 880, it would meet those project objectives.

As stated above consistency General Plan and NSJADP has been added after the NOP, are based on outdated LOS methodology[178] and therefore irrelevant.

As staff writes:

- *"VMT is a significant shift in the way the City thinks about transportation. Instead of continuing to plan for more and more auto traffic, using streets and freeways that are already at or nearing capacity, the City is instead focused on developing safe and inviting pedestrian, bicycle, and transit networks to meet new travel demand."*[179]

Alternatives F, G, H – "Various lane configurations at Charcot/Oakland"

339- Alternative F & H – access to Orchard School Event Center Driveway

The EIR fails to assess the impact of northbound and southbound access to the driveways east of Oakland Road.

340- Alternatives F, G & H – consistency with San Jose Bike Plan 2020

The DEIR omits that the project in its current form as well as alternatives F, G and H are inconsistent with the San José Bike Plan 2020 that designates the crossing of Charcot and 880 as a *"Pedestrian Over Crossing"*.

[178] https://www.strongtowns.org/journal/2018/8/13/a-losing-proposition
[179] http://sjeconomy.com/new-traffic-measuring-method-could-benefit-infill-development-in-san-jose/

VIII. Minor Inaccuracies

Inaccurate references

341- Missing references

The following documents are missing in the list of references

- *„Visual Impact Assessment for Highway Projects published by the Federal Highway Administration (FHWA) in March 1981".*
- *Plan Bay Area 2040*
- *VTA Congestion Management Program Document*
- *Valley Transportation Plan 2040*
- *Thorburn Associates, 1996*

342- Scenic Highways

The link provided in the EIR in footnote 4 is not accessible anymore.

343- Location of trees

"For more detail regarding the size, location, and species of the trees located within the project alignment, refer to Appendix G of this EIR." (p. 50)

Appendix G does not include locations of the trees within the project alignment.

344- Source 52 / References that don't exist

The source *"Orchard School District. Indirect Transfers."* cannot be found and doesn't seem to exist. The link provided leads to a different document. The title of that document is "**Interdistrict** Transfers"

345- Access dates

A number of sources were last accessed before the Notice of Preparation (NOP) for the EIR was even circulated. One source was last accessed in July 2016. Please explain how they can be references for the EIR, if they weren't looked at in the preparation of the EIR (i.e. after the NOP was published).

Typo's

346- Alternative B - east-east capacity

Increasing *"east-east"* capacity (p. 187, second paragraph) seems indeed difficult. This should be corrected to state "east-west" capacity.

347- "Silk Wood" or "Silkwood"

The transportation analysis refers nine times to a road called *"Silk Wood Lane"* and 127 times to *"Silkwood Lane".* Are these different roads?

The DEIR main document with one exception speaks of "Silk Wood Lane". Other appendixes are also inconsistent in the usage. Please correct all instances to the correct street name(s).

In other documents staff has also referred to a street named "Silkwood Drive" that would be affected by the project.[180]

348- "Old Oakland Road" or "Oakland Road"

"East of I-880, the proposed extension would [...] connect with a widened Silk Wood Lane, to the intersection with ***Old Oakland Road*** *to the east."*

Use of "Old Oakland Road" inconsistent with DEIR which generally speaks of "Oakland Road", further down in the same paragraph. *"The extension would also construct bicycle/pedestrian facilities on Charcot Avenue, including sidewalks and Class IV bikeways, between Paragon Drive and Oakland Road."*

349- Appendix J

Footnote 1 should read "short-term locations" not *"shot-term"* locations.

350- Transit Facilities Appendix K

The headline of this section should be corrected to "facil**i**ties"

351- NSPADP

"The Charcot Avenue Extension has been included in each version of the NSPADP in 2005." (DEIR, p. 8)

The correct the acronym is NS**J**ADP.

352- Typo

Third paragraph, first sentence: *"CEQA Guideline Section 15065(a)(3).* ***T****he cumulative impacts discussion for each environmental issue"* (p. 15)

353- 7.1 Introduction

Second paragraph on page 183 ends in quotation marks. It is not clear where the quote begins.

[180] http://sanjose.granicus.com/MetaViewer.php?meta_id=693644 p. 3

354- Word seems to be missing

"GEO-3: Although the project would be located on soil that could become unstable during an earthquake, the implementation of standard conditions and compliance with current seismic safety codes will any significant effects due to this condition."

The sentence seems to be missing a word.

IX. ATTACHMENTS

ATTACHMENT A – Background memo Charcot and Development in North San José

ATTACHMENT B – Pedestrian Count

ATTACHMENT C – Inadequate responses to NOP/scoping comments

ATTACHMENT D – Notes from September 26, 2019 community meeting at Orchard School

ATTACHMENT E – Air Quality Measurements taken at school site

timestamp	date (UTC)	VOC (ppb)	pm 10 (ug/m3)	pm 2.5 (ug/m3)
1568796347	9/18/2019 8:45	168	6.84	3.29
1568796407	9/18/2019 8:46	166	6.76	2.60
1568796467	9/18/2019 8:47	163	5.46	2.42
1568796527	9/18/2019 8:48	166	4.73	2.85
1568796587	9/18/2019 8:49	164	3.85	1.48
1568796647	9/18/2019 8:50	164	5.81	2.59
1568796707	9/18/2019 8:51	166	8.40	1.00
1568796767	9/18/2019 8:52	164	7.41	2.56
1568796827	9/18/2019 8:53	164	5.71	2.69
1568796887	9/18/2019 8:54	162	11.14	3.15
1568796947	9/18/2019 8:55	163	7.21	2.90
1568797007	9/18/2019 8:56	163	6.34	2.17
1568797067	9/18/2019 8:57	160	8.77	3.30
1568797127	9/18/2019 8:58	162	4.30	1.06
1568797187	9/18/2019 8:59	159	6.85	1.28
1568797247	9/18/2019 9:00	160	5.66	2.60
1568797307	9/18/2019 9:01	157	4.28	2.52
1568797367	9/18/2019 9:02	154	3.52	1.00
1568797427	9/18/2019 9:03	153	4.18	1.56
1568797487	9/18/2019 9:04	155	2.56	1.00
1568797547	9/18/2019 9:05	156	7.89	2.95
1568797607	9/18/2019 9:06	156	11.40	3.67
1568797667	9/18/2019 9:07	153	11.49	3.15
1568797727	9/18/2019 9:08	155	9.89	2.62
1568797787	9/18/2019 9:09	155	21.10	3.99
1568797847	9/18/2019 9:10	153	13.76	3.69
1568797907	9/18/2019 9:11	153	9.68	1.68
1568797967	9/18/2019 9:12	154	2.68	1.00
1568798027	9/18/2019 9:13	156	2.70	1.00
1568798087	9/18/2019 9:14	153	2.94	1.60
1568798147	9/18/2019 9:15	153	14.88	4.04
1568798207	9/18/2019 9:16	150	10.08	1.25
1568798267	9/18/2019 9:17	152	2.25	1.50
1568798327	9/18/2019 9:18	150	3.00	1.37
1568798387	9/18/2019 9:19	153	8.85	2.04
1568798447	9/18/2019 9:20	149	4.11	1.65
1568798507	9/18/2019 9:21	153	9.99	2.55

1568798567	9/18/2019 9:22	150	3.55	1.00
1568798627	9/18/2019 9:23	152	2.00	1.00
1568798687	9/18/2019 9:24	153	13.02	3.56
1568798747	9/18/2019 9:25	149	6.25	2.65
1568798807	9/18/2019 9:26	153	6.98	1.74
1568798867	9/18/2019 9:27	151	7.73	2.44
1568798927	9/18/2019 9:28	149	5.99	2.52
1568798987	9/18/2019 9:29	153	8.32	2.35
1568799047	9/18/2019 9:30	150	7.43	2.52
1568799107	9/18/2019 9:31	150	3.52	2.24
1568799167	9/18/2019 9:32	149	4.77	1.31
1568799227	9/18/2019 9:33	150	2.31	1.92
1568799287	9/18/2019 9:34	149	2.92	1.00
1568799347	9/18/2019 9:35	151	10.15	2.78
1568799407	9/18/2019 9:36	149	8.11	2.12
1568799467	9/18/2019 9:37	150	6.39	1.68
1568799527	9/18/2019 9:38	151	5.69	2.27
1568799587	9/18/2019 9:39	151	4.14	1.85
1568799647	9/18/2019 9:40	151	10.85	2.96
1568799707	9/18/2019 9:41	151	3.96	1.11
1568799767	9/18/2019 9:42	149	5.69	1.37
1568799827	9/18/2019 9:43	151	4.87	1.85
1568799887	9/18/2019 9:44	152	2.85	1.59
1568799947	9/18/2019 9:45	153	2.59	1.47
1568800007	9/18/2019 9:46	153	4.99	1.72
1568800067	9/18/2019 9:47	154	5.59	1.92
1568800127	9/18/2019 9:48	152	11.68	3.82
1568800187	9/18/2019 9:49	156	9.81	2.24
1568800247	9/18/2019 9:50	156	7.56	1.50
1568800307	9/18/2019 9:51	158	5.07	1.72
1568800367	9/18/2019 9:52	159	9.04	1.39
1568800427	9/18/2019 9:53	159	5.64	1.99
1568800487	9/18/2019 9:54	156	10.11	1.97
1568800547	9/18/2019 9:55	154	2.97	1.26
1568800607	9/18/2019 9:56	158	5.49	2.00
1568800667	9/18/2019 9:57	156	6.26	1.50
1568800727	9/18/2019 9:58	158	3.21	1.93
1568800787	9/18/2019 9:59	157	7.95	2.92

ATTACHMENT F – Discussion of Context and Alternatives to Charcot Extension

ATTACHMENT G – Preliminary Summary of Charcot Avenue Extension DEIR

ATTACHMENT H – Report Orchard School Community Pedestrian and Bicycle Safety Training

ATTACHMENT I – School opposition San José General Plan 2020

The Charcot Avenue Extension was first identified as an infrastructure improvement project needed to serve the planned growth in the North San José area in the San José "Focus on the Future" 2020 General Plan, which was approved in 1994.

Orchard School District in a consortium with other schools urged and appealed to the City to not approve the General Plan 2020 and the EIR for it without further analysis of its impact schools such as Orchard. The City declined the appeal and moved forward with the General Plan against the recommendation from the schools.

The attachment documents the discussion surrounding the schools and the attempts by the schools to avoid potential future conflicts between the City and the School resulting from the implementation of the plan.

Due to the large extent of discussion and the numerous efforts made by the school, the documentation is quite large in size (500+ pages). The file is therefore provided as digital copy. It is available at: https://app.box.com/s/pt7xcirvybqfz2tahwju260ndk9ckzu9.

Charcot Extension and Overpass

1. "Auto-oriented" [1] North San José

North San José (NSJ) has one of the highest rates of employees driving to work alone (84%) among Bay Area Employment Centers.[2] Contributing to this are inadequate sidewalks[3], dangerous and stressful bike paths[4], and almost non-existent transit on major access routes such as Montague Expressway and Brokaw Road[5]. The area itself is dominated by isolated, single-use buildings surrounded by vast acres of free parking lots which further encourage driving and discourage other modes of transportation.[6]

This has led to local car congestion during peak hours. To improve the situation the City plans the following major projects in the Montague/Brokaw/I-880 area:

- *A flyover at the Trimble Road/Montague Expy intersection (current cost estimate $47 million[7])**
- *A grade separation at Montague Expy and McCarthy Blvd (current cost estimate $106 million)**
- *Interchange modifications at I-880**
- *Widening Montague to 8 lanes (mostly complete)**

* part of the settlement with the City of Milpitas and the City and County of Santa Clara. San José is obligated to build and fund these or to re-negotiate the settlement.[8]

- *Zanker Road Widening*
- *Charcot Avenue Extension (current cost estimate $54 million)*

Additionally, the City plans to widen a number of intersections in the area [see map next page]. It seems no pedestrian or bicycle improvements are currently planned on Brokaw Road either as part of the *North San José Deficiency Plan* or otherwise.[9]

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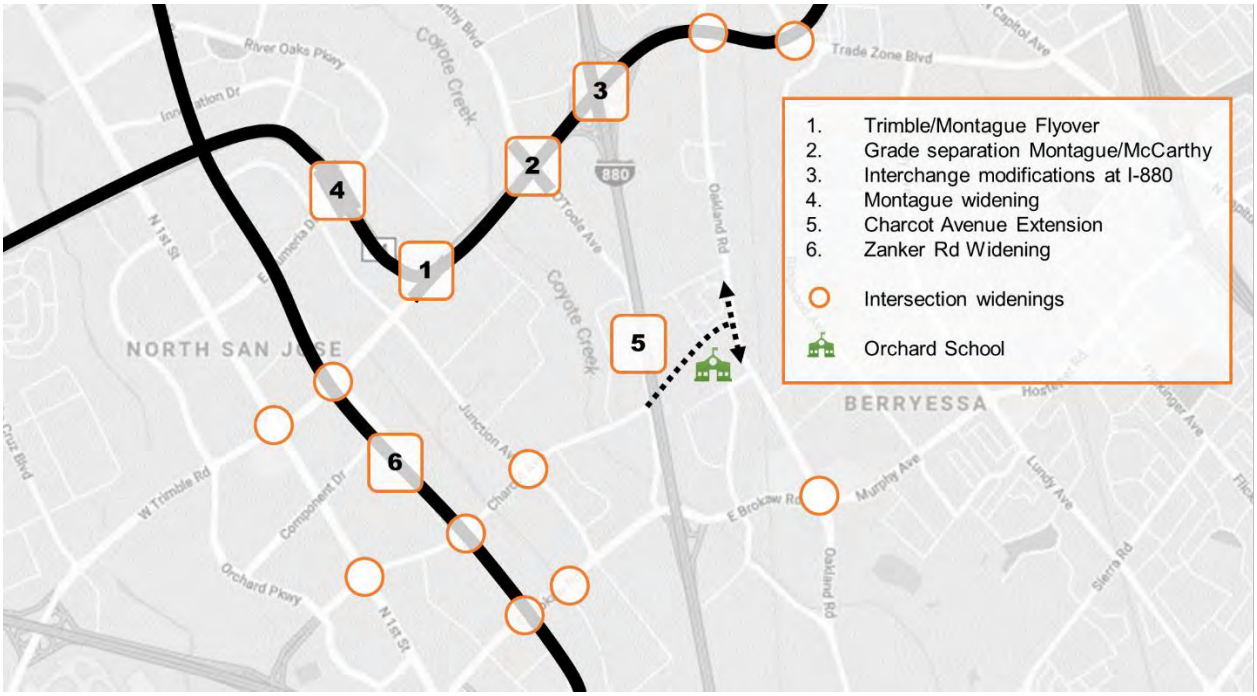
[1] Rose Center for Public Leadership, "Activating North San José" p. 17, https://danielrosecenter.org/wp-content/uploads/sanjose_lu_panel_presentation.pdf
[2] SPUR, "Rethinking the Corporate Campus", April 2017, p. 13, https://www.spur.org/sites/default/files/publications_pdfs/SPUR_Rethinking_the_Corporate-Campus.pdf
[3] "It's hard to walk in NSJ as existing sidewalks are small and frequently meandering, block and parcel sizes are large, and land uses are spread out, combing to create a barrier to efficient pedestrian movement", "NSJ Retail Strategy", http://sanjose.granicus.com/MetaViewer.php?meta_id=624592" also see "Plan Bay Area 2040 – Equity Analysis Report", MTC/ABAG, p. 130 http://2040.planbayarea.org/sites/default/files/2017-07/Equity_Report_PBA%202040%20_7-2017.pdf
[4] "How does it feel to bike in San Jose?", San Jose Better Bike Plan 2025 https://static1.squarespace.com/static/5b85b16db40b9d1dd2ad6421/t/5c12c093aa4a99d17f4deb37/1544732839253/Level+of+Traffic+Stress.pdf
[5] The 321 route on Montague does 1 trip per day per direction (Once around 8am in westbound and once around 6pm in eastbound direction) http://www.vta.org/routes/321. There is currently no bus route on Brokaw.
[6] Also: "The Plan's phasing appears to have perpetuated the segregation of uses --- precisely the condition that exacerbates traffic, GFG [sic] emissions and auto dependence." Liccardo, Nguyen, Peralez "Memo: North San José Area Development Policy", April 8, 2016, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2131&meta_id=567696
[7] "FY18 TRAFFIC IMPACT FEE REPORT" November 26, 2018, http://www.sanjoseca.gov/DocumentCenter/View/81369
[8] "Status Report on the Update to the North San Jose Area Development Policy" http://sanjose.granicus.com/MetaViewer.php?meta_id=557581 , Feb 12. 2016, p. 7.
[9] Maps of VTA's "VTP 2040" show a multi-modal improvement project on Brokaw/Murphy/Hofstetter, but VTA staff confirmed by email that this was placed on the maps in error (http://www.vta.org/sfc/servlet.shepherd/document/download/069A0000001EOT4IAO, p. 16)



Map 1: Selected planned Improvements according to NSJ Deficiency Plan

2. Negative Impact of Building an Additional Road into NSJ

1. Impact on Transportation Mode Usage

The City of San José is actively trying to reduce Vehicle Miles Traveled (VMT) as well as the share of people travelling in single-occupancy vehicles by shifting people towards more active modes of transportation.[10] Unfortunately, the latest data does not show significant progress toward these goals.[11] It seems questionable that an additional road like Charcot would lead to a significant change in these metrics, especially since the current ***North San José Deficiency Plan*, which Charcot is a part of, is based on outdated Level of Service (LOS) criteria**.[12]

Implementing the current *North San José Deficiency Plan* is **estimated to cost almost a billion dollars**[13]. According to the most recent estimates, 89.5% of the funds for this plan will go toward road and intersection widenings and other projects that increase road capacity, and 10.5% ($97M) will go toward "Offsetting Actions from the CMA Immediate Implementation Action List" (i.e., pedestrian, bicycle, transit, and transportation demand management/TDM)[14].

[10] "Climate Smart San Jose", http://www.sanjoseca.gov/DocumentCenter/View/75035
[11] Memorandum "Envision San José 2040 General Plan Annual Performance Review, November 19. 2018, https://sanjose.legistar.com/View.ashx?M=F&ID=6791914&GUID=C2C82D07-5402-4578-ACB2-C6CF20CD775E
[12] City of San José CEQA Transition to Vehicle Miles Traveled Metric http://www.sanjoseca.gov/vmt
[13] 924 million dollars, Memorandum "FY18 Traffic Impact Fee Report", http://www.sanjoseca.gov/DocumentCenter/View/81369
[14] Some of the LOS projects will include multi-modal elements.

Implementing the *North San José Deficiency Plan* will not improve upon the current mode share distribution.[15] "Of all North San Jose project trips, 88% would be made by automobile, six percent would be on transit and six percent would be walk or bike."[16]

2. Financial Impact

The plan as originally intended was to be funded mainly (up to ~90%) by the North San José Traffic Impact Fee (TIF). Since the plan's initial adoption, project costs have increased significantly and the City has offered lower TIF rates to developers as incentive for development.[17] **New estimates show that TIF revenue will cover only roughly 50% of the expected costs**[18]. San José City staff assumes that VTA will cover most of the shortfall through Measure B funds (~$324M), in turn making these funds unavailable for other, maybe more efficient VTA Measure B projects, while leaving about $87M to be covered from funds not yet identified.[19] If no additional external funding can be secured San José might have to cover the costs from the general fund or increase the NSJ TIF.

It seems logical that **most of the LOS-based "improvements" are likely to become obsolete** sooner rather than later, particularly if the City is able to achieve the above mentioned mode shift and significantly reduce the number of cars on our streets.

The **cost estimates for the projects don't include future maintenance costs** which will add to San José's existing infrastructure backlog.[20]

In its Next Network update, **VTA identified Brokaw Road as well as Montague Expressway as important new routes for transit**[21]. VTA will try to establish successful bus lines running up to every 15 minutes during peak times on both roads[22] [23]. These new lines would, however, compete with road expansion projects like the Charcot Extension for the same pool of commuters. It should be noted that, ironically, VTA is expected to fund about 90% of the estimated Charcot project costs.

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[15] Charcot specific data not yet available.
[16] "North San Jose Development Policy – Transportation Impact Analysis", February 24, 2005, p. 71 http://www.sanjoseca.gov/DocumentCenter/View/40212
[17] Memorandum "NORTH SAN JOSE TRAFFIC IMPACT FEE INCENTIVE PROGRAM", November 23, 2015, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=1477&meta_id=546956
[18] Memorandum "FY18 TRAFFIC IMPACT FEE REPORT" November 26, 2018, http://www.sanjoseca.gov/DocumentCenter/View/81369
[19] Memorandum "FY18 TRAFFIC IMPACT FEE REPORT" November 26, 2018, http://www.sanjoseca.gov/DocumentCenter/View/81369.
[20] Memorandum "GENERAL OBLIGATION BOND OPTIONS FOR NOVEMBER 2018", June 14, 2018, https://sanjose.legistar.com/View.ashx?M=F&ID=6311376&GUID=454D438A-8CFB-42C8-A611-5BA49E912812
[21] See VTA "Transit Alternatives Report"' June 10, 2016 http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/TRIP%20Alternatives%20Report%20Web.pdf
[22] VTA „Next Network Final Plan", March 24, 2017 https://static1.squarespace.com/static/56c7a8e68a65e2903b636e0a/t/58e809e8cd0f68da60388e97/1491601899933/VTA+Final+Plan.pdf
[23] The recently published VTA 2019 New Transit Service proposal suggests a reduced frequency for local bus #20 on Montague compared to the Next Network.

3. Local Impact

The Environmental Impact Report (EIR) which will describe the specific impacts of the project is not yet public. The concerns of the community[24 25 26] are therefore based on the available draft designs as well as general observations of similar projects.[27]

The community's main concerns are:

- **Conflicts with Vision Zero**[28] and especially its Core Principle 2: "Human life and safety takes priority over mobility"[29]. Given the close proximity of several logistic hubs, it is worrisome that the road will likely carry a significantly higher number of trucks than a typical road in a school zone;
- **Air Pollution**[30 31 32 33 34];
- **Impact on the size of Orchard School, including the available recess area and sports field** either because of eminent domain or new setback requirements; and
- **Safety risks**: The industrial area in NSJ bordering I-880 includes many businesses dealing with dangerous chemicals (e.g., Kinder Morgan Oil Terminal, Univar pesticides and petrochemical warehouse). Trucks carrying these chemicals travelling a just few feet away from classrooms on a continuous and frequent basis puts students at risk.

Map 2: Sources of potentially significant truck traffic

Additionally, from an equity perspective it should be noted that the immediate affected neighborhood has been identified as a **"Community of Concern"** by the MTC[35] and has a lower median income than most surrounding areas.

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[24] abc7news "Parents fight 4 lane road near San Jose elementary school", https://abc7news.com/education/parents-fight-4-lane-road-near-san-jose-elementary-school-/3489609/
[25] KTVU 2, "Parents from San Jose elementary school protest proposed overpass", http://www.ktvu.com/news/parents-from-san-jose-elementary-school-protest-proposed-overpass
[26] KPIX 5 CBS, "New Overpass Plans In High-Traffic Area Worry San Jose Residents", https://sanfrancisco.cbslocal.com/2018/09/05/new-overpass-plans-in-high-traffic-area-worry-san-jose-residents
[27] Orchard Parents, "Comments to Notice of Preparation of an Environmental Impact Report for the Charcot Avenue Extension Project", May 31, 2018, https://docs.wixstatic.com/ugd/602fb4_717f8b2dcbc64c17bce1a61708c58750.pdf
[28] "Planned Freeway Overpass Tests San Jose's 'Vision Zero' Pledge to Reduce Traffic Fatalities", https://www.sanjoseinside.com/2018/09/05/planned-freeway-overpass-tests-san-joses-vision-zero-pledge-to-reduce-traffic-fatalities/
[29] Vision Zero San Jose http://www.sanjoseca.gov/DocumentCenter/View/74828
[30] The Invisible Hazard Afflicting Thousands of Schools. The Center for Public Integrity, https://publicintegrity.org/environment/the-invisible-hazard-afflicting-thousands-of-schools/
[31] Air pollution: black, Hispanic and poor students most at risk from toxins – study, Guardian, https://www.theguardian.com/education/2018/feb/01/schools-across-the-us-exposed-to-air-pollution-hildren-are-facing-risks
[32] EPA https://www.epa.gov/schools/basic-information-about-best-practices-reducing-near-road-pollution-exposure-schools
[33] Association between Traffic-Related Air Pollution in Schools and Cognitive Development in Primary School Children: A Prospective Cohort Study, https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001792
[34] Geographic and social disparities in exposure to air neurotoxicants at U.S. public schools, https://www.sciencedirect.com/science/article/pii/S0013935117317188
[35] "Plan Bay Area 2040 – Equity Analysis Report", MTC/ABAG, p. 90 http://2040.planbayarea.org/sites/default/files/2017-07/Equity_Report_PBA%202040%20_7-2017.pdf

3. Accessibility of North San José

In the past City staff has generally argued that NSJ is an attractive business location since it is highly accessible:

> *"North San José provides a strategic location for job growth because of its proximity to the San José Norman Y. Mineta International Airport and the Downtown, along with a* ***high degree of accessibility*** *from several major freeways including Highway 101, Interstate 880, State Route 237 and State Route 87. The area is also well served by other transportation facilities including an existing light rail line and the Guadalupe River and Coyote Creek trail systems."* [36]

In the context of the Charcot Extension, City staff has contradicted this and argued that Charcot is needed because it is difficult to get in and out of NSJ: *"This southern area of North San José is like a bath tub and* ***right now is hard to kind of get in and out.****"* [37]

A clearer definition of accessibility,[38] especially in the context of moving from LOS to VMT, seems necessary. [39] [40] [41]

It is also important to note that the Charcot Extension will be able to carry only 1,000 vehicles per hour[42] – a relatively small number compared to the 80,000 new jobs the city hopes to create in NSJ.[43]

Given that many vibrant cities[44] have limited accessibility either for geographical reasons – such as Manhattan or San Francisco[45] – or because of voluntary restrictions – such as London[46], Madrid[47] or Oslo[48] – it generally seems questionable that automotive "accessibility" is related to economic development in a significant way.

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[36] North San José Area Development Policy, p. 7, http://www.sanjoseca.gov/DocumentCenter/View/43619 also: "**One of North San Jose's greatest strengths is its connection to the regional transportation infrastructure.** The area is located adjacent to the Norman Y. Mineta San Jose International Airport and is bounded by multiple major highways that provide direct access to the rest of Silicon Valley, San Francisco, and East Bay communities. Multiple VTA light-rail stations also connect area residents and workers directly to Downtown San Jose. Furthermore, the area has relatively easy access to two existing Caltrain stations and two future BART stations (Berryessa and Alumn Rock), all of which provide even greater regional connectivity." "NSJ Retail Strategy", http://sanjose.granicus.com/MetaViewer.php?meta_id=624592"

[37] Jim Ortbal, Director of Transportation at San José City Council, Jun 19, 2018, "6.5 18-837 Amendment to the Agreement with BKF Engineers for I-880/Charcot Avenue Extension Project."

[38] "The Difference Between Mobility and Accessibility", October 17, 2018, https://www.strongtowns.org/journal/2018/10/17/the-difference-between-mobility-and-accessibility or "A LOSing Proposition", August 14, 2018, https://www.strongtowns.org/journal/2018/8/13/a-losing-proposition

[39] "SB 743 Implementation" http://www.dot.ca.gov/hq/tpp/sb743.html

[40] See "City-initiated general plan text amendment, new city council transportation analysis policy 5-1, amendment to council policy transportation impact policy 5-1, and designation of infill opportunity zones.", https://www.sanjoseca.gov/DocumentCenter/View/75541

[41] "New Traffic Measuring Method Could Benefit Infill Development in San Jose", August 23, 2018, http://sjeconomy.com/new-traffic-measuring-method-could-benefit-infill-development-in-san-jose

[42] [42] "North San Jose Development Policy – Transportation Impact Analysis", February 24, 2005, p. 135 http://www.sanjoseca.gov/DocumentCenter/View/40212, p. 135

[43] "NORTH SAN JOSE - Live Here. Work Here. Connect Everywhere. http://sjeconomy.com/places/north-san-jose/

[44] https://www.vox.com/the-goods/2018/10/26/18025000/walkable-city-walk-score-economy

[45] One could argue that similar to these places NSJ is also surrounded by water on three sides (Guadalupe River, Coyote Creek and the Bay).

[46] https://www.standard.co.uk/news/transport/cars-set-to-be-banned-from-half-of-roads-in-londons-square-mile-and-speed-limits-slashed-to-15mph-a3957191.html

[47] https://www.citylab.com/transportation/2018/05/madrid-spain-car-ban-city-center/561155/

[48] https://www.nytimes.com/2018/12/19/travel/oslo-restricts-cars-in-city-center.html

4. Potential Benefits of a Pedestrian and Bike Bridge

Given the significant negative impact and questionable benefit of a roadway extension it is worth discussing how the Charcot project could be improved from both a local and a citywide perspective. One alternative would be to build a pedestrian and bike bridge. Such a bridge would have a number of **advantages**, including:

- **Supports the City's goal of shifting people to other transportation modes**
    - Supports the walkability goals of the NSJ Task Force[49]
    - Creates a more attractive, and even safer, route for people biking into NSJ
    - Encourages people to use public transit[50]
    - Sets a signal for the direction of further transportation planning in NSJ
    - Strengthens San José's position as a leader in sustainable transportation policy
- **Financially**: Far less expensive to construct and to maintain in the long term
- **Significantly less local impact**
    - Preserves the current safe route between the school and the neighborhood to the north
    - Would **allow for a small neighborhood park next to the school on Silk Wood Lane** serving parents and siblings waiting for children after school, a place for Supermicro employees to comfortably eat lunch, and for general use for the neighborhood
- **Avoids discussion of NSJ as an unsuitable location for businesses due to limited accessibility**
- Provides a **specific example of how the City is working with a community to find win-win solutions**
- **Create a sense of "place"**
    - One of the biggest challenges for NSJ is to create a sense of place[51] – "Creating a 'there-there' in NSJ requires the creation of walkable, mixed-used communities".[52]
    - A well-designed pedestrian bridge serving as a distinct gateway location into NSJ and connecting to the Coyote Creek Trail system and the planned green lush parkway on Charcot leading to the Guadalupe River[53] is much more likely to create this sense of place than a car-centric overpass ever could.

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[49] "8.1.1 Walkability – Strive to make North San José districts and neighborhoods walkable. 8.1.2 Pedestrian-Friendly Environment – Create an urban environment that is visually attractive, pedestrian- and bike-friendly and designed to the human scale.", North San José Neighborhoods Planning Taskforce Guiding Principles Final Unanimously Adopted 3-6-08

[50] E.g. new VTA bus routes on Montague and Brokaw.

[51] Rose Center for Public Leadership, "Activating North San José", https://danielrosecenter.org/wp-content/uploads/sanjose_lu_panel_presentation.pdf

[52] Liccardo, Nguyen, Peralez "Memo: North San José Area Development Policy", April 8, 2016, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2131&meta_id=567696

[53] According to the North San José Urban Design Guidelines Charcot is supposed to a green connector providing enhanced pedestrian and bicyclist connections between the Guadalupe River and Coyote Creek. It is supposed to be a parkway with a "lush, vegetated character created through a combination of planted medians, generous landscaping along their street and building edges, and two lanes of traffic moving at relatively slow speeds." https://www.sanjoseca.gov/DocumentCenter/Home/View/432

Introduction

California Walks (Cal Walks) and the Orchard Parent-Teacher Association collaborated on a Train-the-Trainer session for pedestrian counts. This project aimed to identify pedestrian safety issues around Orchard School, San Jose, by means of a pedestrian count. A group of volunteers engaged in a pedestrian count session on Tuesday March 5, 2019 to assess pedestrian and traffic activity during drop-off and pick-up hours on that school day. This report summarizes the activities undertaken and a discussion of the data collected through this Train-the-Trainer session.

- **Coordinators**
  - Jaime Fearer, AICP, California Walks Deputy Director
  - Robin Roemer, Orchard School PTA
- **Participants**
  - Tony Dang, California Walks Executive Director
  - Emily Chen, parent volunteer
  - Jeffrey Chang, student volunteer

Objectives

- **Gather data** on the number to people traveling to Orchard School by walking, including students, adults, younger siblings, and children in strollers.
- **Identify pedestrian activity** on Fox Lane and Oakland Road crosswalks and in the drop-off area near Silk Wood Lane for recording the number of students entering the school.
- **Present data** to advocate for enhanced pedestrian safety facilities and additional traffic regulations in the area.
- **Investigate potential safety hazards** around the school area, with special focus on the effects of work commute in around the school, dangerous driver behaviors, and freight truck activity.

Preliminary site visit

On March 3, 2019, the two coordinators, Jaime Fearer and Robin Roemer, and student volunteer Jeffrey Chang visited the Orchard School campus to identify the areas to record pedestrian activity, as well as define the methods for carrying out the counts.

Locations

For this training session, pedestrian counts were carried out at two locations during each period (morning and afternoon), since the small number of volunteers and counters only allowed for a maximum of two count areas per session.

- **Fox Lane** – The crosswalk on this road was prioritized since a large number of parents use the parking lot across the school on Fox Lane to drop off their children. Following drop-off, students would use the crosswalk on Fox Lane to enter the school. In addition, the absence of traffic lights or STOP signs at the crosswalk and significant activity of work commuters on Fox Lane imposes a greater danger for pedestrians. Fox Lane was assessed during both **morning and afternoon sessions**.
- **Silk Wood Lane** – A drop-off lot at the turn of Silk Wood Lane is another priority location since a large number of families living North of Orchard School use this area as a drop-off location for their children. Additionally, the Charcot Avenue Extension Project will construct an overpass that cuts through this area; pedestrian counts in this location are necessary to address safety concerns related to that project. Silk Wood Lane was assessed during the **morning session only**.
- **Oakland Road** – The crosswalk on Oakland Road is another area to be assessed since many students who live in communities South of Orchard School cross on Oakland if they walk to school. In addition, it is a large intersection that is monitored by the crossing guardsl during drop-off and pick-up hours. It is of interest to investigate the current safety measures that has been taken for improving walkability in that area, as well as develop further recommendations for the potential safety hazards that still exist on Oakland Road. Oakland Road was assessed during the **afternoon session** only.

Methods

Screenline counts were used for recording pedestrians in this Train-the-Trainer session. A traditional screenline count method involves setting an imaginary line perpendicular to a road, and pedestrians and bicyclists are counted each time they cross the line from **left-to-right** or **right-to-left** directions. By using a screenline count form (see Figure 2), counters will manually tally the number of pedestrians that cross the designated screenline from either direction. Additional subcategories of pedestrian activity can be recorded, including **children**, **strollers**, **skateboards/scooters/ skates**, and **wheelchairs/special needs**. It has been noted that children who attend Orchard School rarely bike to school, so the bicycle

portion of the screenline count sheet was not planned to be used (no bicycles were observed during counting periods as well).

- Screenlines for **Oakland Road** and **Fox Lane** were set **parallel to the road and perpendicular to the crosswalk,** as opposed to perpendicular to the road in traditional screenline counts. The overarching objective was to investigate the safety issues of students and families walking to the school, so screenlines set perpendicular to the crosswalks best account for the number of pedestrians exposed to traffic as they cross into the school.
    - Volunteers at Oakland Road were stationed at the right turn from Oakland Road onto Fox Lane, facing South towards the Oakland Road crosswalk. Crossing the Oakland Road crosswalk **toward the school campus was considered the left-to-right direction** and crossing **away from the campus was considered the right-to-left direction**.
    - Volunteers at Fox Lane were stationed at the right turn from Fox Lane to Ridder Park Drive, facing West toward Oakland Road. Crossing the Fox Lane crosswalk **toward the campus was considered the right-to-left direction**, and crossing **away from the campus was considered the left-to-right direction**.
- The screenline for **Silk Wood Lane** was set **across the opening to the drop-off area**, to record pedestrian activity in that area of the school. In light of the overpass proposition, pedestrian counts can identify the number of students and families that rely on the campus entrance on Silk Wood Lane for school arrival and dismissal, and those who cross Silk Wood Lane from residences to the North.
    - Volunteers at Silk Wood Lane were stationed adjacent to the school campus and right of the dirt drop-off area, facing Silk Wood Lane toward the North. Walking **towards the campus was considered the right-to-left direction**, and walking **away from the campus was considered the left-to-right direction**.

Morning counts consisted of one volunteer counting and another holding an umbrella, at each location (Silk Wood Lane and Fox Lane), due to rain. Afternoon counts consisted of two people counting at each location (Oakland road and Fox Lane), since the rain had stopped. The preferred method would be at least two people counting at each location.

Results

Table 1: Silk Wood Lane – Morning (7:47 – 8:21, One Counter)

	Time Intervals			Total
	7:47 – 8:02	8:03 – 8:18	8:18 – 8:21	
Right to Left (toward campus)	62	93	1	156
Left to Right (away from campus)	2	34	6	42
Additional Characteristics				
Child	50	68	1	119
Stroller	1	5	0	6
Skateboard/Scooter/Skates	0	0	0	0
Wheelchair/Special Needs	0	0	0	0

Table 2: Fox Lane – Morning (7:45 – 8:30, One Counter)

	Time Intervals			Total
	7:45 – 8:00	8:00 – 8:15	8:15 – 8:30	
Right to Left (toward campus)	8	107	2	117
Left to Right (away from campus)	0	33	27	60
Additional Characteristics				
Child	4	64	8	76
Stroller	0	1	1	2
Skateboard/Scooter/Skates	0	0	0	0
Wheelchair/Special Needs	0	0	0	0

Table 3: Oakland Road – Afternoon (2:00 – 3:00, Two Counters)

Counter 1					
	Time Intervals				Total
	2:00 – 2:15	2:15 – 2:30	2:30 – 2:45	2:45 – 3:00	
Right to Left (away from campus)	0	2	42	20	64
Left to Right (towards campus)	2	8	5	0	15
Additional Characteristics					
Child	0	2	34	15	51
Stroller	0	2	0	2	4
Skateboard/Scooter/Skates	0	0	0	0	0
Wheelchair/Special Needs	0	0	0	0	0
Counter 2					Total
Right to Left	0	2	42	20	64
Left to Right	2	9	5	0	16
Additional Characteristics					

Child	0	1	34	14	49
Stroller	0	2	0	2	4
Skateboard/Scooter/Skates	0	0	0	0	0
Wheelchair/Special Needs	0	0	0	0	0

Table 4: Fox Lane – Afternoon (2:02 – 2:57, Two Counters)

Counter 1					
	Time Intervals				Total
	2:02 – 2:15	2:15 – 2:30	2:30 – 2:45	2:45 – 2:57	
Right to Left (toward campus)	10	45	18	6	79
Left to Right (away from campus)	0	30	95	60	185
Additional Characteristics					
Child	2	22	59	44	127
Stroller	1	4	0	0	5
Skateboard/Scooter/Skates	0	0	1	1	2
Wheelchair/Special Needs	0	0	0	0	0
Counter 2					Total
Right to Left	4	51	20	8	83
Left to Right	7	24	100	59	190
Additional Characteristics					
Child	1	18	54	39	112
Stroller	1	4	2	2	9
Skateboard/Scooter/Skates	0	0	1	1	2
Wheelchair/Special Needs	0	0	0	0	0

Calculating the difference between the right-to-left and left-to-right numbers can reveal the number of students that enter the school (in the morning) as well as leave the school (in the afternoon), at each specific area.

- **Silk Wood Lane** – Morning: 114 students entering
- **Fox Lane** – Morning: 57 students entering
- **Oakland Road** – Afternoon: 49 students leaving (rounded average of two counters)
- **Fox Lane** – Afternoon: 107 students leaving (rounded average of two counters)

From the results, Silk Wood Lane had more pedestrian activity during the morning, compared to Fox Lane. In the afternoon, Fox Lane had more pedestrian activity than Oakland Road. Fox Lane activity in the afternoon can be attributed to the large number of parents that park in the parking lot located on Fox Lane at Ridder Park drive, across from the school. That parking lot is widely used by parents who wait there to pick up their children after they cross Fox Lane.

It should also be noted that the lower number of pedestrian counts (in comparison to the figures presented by the Figure 1, the Orchard School Student Population Demographics) may be due to rain. Certain parents may choose to drive to school and drop children in the drop-off parking lots on a rainy day. These drop-off zones are located in the school; children dropped off directly inside campus are not exposed to traffic on the road, so they are not counted as pedestrians.

Discussion

Errors

- **Human error** – When there is a large number of pedestrians crossing from both sides, it is difficult to count every single individual. Manual tallies make it difficult to count while recording the number on the tally sheet; there may have been a small number of pedestrians that were not tallied as a result of taking counts by hand.
- **Confusion of screenline directions** – During the afternoon session on Fox Lane, the left-to-right counts were switched with the right-to-left counts during recording. This error was noted after the counts, and the numbers were adjusted to display the appropriate direction for the final count tables.
- **Rain** – Because of rain, only one counter was recording pedestrian counts for each location in the morning. This may decrease the reliability of the count data slightly, even though another was present to provide assistance during morning counts.

What Went Well

- **Two counters** that managed each of their tally sheets, in the afternoon, allowed both participants to work together for the counts.
- **Improved weather** in the afternoon made counts easier.
- **Observing driver behaviors** along with counting pedestrians helped provide leads for future investigation and safety measures.

Suggestions for Count Improvement

- **One counter for each direction** (left-to-right and right-to left) can help reduce the number of errors made by only a single person counting both crossing directions.
- **An update tally form** that better identifies screenline direction can help avoid confusion regarding which sides of the road the screenline corresponds with. For this Train-the-Trainer session, larger areas for tallying children would be helpful, as students were the main focus.
- **Better counting devices** such as clickers or video cameras can produce more reliable data.
- **Having three counters per intersection** is helpful if one counter needs to switch out during a count session. In general, having more counters at each location would yield more accurate results and decrease the effects of human error.

Safety Issues and Possible Solutions

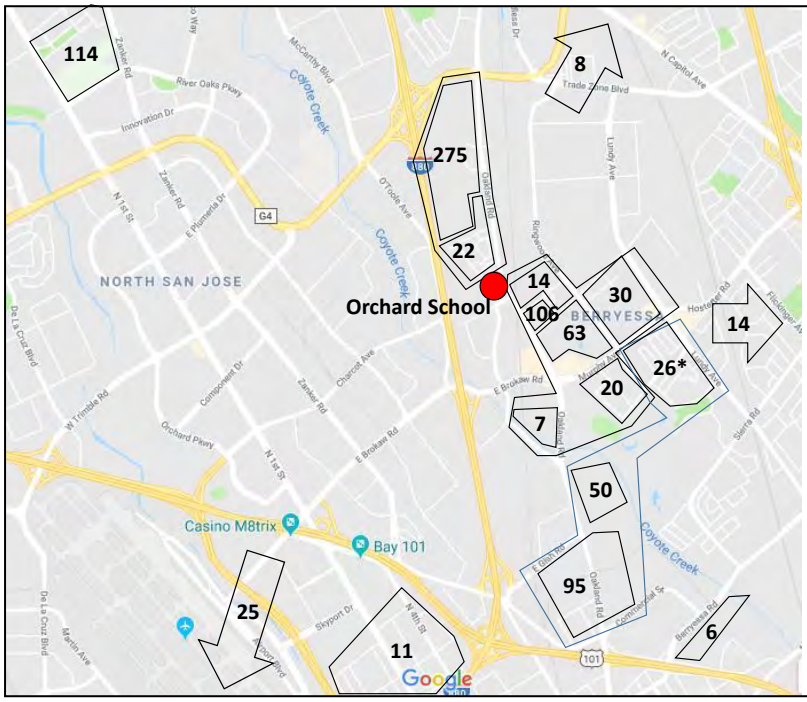
- **Large numbers of cars turning onto Fox Lane** – Much of these drivers were observed to be single drivers, presumably taking Fox Lane for commute to the workplaces on Ridder Park Drive. More action is needed to discourage cut-through commute, especially in a school area.
- **STOP sign/turning issues** – Particularly on the right turn from Oakland Road to Fox Lane, car speeds are very high as drivers turn onto Fox Lane. Where Ridder Park

Drive intersects with Fox Lane, drivers turning right tend to only yield rather than stop at the STOP sign.

- **Drop-off parking lot backup** – One of Orchard School's drop-off parking lot entrances is on Fox Lane, near the right turn from Oakland Road onto Fox Lane. Cars waiting to enter the parking lot line up along the sidewalk which causes backups on Fox Lane. This backup extends towards the intersection at Fox Lane and Oakland Road during school pick-up/drop-off times. As a result, the queue blocks those turning left and right onto Fox Lane, causing traffic issues around the crosswalks on Oakland and causes safety issues for students as they cross the road.
- **Speed bumps** – The lack of speed bumps can contribute to high turning speeds onto Fox Lane. Installing speed bumps could directly address the issue of turning speed, but it may also add to the issue of backup on Fox Lane.
- **Freight trucks** – Freight trucks are observed to be using Fox Lane in order to reach Interstate-880 by cutting through Ridder Park Drive. Future counts can incorporate recording freight truck activity in order to investigate this issue more thoroughly.

References

Figure 1: Orchard School Student Population Demographics



North

297	Casa del Lago (275, mobile home park) + Silkwood (22, townhomes)

South/West

240	< 1.1 mi 106: Los Esteros (affordable housing)
171	< 2 mi 50: Golden Wheel mobile home park 95: trailer/RV parks

Others

114	North Park (incl 3 from surrounding SCUSD areas)
6	Berryessa Rd
11	South of 101

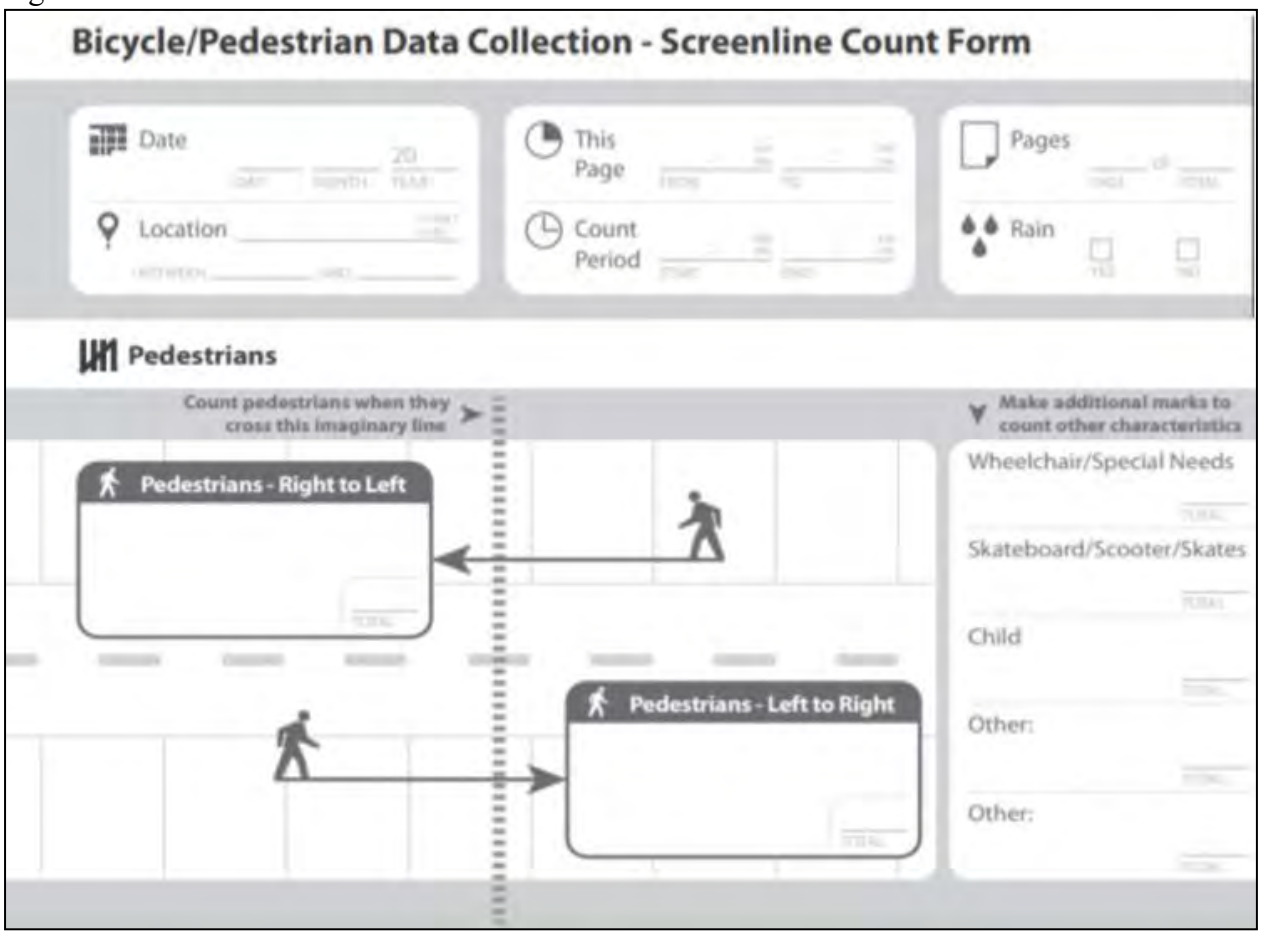
Outside of the District

8	Milpitas
14	Berryessa
25	Other areas of San José, Campbell, San Leandro
4	Not identifiable

890	**Total students**

* Some of the addresses in this block seem outside of OSD

Figure 2: Screenline Counts Data Collection Form



ATTACHMENT C – Inadequate responses to NOP/scoping comments

Response 1.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues. For the portions of this comment that have traffic and air quality-related questions, please see Sections 3.17 and 3.3, respectively."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment also address the unsafe transportation of hazardous materials "It's already bad enough with the oil rigs and tankers blasting very fast on our roads", "noise" and waste "debris".

Response 2.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment addresses "pollution, noise and congestion", transportation of hazardous materials "It's already bad enough with the oil rigs and tankers blasting very fast on our roads".

It also suggests alternative methodology to be used in the EIR "Forget using software programs - being there live to experience is a whole other thing."

Response 10.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises the question if roadway capacity in the area will be adequate to handle traffic volumes *"Our streets cannot handle these volumes of traffic & cars"*. This question should be discussed as an impact to the transportation network. The report fails to provide meaningful information on the capacity of the Charcot Extension and other roadways.

Response 12.1

"This comment states the opinion that the project will have multiple impacts on the health and safety of school children and that it should not be constructed if it requires right-of-way from Orchard School because of the impacts thereof. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

Statement is inconsistent with itself. *"Health of school children"* is an *"environmental issue"*. The comment also raises issues of air pollution, hazardous materials, division of an existing community.

Response 15.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises questions of "air quality", "noise pollution", "parking", transportation of hazardous materials ("oil tanker truck") and environmental justice. The latter is not discussed in the report at all.

Response 23.1

"This comment states the opinion that the project should not be constructed because of its impact on Orchard School. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of pollution, noise, traffic and division of an existing community.

Response 25.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of pollution, traffic and transportation of hazardous materials through a residential neighborhood.

Response 29.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-

making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of impact to recreational land, air pollution, noise and traffic.

Response 31.1

"This comment states the opinion that the project should not utilize land that is part of Orchard School. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of impact to recreational land ("Please don't take away a piece of land from Orchard School that my children attend because they need the space to play to regain physical and mental health to be productive.") which the EIR itself considers a Significant, Unavoidable Impact.

Response 34.5

"The above items are discussed in Section 3.17, Transportation."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises questions about additional intersections as well as traffic distribution throughout the day that are not discussed in Section 3.17.

Response 34.7

"As is standard practice, upon completion of the extension, the City will undertake a speed study to reevaluate speed limits along the entire length of Charcot Avenue. The speed limit on any segment will not, however, be set higher than 35 mph."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment asks for design speed which should be decided before construction. The comment also fails to address if the City will make changes to the roadway should speeds measured exceed the actual and intended speed limit.

Response 34.9

"The issue of cut-through traffic is addressed in Section 3.17, Transportation."

Statement misleading. Cut-through traffic for Wayne Ave, McKay Dr, Ringwood Ave that is mentioned in the comment is not addressed in the EIR.

Response 34.22

"Irrespective of traffic volumes, pedestrians will continue to use the existing sidewalks along Oakland Road."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment asks for a measure of walkability similar which includes factors such as safety and placemaking as referenced in the San Jose Complete Streets Design Standards and Guidelines.

Response 34.26

"The overpass will include both sidewalks and separated bike lanes."

Response does not address the question of how easily pedestrians going to and from O'Toole would be able to access the overpass. Based on the designs provided in the EIR, they would have to go under the overpass, cross Charcot Avenue, walk west on Charcot Avenue to the beginning of the overpass, cross Charcot Avenue slip ramp again to the overpass and then on the overpass walk back toward O'Toole/880. This violates General Plan policy which emphasizes and prioritizes easy pedestrian movement.

Response 34.48

Response references Noise Analysis, yet the Noise Analysis does not answer all questions posed by the comment. Response therefore needs to be amended.

Response 36.3 - 1

"Data on current and future bike/pedestrian traffic volumes are contained in Section 3.17, Transportation."

Section 3.17 does not include meaningful current bike/pedestrian traffic volumes and no future volumes at all. Statement is untrue.

Response 38.1

"This comment states the opinion that the project should not be constructed because it is located adjacent to a school and a residential neighborhood. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of pollution and noise "project will effectively destroy quiet enjoyment".

Response 39.2

"The analysis in Section 3.17, Transportation, describes the impact of the project on multiple modes of transportation. It is important to note that, unlike a typical development project (e.g., residential, commercial, industrial, etc.) that generates travel demand, this objective of this project is to construct facilities that accommodate all forms of transportation. Consistent with the Complete Streets policies, the project includes vehicular, bicycle, and pedestrian improvements."

Neither comment nor EIR address the all issues raised in the comment namely multimodal performance indicators such as non-auto mode shares, transit boardings, and pedestrian and bicycle quality of service measures.

Response 43.1

"This comment states the opinion that the project should not be constructed for the reasons enumerated above. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises issues of e.g. pollution and noise, traffic.

Response 48.5

"In accordance with State law, the speed limit on all roads around the school, including Oakland Road and Charcot Avenue, will be 25 mph whenever children are present."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises the issue of speeding, i.e. going above the posted speed limit. This is a potentially environmental issues as frequent speeding on a roadway increases the need for public services (police presence) in this area.

Response 52.1

"This comment states the opinion that the project should not be constructed because it is in a school and residential area and therefore should be removed from the General Plan. The comment is noted for the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues."

The response to the comment does not adequately address the concerns mentioned in the comment.

The comment raises the issue of noise, air pollution and dividing an established community.

Summary of comments from the community

Community meeting organized by Orchard PTA on September 26, 2019 at Orchard School

Summarized live by Orchard PTA. Full record of the comments are available as community meeting was recorded on tape. Record will be submitted to the City.

Wendy Gudalewicz, Orchard School Superintendent

- This meeting is an opportunity for the city officials to hear stakeholders' voices
- Tuesday meeting [organized by the City] conflicted with school board meeting, which was cancelled so that school board members could attend. City Council members were not able to attend Tuesday meeting because of City Council Session
- Worst part of the 4 lane road is right by the school (cars speeding up)
- Crosswalk is located where merge happens -- accidents are very likely
- 30mph is unlikely to be followed
- So many students crossing at crosswalk during peak hours
- In front of school, also dangerous due to gasoline trucks. If these trucks move to Charcot these will be involved in that heavy traffic
- Traffic will be 20 feet from 4th/5th grade pod. Extremely dangerous
- If tried to build a new school here now, would not be allowed based on state guidelines

Erin McCarthy, President Orchard Teacher Association

- Teachers 100% opposed to this project
- 30+mph within 20 feet of children
- Immediate physical danger
- Noise will interfere with all classroom activities
- Project will more than double pollution in the school area
- Benefits of expensive project are questionable - average commuter will save 17 seconds
- Working and advocating to keep students safe and ensure that conditions do not get worse
- Let teachers spend time teaching and supporting students instead of attending meetings that are a detriment to the learning environment

Nida Spetter, Orchard School Board Member

- Negative impact of project on parents
    - Increased accidents
    - Difficulty dropping off students to school
    - Lack of traffic light increases the likelihood that students will be hit by cars
    - Drivers are unlikely to respect traffic signs and limits, which increases the danger for students

Cecile Wei-Yu-Neng, parent at Orchard School

- Resident of City of San Jose

- At the time of the project idea, there was no school. San Jose has changed. This project should change
- Imagine if a car had an accident at the location 20 feet from the classroom
- People will not be happy with saving only 17 seconds. They will try to save more by going faster
- Concerned about risk of increased asthma for students
- Focus should be on decreasing number of cars
- Money could be used to provide so much to the community
- Unclear why this project is a good idea

.

Monica Galindo-Dass, parent and PTA Board Member

- Concerned about people ignoring traffic lights
- Students are walking by themselves and are not aware
- Is the City opening themselves up to lawsuit if students are injured?

Deena Said, Silk Wood Lane resident - will have a student in school in 2020

[comment was read at the meeting and submitted in writing to Orchard PTA after the meeting]

> My name is Deena Said and I own and reside in a home that backs up to Silk Wood lane, more importantly I'm the mother of a son that will be attending Orchard school in the 2021-2022 school year.
> I commute to Sunnyvale every day and sit in traffic from 1-2 hours. I understand that traffic congestion is an issue. However this extension project is not the solution.
> I am vehemently against this extension project.
> A plan introduced in 1994, nearly 25 years ago, well before the school and homes were built, has no place in 2019.
> This harm has been completely glossed over in the materials provided at the last meeting. 17 seconds is laughable in light of the harm that this project will cause through construction to completion.
> Air pollution is already a major concern considering the amount of cars on the roads and freeways across the south bay. Just yesterday a study was published in the Environmental Health Perspectives Journal, that found that short-term exposure to high ambient air pollution corresponded with a rise in visits to the children's psychiatric emergency department.
> Researchers at the University of Cincinnati and the Cincinnati Children's Hospital Medical Center examined psychiatrist patient visits, and then traced the concentration of PM 2.5 in their residential areas. Researchers found that whenever there were increases in PM 2.5, there would be MORE psychiatric visits within the following few days.
> Collectively, these studies contribute to the growing body of evidence that exposure to air pollution during early life and childhood may contribute to depression, anxiety, and other mental health problems in adolescence.
> Our children now live in the age of anxiety, the last thing we need is to actively contribute to their potential anxiety by allowing this project to continue. Furthermore, on an even more personal note, my children will be limited as they play in our backyard, due to the pollution and particulate matter.

San Jose calls itself the capital of Silicon Valley, the home of innovation. This plan is the opposite of innovation as it doesn't solve for the problem of traffic congestion, instead it puts our children in harm's way. The focus should be on improving public transportation options, planting additional vegetation to combat current pollution, and looking for solutions that do not impact our most vulnerable population.

Lisa Bennett, Director of Champions after school program at Orchard School site

- Native of San Jose; lived here 43 years; avid voter
- Disappointed in City and leaders
- Parking for staff and parents is already limited -- project will eliminate parking for Champions staff
- Concerned about having to park on a dark street early in the morning - safety is already a great concern
- Students are on campus from early in the morning to late (when parent workday is done). Concerned about the exposure of staff and students to the increased pollution level for a meager 17 seconds of time saved
- Leaders need to be more considerate of schools and those who run them

Christopher Scott, parent at Orchard School

- Lives 2 blocks away - currently takes 15 minutes to drop son off at school
- Will exacerbate the trip for drop off
- Huge problem for people on Fox lane as well as the people coming from the back side
- If kids are out on field - emergency vehicles will be additional distraction (especially 20 feet away)
- Pollution increase and traffic
- Plant trees to block cars going 40mph as well as to mitigate pollution

Bob Kramer, resident Casa de Lago mobile home park

- 14 foot sound wall in his back yard because of adjacent 880 freeway
- Every day there is a layer of pollutants in yard
- Many people with respiratory problems in the neighborhood
- Must keep windows closed to keep it out of the house
- Why should we add more pollution to the school

Community member

- Project does not benefit anyone living in the area
- Only benefactors are the delivery trucks (Fedex, DHL, UPS, etc)
- Project shows no concern for the safety of the children
- Option - pedestrian tunnel proposed
- Idea is half baked - will serve one type of driver, not the immediate residents of the area

David Cohen, Berryessa School Board President

- Project would have been nice in the past, but will not save time anymore

- City appeared to give up on building the road when they allowed the neighborhood to be built
- Anything less than a full stop light at the crosswalk is a mistake
- At a minimum, should have planned for student crosswalk when school and housing was built, but City failed to do so

Lawrence, Community member

- What happens when a child gets hit?
- What about the children who witness another child get hit?
- Who will counsel children when this does happen?
- Even a small percent increase in pollution is unacceptable. Consider cumulative affects
- Given common sense, this project should not be built

Huy Tran

- Came to find out more about the issue
- Encourage more people to come out and speak out - pass out flyers
- We can do better as a City taking care of the people who live here

Linda Locke, President Berryessa Citizen Advisory Committee

- Lives in Berryessa; was an educator there
- Because project was planned 20 years ago does not make it right today
- Encourage to involve community beyond the school

Sharmila, parent at Orchard School

- No benefit seen in project
- Concerned about safety of students walking to school
- Most drivers don't pay attention to signs and signals or stop when children are crossing
- Just want students to be safe

Karl Jacobson, former Orchard School Board President

- 35 years in District
- This area was not industrial when the project was developed
- The only people who will benefit are the developers - not the students
- Project puts kids at risk in order for the City to make money
- This is not a school issue only - impacts the entire community

Discussion of alternatives to Charcot Extension project

Updated: March 12, 2019

Content

CONTEXT

1. Issues of Charcot Extension
2. Transportation goals
3. Reasons for peak hour congestion east-west corridor not addressed by Charcot Extension
4. Assumed east-west travel patterns

ALTERNATIVES

I. Most similar alternative & SOV increasing alternatives

1. Overpass from Ridder Park to Junction Ave
2. Improving South Corridor access to NSJ
3. Other capacity increasing alternatives

II. Alternatives promoting alternative modes of transportation

1. Bike/Pedestrian Bridge
2. HOV/Transit lanes
3. Further alternatives/strategies/instruments to reduce SOV

III. Alternatives addressing existing bottlenecks

1. Typical bottlenecks AM westbound traffic
    1. Additional bottleneck AM
    2. Detailed look at typical bottleneck AM westbound traffic
    3. Proposition for Montague/880/McCarthy interchange
2. Typical bottlenecks PM westbound traffic
    1. Detailed look at typical bottleneck PM: Montague/McCarthy/O'Toole
    2. Alternative proposition for 880 SB on-ramp
    3. Proposition for alternative merging pattern on Montague

IV. Summary of suggested alternatives

I. Geographical overview

II. Draft evaluation of proposed alternatives

V. Conclusion

I. Issues of Charcot Extension

The Environmental Impact Report (EIR) which will describe the specific impacts of the project is not yet public. The concerns of the community are therefore based on the available draft designs as well as general observations of similar projects.

The **community's main concerns** are:

- **Conflicts with Vision Zero** and especially its Core Principle 2: "Human life and safety takes priority over mobility". Given the close proximity of several logistic hubs, it is worrisome that the road will likely carry a significantly higher number of trucks than a typical road in a school zone;
- **Air Pollution**;
- **Impact on the size of Orchard School**, including the available recess area and sports field either because of eminent domain or new setback requirements; and
- **Safety risks**: The industrial area in NSJ bordering I-880 includes many businesses dealing with dangerous chemicals (e.g., Kinder Morgan Oil Terminal, Univar pesticides and petrochemical warehouse). Trucks carrying these chemicals travelling a just few feet away from classrooms on a continuous and frequent basis puts students at risk.

Sources of potentially significant truck traffic

*Additionally, from an equity perspective it should be noted that the immediate affected neighborhood has been identified as a "**Community of Concern**" by the MTC and has a lower median income than most surrounding areas.*

2. Transportation goals

City Transportation Goals (excerpt)

- **Decrease driving alone**—from 76% today to 40% by 2040 and 12% by 2050—by significantly increasing rates of walking, biking, and transit use.
- **Overall decrease of 40% in VMT by 2040,** Climate Smart furthers the goals to a 57% reduction by 2050
- **Vision Zero**

Goals of Charcot Extension

- Provide **a safe multi-modal facility** to improve the roadway network connectivity in the area.
- **Improve connectivity between residential areas** on the east side of I-880 **and the North San José commercial area** on the west side.
- Increase the **capacity*** for east/west travel across the I-880 corridor (besides Montague Expressway and Brokaw Rd.)
- Provide a **safe bicycle/pedestrian facility over I-880**.

[* TBD: capacity for vehicles or for people?]

QUESTION:

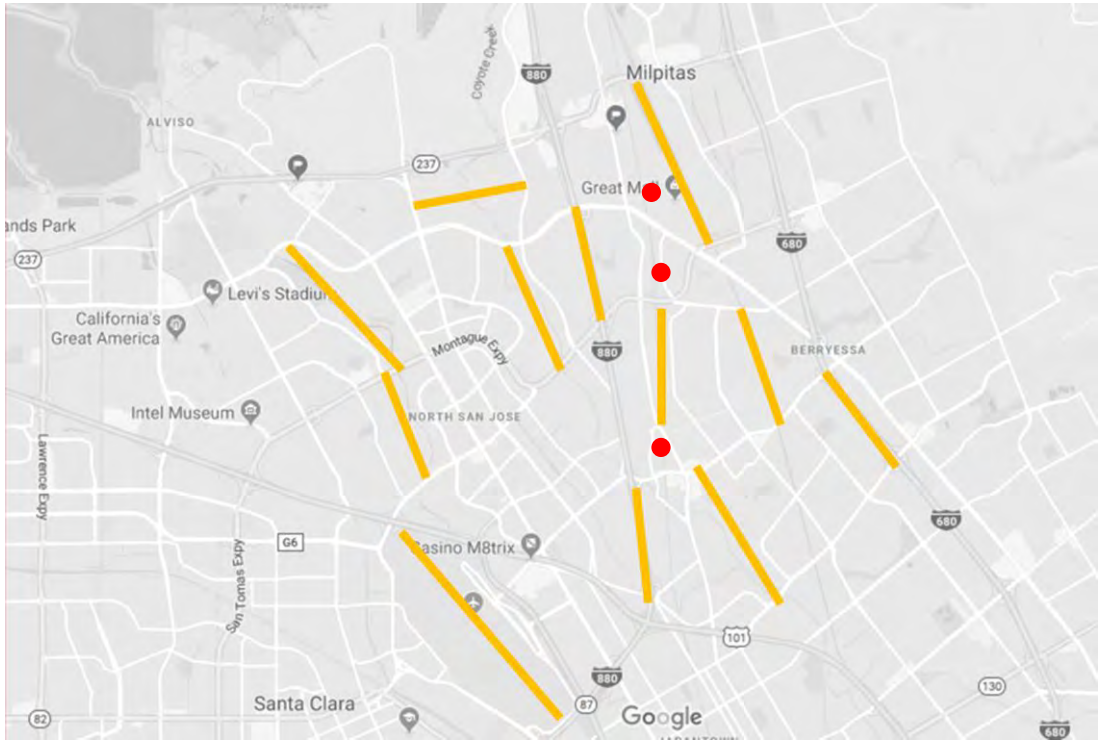
Are there alternatives

- more effective at achieving project and/or city goals (benefit);
- that are cheaper (cost);
- with less harmful impact (impact);

that should <u>replace or be prioritized</u> over Charcot?

3. Reasons for peak hour congestion east-west corridor **NOT** addressed by Charcot Extension

- **Regional imbalance of housing and jobs**
- Currently **limited** convenient **transit** options
- **Bottlenecks** with ~7 lanes merging into 3-4 (on Trimble/Montague eastbound and Trade Zone/Montague westbound)
- **At-grade rail crossings** causing back up which can take time to dissolve
- Large number of **SOV commuters**
- **Suburban layout of Berryessa** promotes car usage
- Large number of **available parking in NSJ** promotes car usage
- Remaining **major barriers** (see map)
- Remaining **large street grid** (see annex)

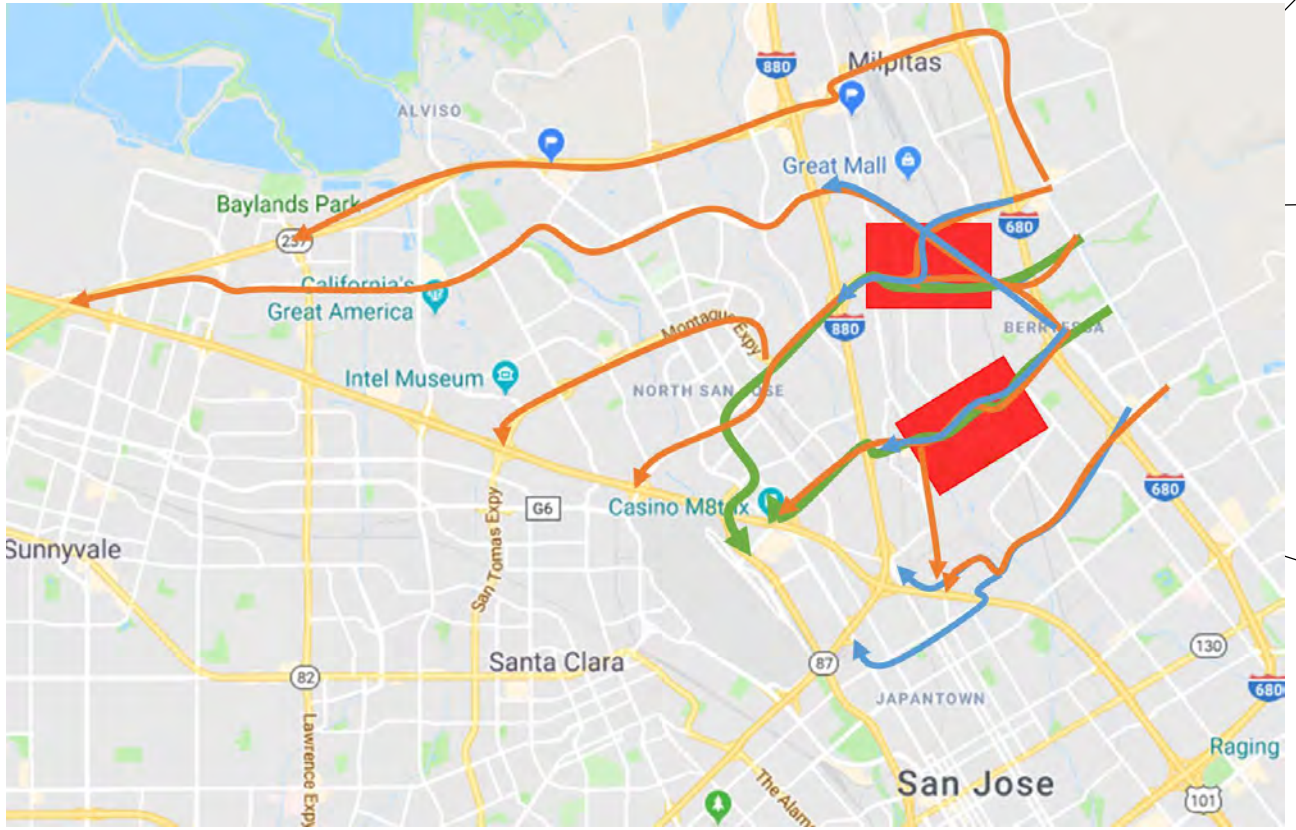


Major barriers (i.e. ± 1 mile between crossings) and at-grade rail crossings between Berryessa, North San Jose and employment centers further west after Charcot is extended over 880.

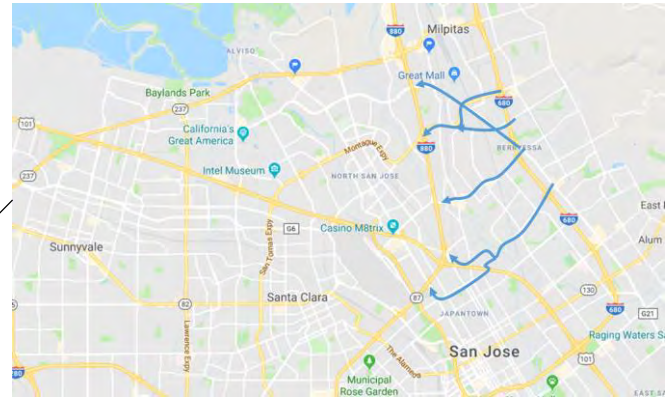
NOTE: Distance between Berryessa and jobs in NSJ generally <6 miles (i.e. within biking distances for significant part of the population if sufficient safe and attractive facilities are provided)

4. Assumed travel patterns

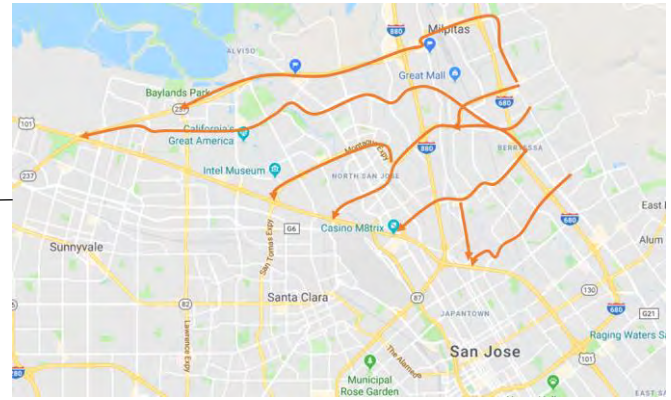
Assuming commuters choose shortest/most direct routes, most people working west of Berryessa are going through the areas marked in red, making these areas prone to congestion.
GPS based driving (see Annex) might result in additional, longer routes.



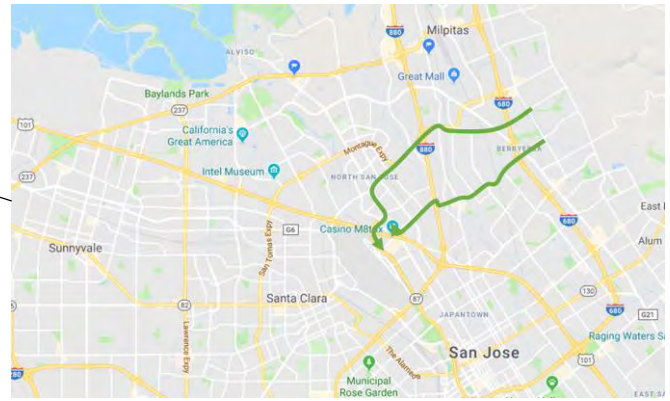
to 880



to 101

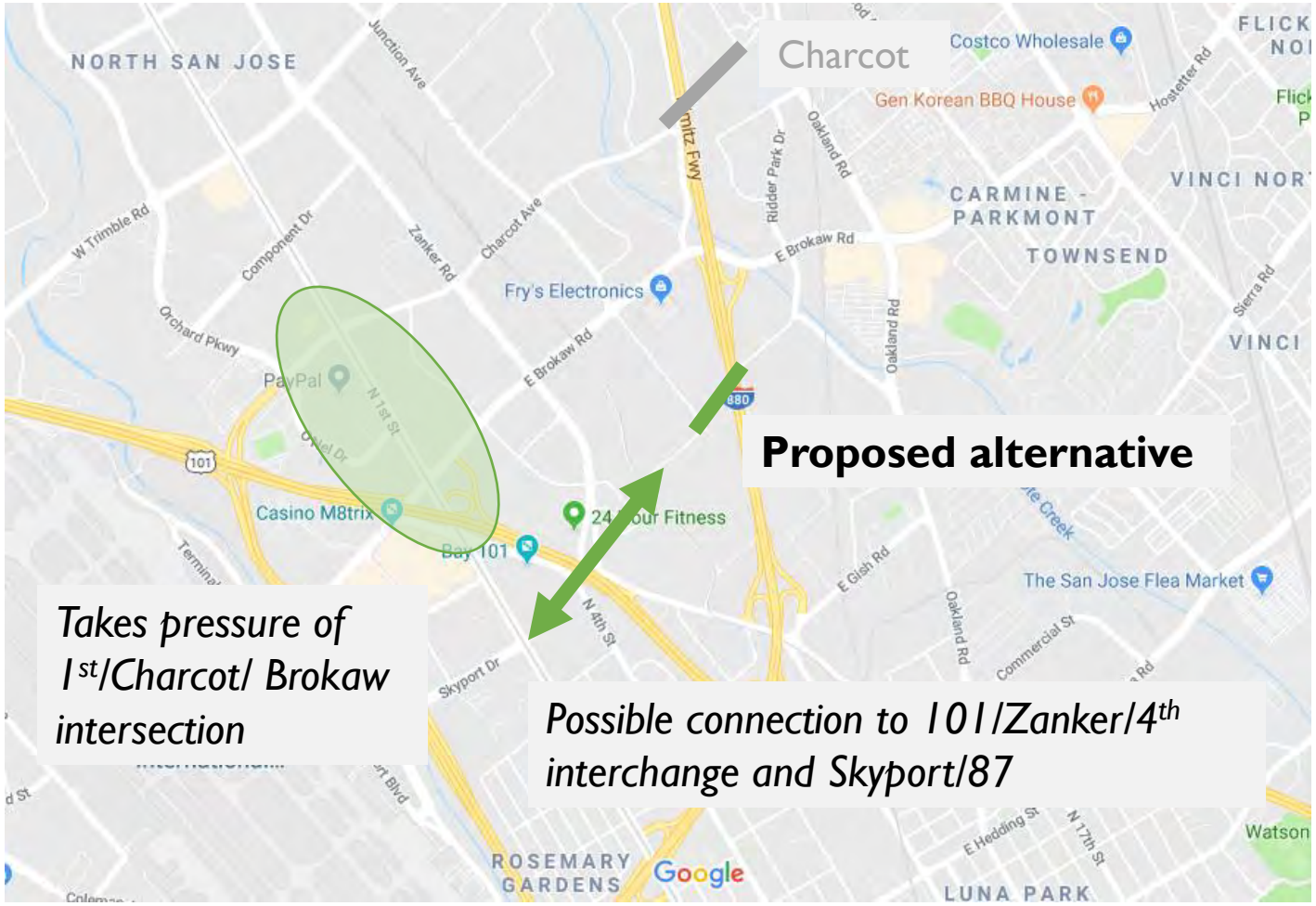


to 87



1. Most similar alternative & Single Occupancy Vehicles (SOV) increasing alternatives

1.1. Overpass from Ridder Park to Junction Ave



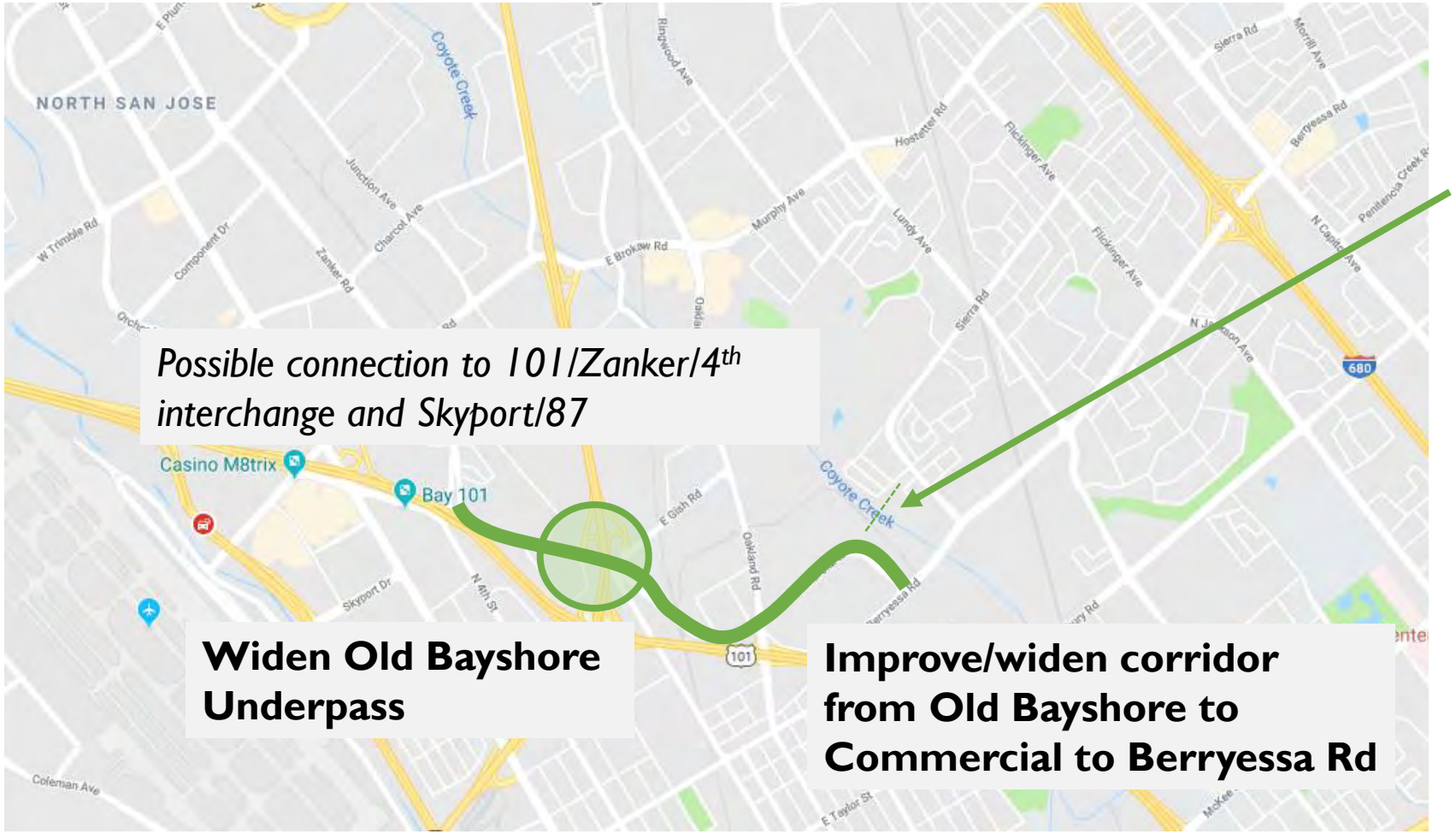
ADVANTAGES

- Impact only on business/industrial area
- Improves connection for regional traffic (101/87)
- Could improve intersection of 1st and Charcot/Brokaw which is heavily congested PM peak – allows traffic to bypass NSJ.

CONCERNS

- Right-of-way
- No relief for traffic east of Oakland *(similar issues exist with Charcot)*
- Potentially no relief for Montague *(no evidence so far available that Charcot would provide relief for Montague)*

1.2. Improving South Corridor access to NSJ



Previous plans have also considered connecting Commercial to Sierra Rd over Coyote Creek as well as e.g. State Route 87 extended north to State Route 237.
Staff has since come to the conclusion that "these improvements are no longer feasible due to developed land uses along the routes and will cause significant environmental impact."
(1994 NSJ Deficiency Plan)

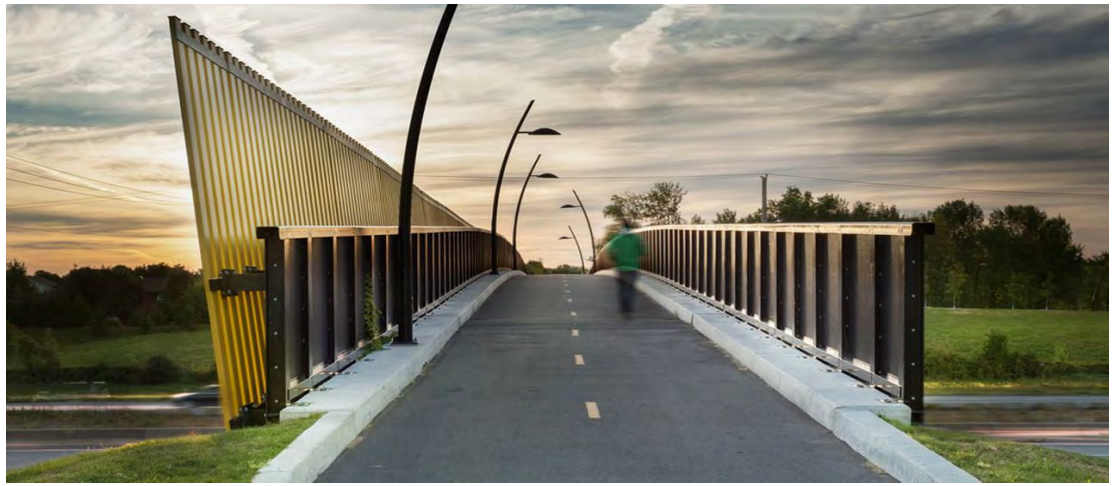
1.3. Capacity increasing alternatives (not considered further below)

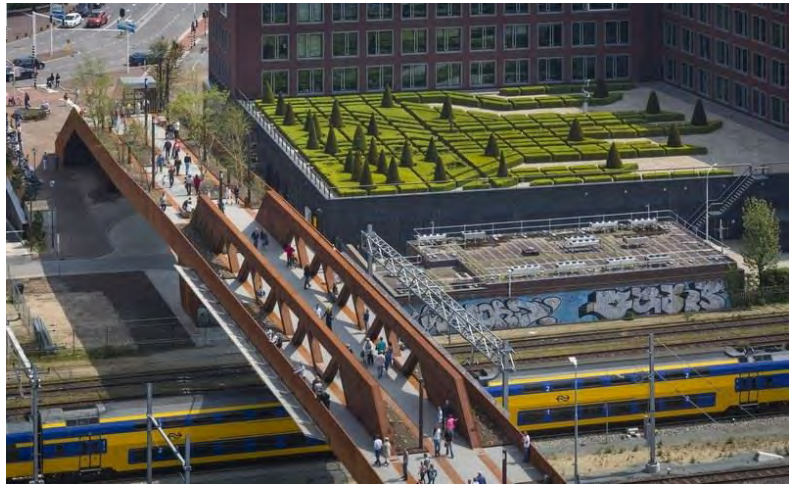
Widening Montague to 10 lanes

Widening Brokaw to 8 lanes

II. Alternatives promoting **alternative modes of transportation**

II.1. Bike/pedestrian bridge from Charcot to Oakland Rd





II.1. Bike/pedestrian bridge – supporting material

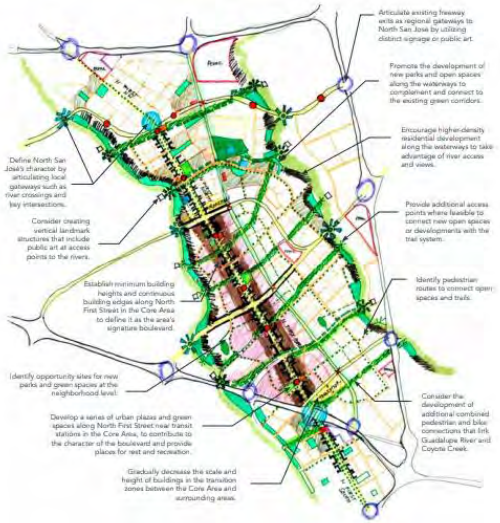
Supports the City's goal of shifting people to other transportation modes

- Creates a more attractive, and even safer, route for people biking into NSJ
- Encourages people to use public transit
- Sets a signal for the direction of further transportation planning in NSJ
- Supports the walkability goals of the NSJ Task Force
- Strengthens San José's position as a leader in sustainable transportation policy

Financially: Less expensive to construct and to maintain in the long term

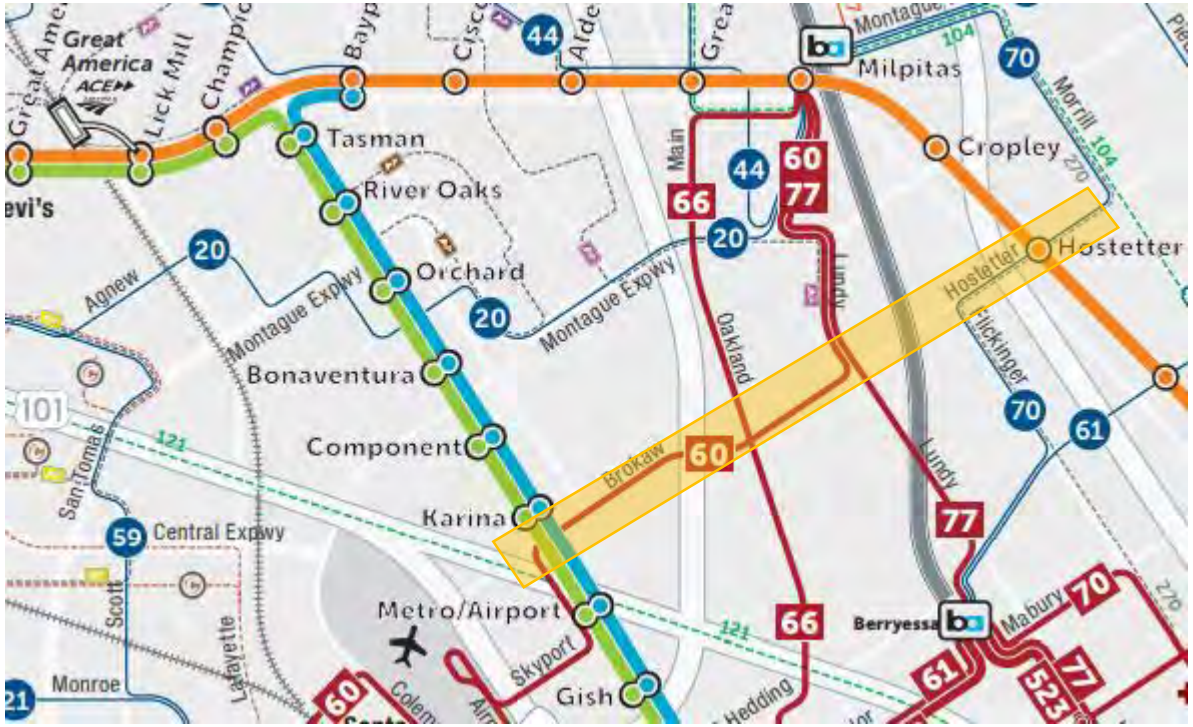
Create a sense of "place"

- One of the biggest challenges for NSJ is to create a sense of place – "Creating a 'there-there' in NSJ requires the creation of walkable, mixed-used communities" (Liccardo, Nguyen, Peralez)
- A well-designed pedestrian bridge serving as a distinct gateway location into NSJ and connecting to the Coyote Creek Trail system and the planned green lush parkway on Charcot leading to the Guadalupe River is much more likely to create this sense of place than a car-centric overpass



Liccardo, Nguyen, Peralez "Memo: North San José Area Development Policy", April 8, 2016, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2131&meta_id=567696

II.2. HOV/Transit lanes



HOV lane on Brokaw

- to encourage car-sharing and to connect to HOV/Express lanes on 880, 87, 101
- to support new VTA 60 bus route

Pilot Transit Lane on Oakland Rd

- to support VTA 66 bus route to Downtown
- Oakland Rd sufficiently wide to accommodate lane without impacting car traffic
- Additional protection for bike path
- Allows people in Santa Clara County to experience dedicated transit lane
- BUT: Probably only marginally helpful for east-west travel

II.3. Further alternatives/strategies/instruments to reduce SOV

- **Additional transit routes**
  - Bus line from Berryessa (east of 680) to NSJ
  - Keep direct light rail vom Berryessa to NSJ in addition to light rail to MV
  - Direct light rail connection from Milpitas BART to NSJ/1st corridor
- **Reduce available parking** in NSJ
- Continue expanding **HOV and express lanes on high- and freeways**
- Provide/encourage additional amenities in NSJ (retail, entertainment, restaurants) to **stagger PM commute time**
- Address regional housing and jobs imbalance
- **Traffic calming measures**
- **Multi-modal improvements e.g. Tasman Corridor Study**, pedestrian improvements (sidewalk gaps) and masterplan, improved bike paths, addressing other accessibility issues
- **Additional TDM-Strategies**

Many of these items may already be in progress or even outside of City jurisdiction.

Replacing or de-prioritizing Charcot could free up staff and resources to support them further.

III. Alternatives addressing **existing bottlenecks**

III.I.1. Typical bottlenecks AM westbound traffic

(Example Wednesdays, 8:35 AM)

Montague / Trade Zone (converging traffic)

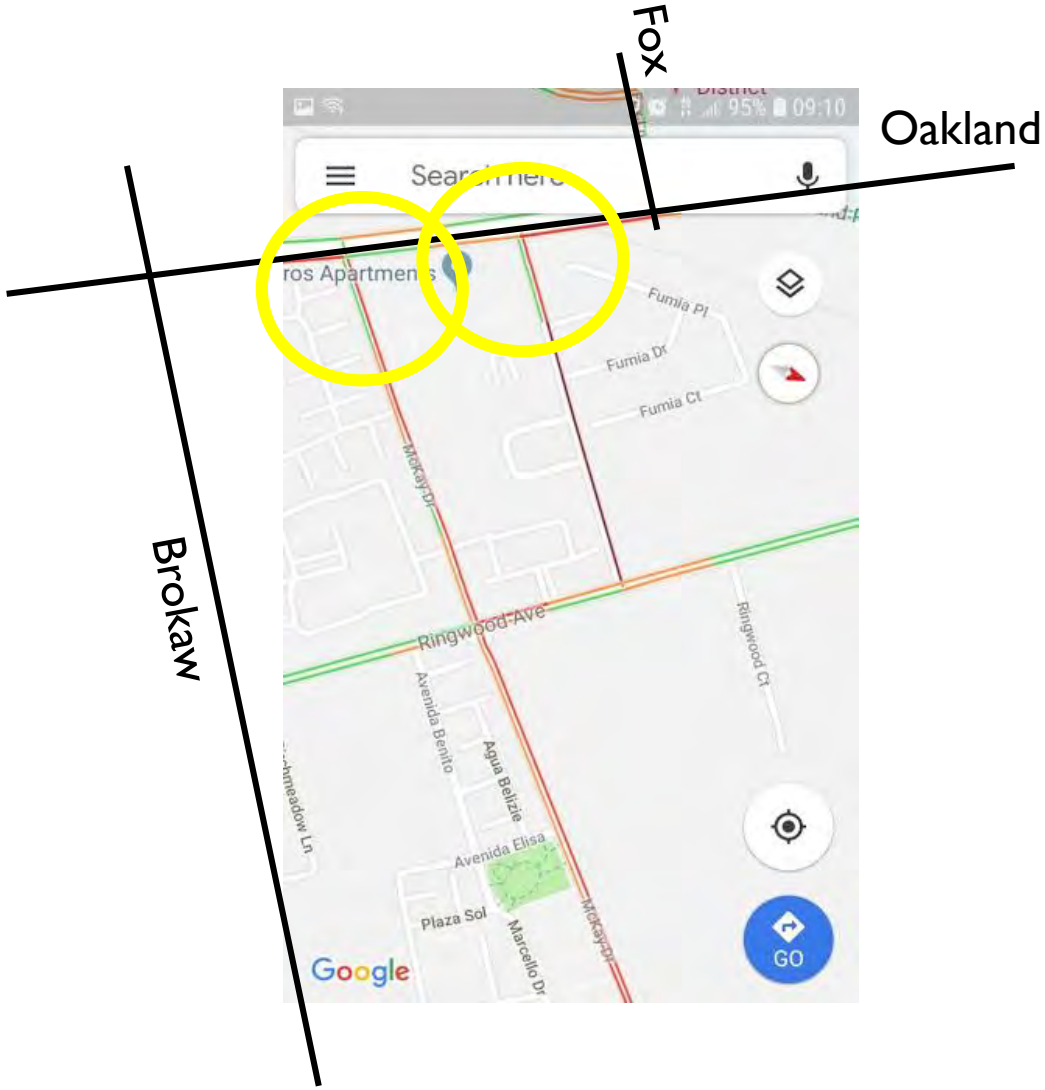
Montague / McCarthy/ O'Toole (see details below)

Brokaw / Ridder Park (see details below)

Montague WB to Trimble SB seemingly not a bottleneck currently, questioning the need of flyover.

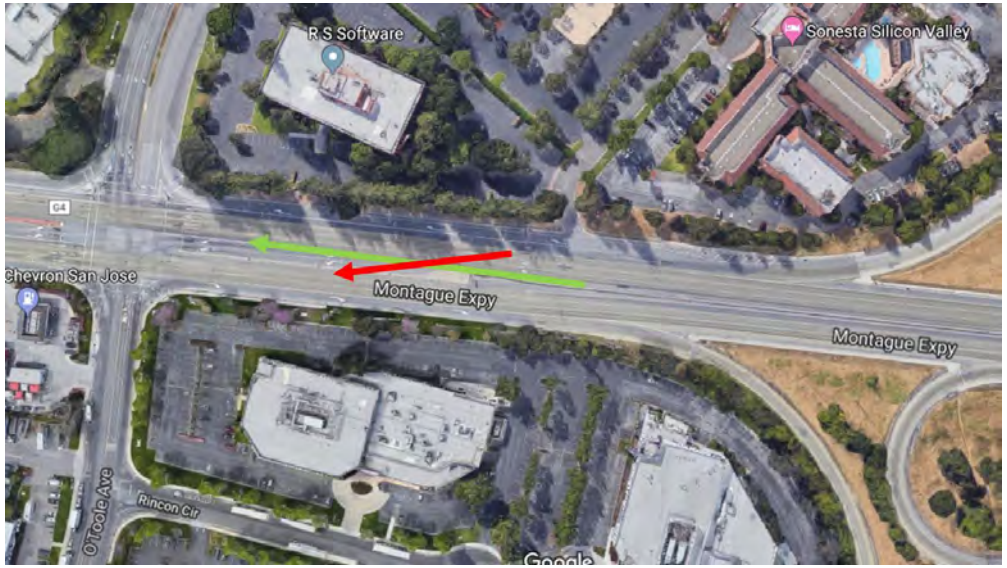
III.I.2. AM bottleneck not shown on large map:

McKay and Wayne backed up towards Oakland Rd as people use it as alternative/additional route to Brokaw



III.I.3. Detailed look at typical bottleneck AM westbound traffic

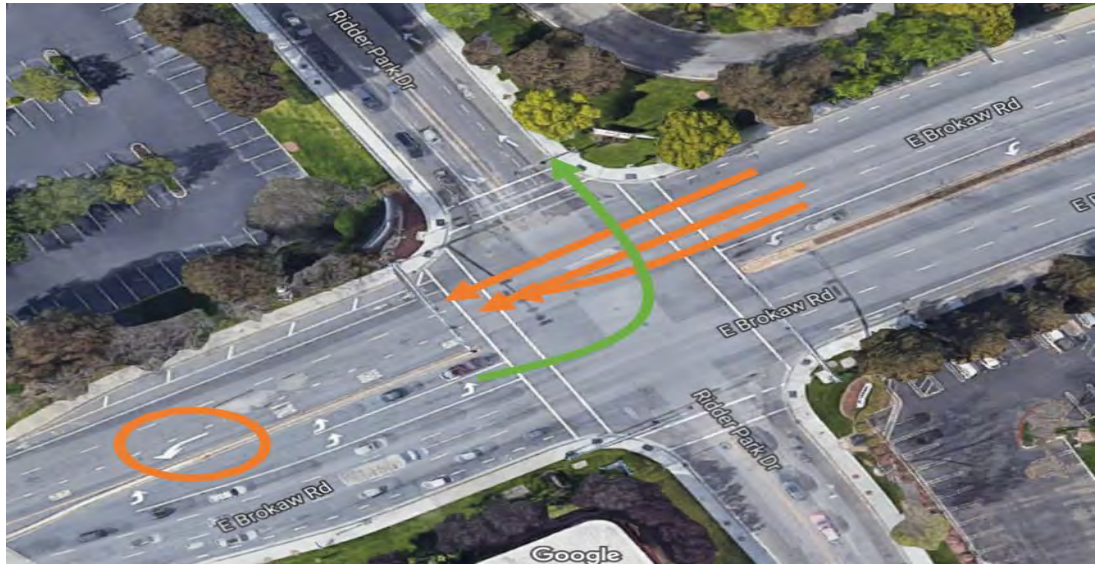
MONTAGUE/MCCARTHY/O'TOOLE



Traffic (including many trucks) coming from I-880 moving across 3 lanes on Montague to turn left on O'Toole or to get into left turn lane at next intersection (Trimble)

Mitigation to be evaluated:
Interchange re-configuration

BROKAW/RIDDER PARK



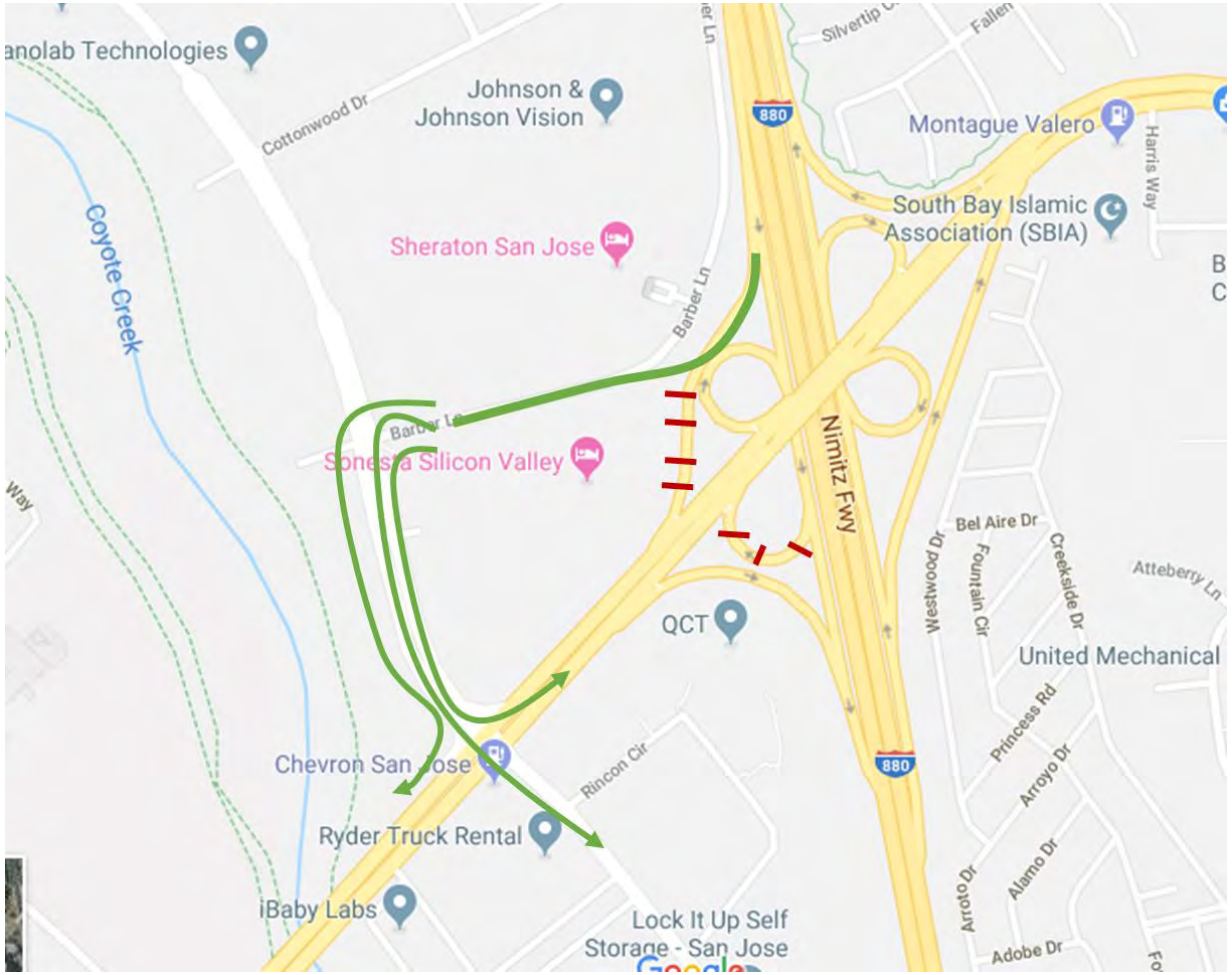
- 3 through-lanes become 2
- Long left turn phase from Brokaw into Ridder Park
- UPPR at grade crossing just before intersection (not shown)

Mitigation to be evaluated:
<u>Adding WB lane to Brokaw</u>, signal timing, rail grade separation

III.I.4. Proposition for Montague/880/McCarthy interchange

- Current deficiency plan and settlement calls for a grade separation at McCarthy (estimated cost: 106 million) and 880 interchange modification

- **ALTERNATIVE SUGGESTION**
  Connecting 880 SB off-ramp to Barber Lane/McCarthy:
  - Eliminates weaving across lanes to from 880 off-ramp to left turn lane
  - More controlled merging towards Trimble Road as well
  - (Gasoline) truck traffic crosses Montague straight instead of left turn
  - Eliminates 2 conflicts with bike/ped on Montague
  - Could help with eastbound traffic as well (eliminates one merging section)



III.2.1. Typical bottlenecks PM westbound traffic
(Wednesdays, 5:35 PM)

Montague
Trimble to Oakland

Charcot and 1st

Brokaw from
1st to Oakland

Improved traffic flow on Trade Zone and Murphy/Hofstetter suggests Oakland may functions as "metering light" for remainder of network (see: http://cityobservatory.org/backfire_wider_worse_traffic/)

Trimble-flyover would not improve flow for traffic converging in eastbound direction on Montague

III.2.2. Detailed look at typical bottleneck PM eastbound traffic

Taking the left lane from Trimble to Oakland can be faster than taking HOV lane till McCarthy and then trying to move over to left lane at 880.

HOV lane becomes turn lane for going to 880 resulting in significant weaving movement

Mitigation to be evaluated:
Lane configuration, move 880 SB on-ramp to O'Toole

Right hand lanes weaving

Left lane usually relatively free-flowing

Mitigation to be evaluated:
Leading SB 880 off-ramp to McCarthy (see above) eliminates merging

Short merging lane

Left lane relatively free flowing

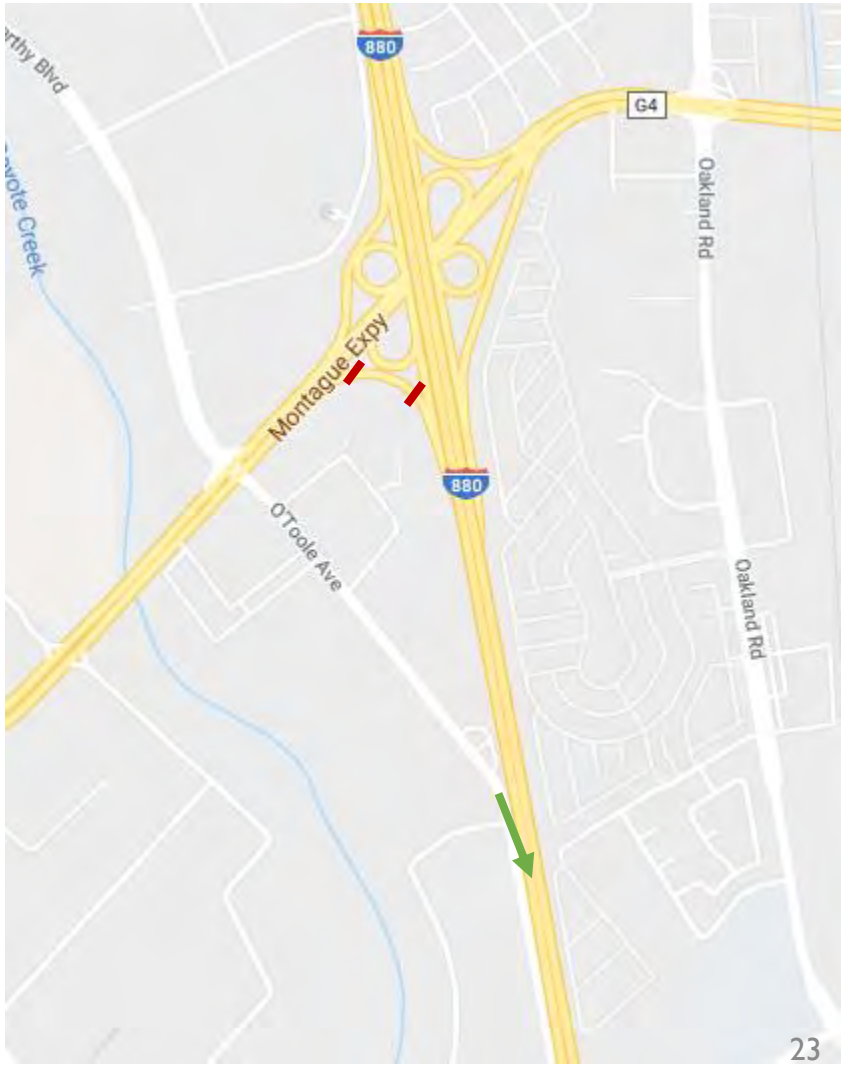
Mitigation to be evaluated:
Increase length of merging lane

III.2.3. Alternative proposition for 880 SB on-ramp

Goal: Separate traffic going over 880 from traffic going to 880 SB

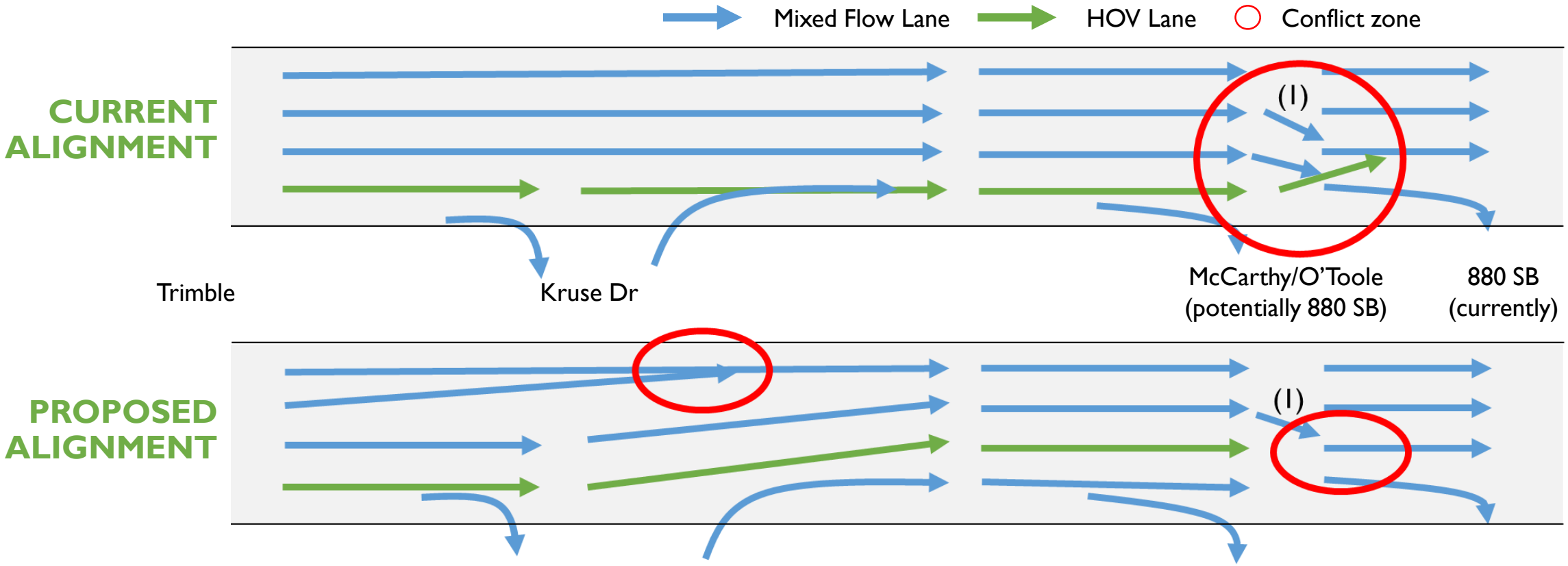
- Current deficiency plan and settlement calls for a grade separation at McCarthy (estimated cost: 106 million) and 880 interchange modification
- Alternative proposition: Connecting 880 SB on-ramp to O'Toole:
  - Eliminates weaving across Montague lanes to 880 on-ramp
  - Allows Montague traffic to 880 SB to turn right on O-Toole
  - Traffic from McCarthy to 880 SB goes straight instead of adding onto Montague
  - Eliminates 1 conflict with bike/ped on Montague

Crash data, fatalities in red



III.2.4. Proposition for alternative merging pattern on Montague

Goal: Improve flow on HOV lane and reduce conflicts at McCarthy/O'Toole intersection



(1) People planning to go to 880 NB

IV. Summary of suggested alternatives

IV.1. Geographical overview alternatives

Alternatives NOT increasing SOV capacity

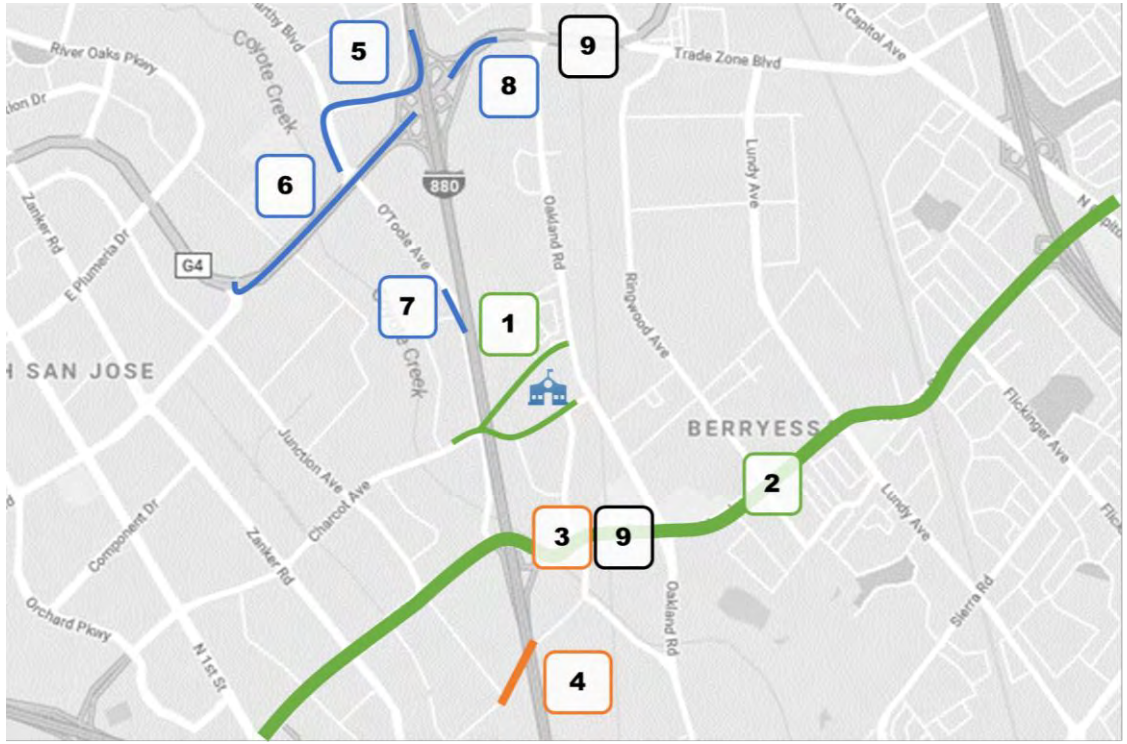
1. Bike/Ped Bridge (2 alignment options)
2. HOV lane on Brokaw

Alternatives increasing SOV capacity

3. Widening Brokaw from 5 to 6 lanes @ Coyote Creek (and improved signal timing)
4. Overpass from Ridder Park to Junction towards Sykport Dr/Zanker

Montague/McCarthy/880 interchange improvements

5. SB 880 off-ramp
6. HOV lane alignment
7. SB 880 on-ramp
8. NB 880/EB Montague merging lane



9. Rail road grade separations

Not shown: South Corridor (Old Bayshore) improvement

IV.2. Draft evaluation of proposed alternatives compared to Charcot

	BENEFIT	COST	NEGATIVE ENVIRONMENTAL IMPACT
Bike/Ped Bridge	Promotes active transportation	Lower	Much lower
HOV lane on Brokaw	Promotes car sharing, reduces congestion along Murphy, Hofstetter	Lower	Much lower
TDM et al.	Promotes active transportation	TBD	Likely to be lower
Widening Brokaw from 5 to 6 lanes	Eliminates bottleneck	Lower?	Less impact on humans, Impact on Coyote Creek tbd
Overpass from Ridder Park to Junction	Connects to Zanker/Skport interchange, shortens distance to 87	Same? Higher?	Lower on sensitive receptors (only commercial/industrial zone affected)
South corridor	Improves Berryessa BART–NSJ Connection	?	Likely to be lower on sensitive receptors (mostly commercial/industrial zone affected)
Montague/McCarthy/880 interchange improvements	Improves bottleneck and safety	Lower?	Lower, limited additional impact to existing traffic in the area
Rail road crossings		?	?

V. Conclusion

- **There seem to a number of potentially better alternatives that should be evaluated and either replace or take priority over the Charcot Extension.**

- In addition, NSJ Deficiency Plan calls for a number projects to be prioritized for Phase 1 of NSJ the development while Charcot was a phase 2 project. Among them seem to be:
  - North First Street & Montague Expressway
  - Trimble Boulevard & Montague Expressway
  - North First Street & Trimble Road
  - North First Street and Charcot Avenue
  - North First Street and Metro Drive
  - Bering Drive and Brokaw Road

"Reductions in cumulative traffic impacts will be largely dependent upon long term changes in the behavior of commuters. Such changes will be necessary in order to reduce the overwhelming dependence on single occupant automobile transportation" (NSJ EIR)

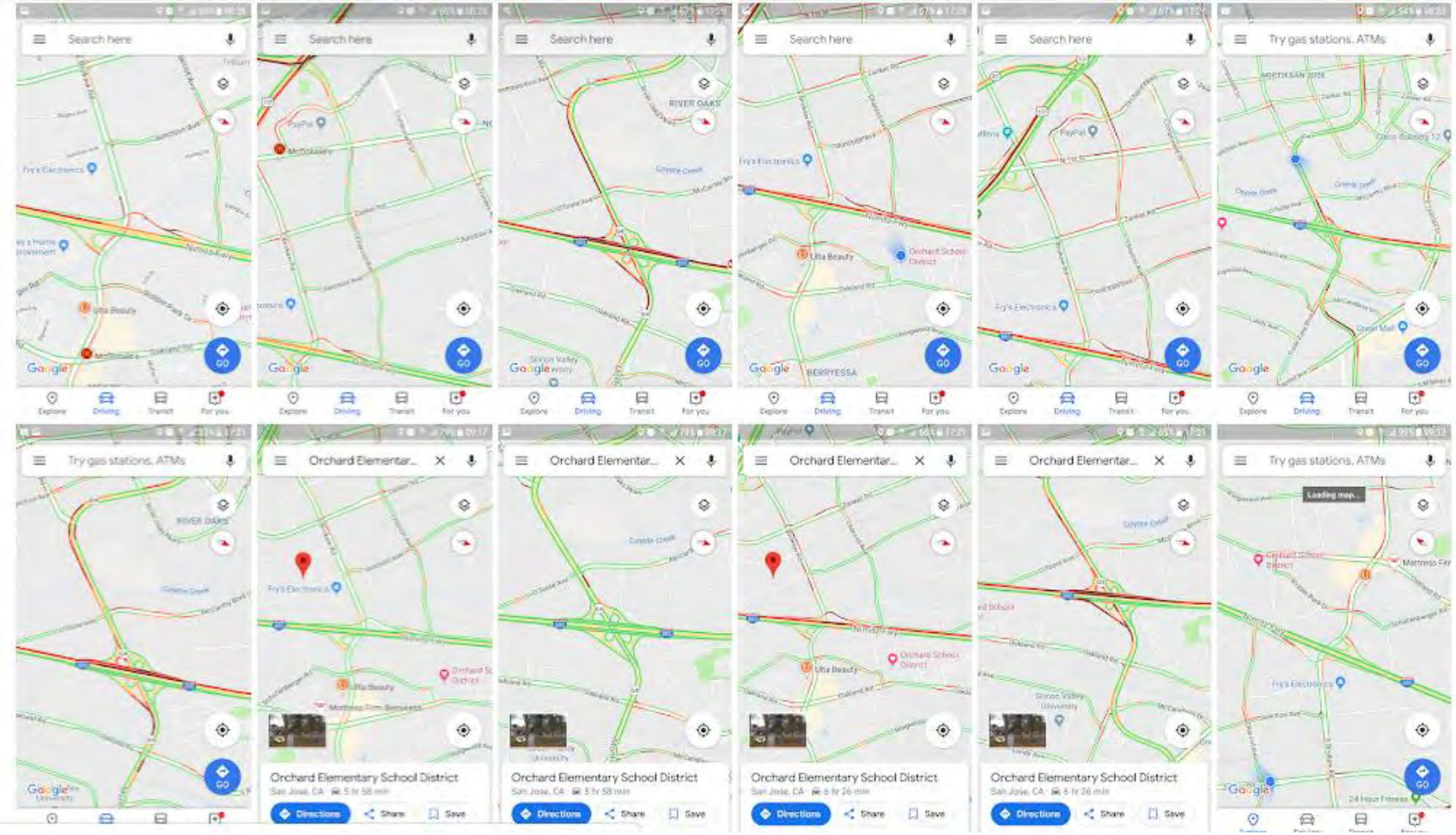
ANNEX

Extended study of traffic conditions on Montague and Brokaw during AM and PM peak hours

In order to further analyze traffic conditions during peak hours, 142 screenshots of Google Maps traffic conditions in the area were taken.

Timeframe: Aug-Nov 2018

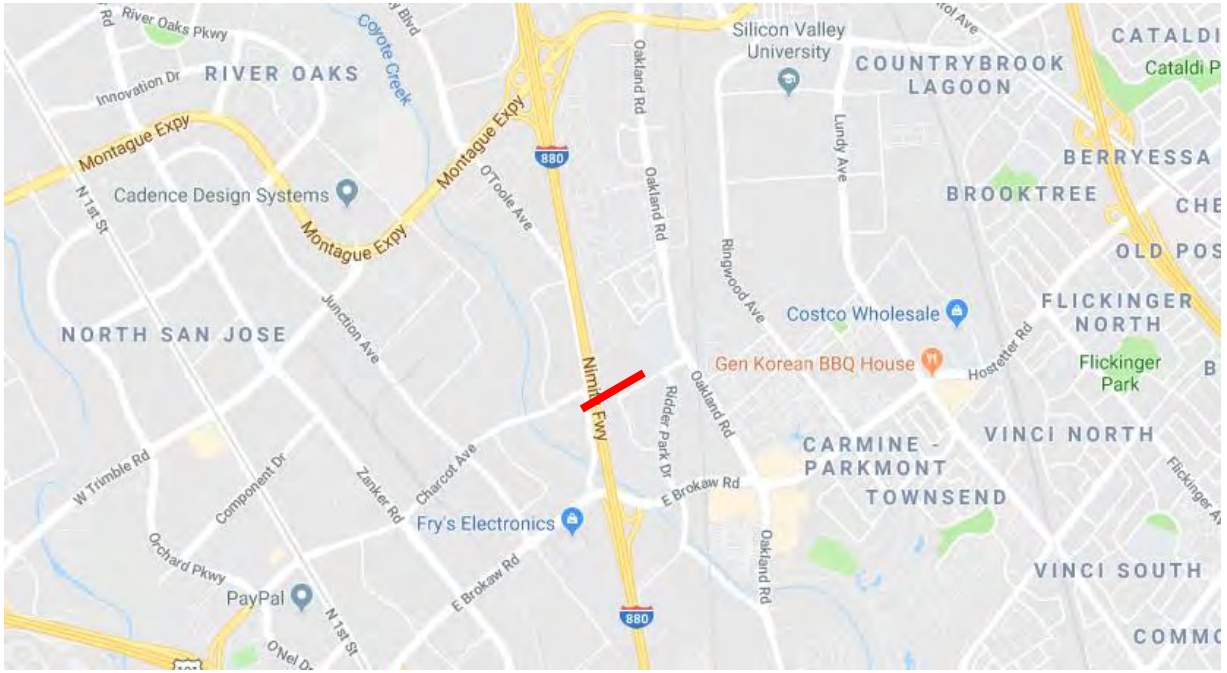
They can be accessed and studied at https://photos.app.goo.gl/QES6NqCaRZYxCkTR7



Dense street grid might improve traffic but not planned or maybe even possible on either side of 880

Dense urban grid systems (e.g. DTSJ on the right) have more capacity and efficiency and reduce pedestrian fatalities because of smaller intersections, smaller human-scale blocks, and ample of alternative routes.

Maps are at the same scale. 1000 feet



Potentially not possible in parts of NSJ because of barriers (e.g. railroad/BART tracks, Coyote Creek, 880) and block size needed for industrial use. Significant number of roads needed to create a dense grid.

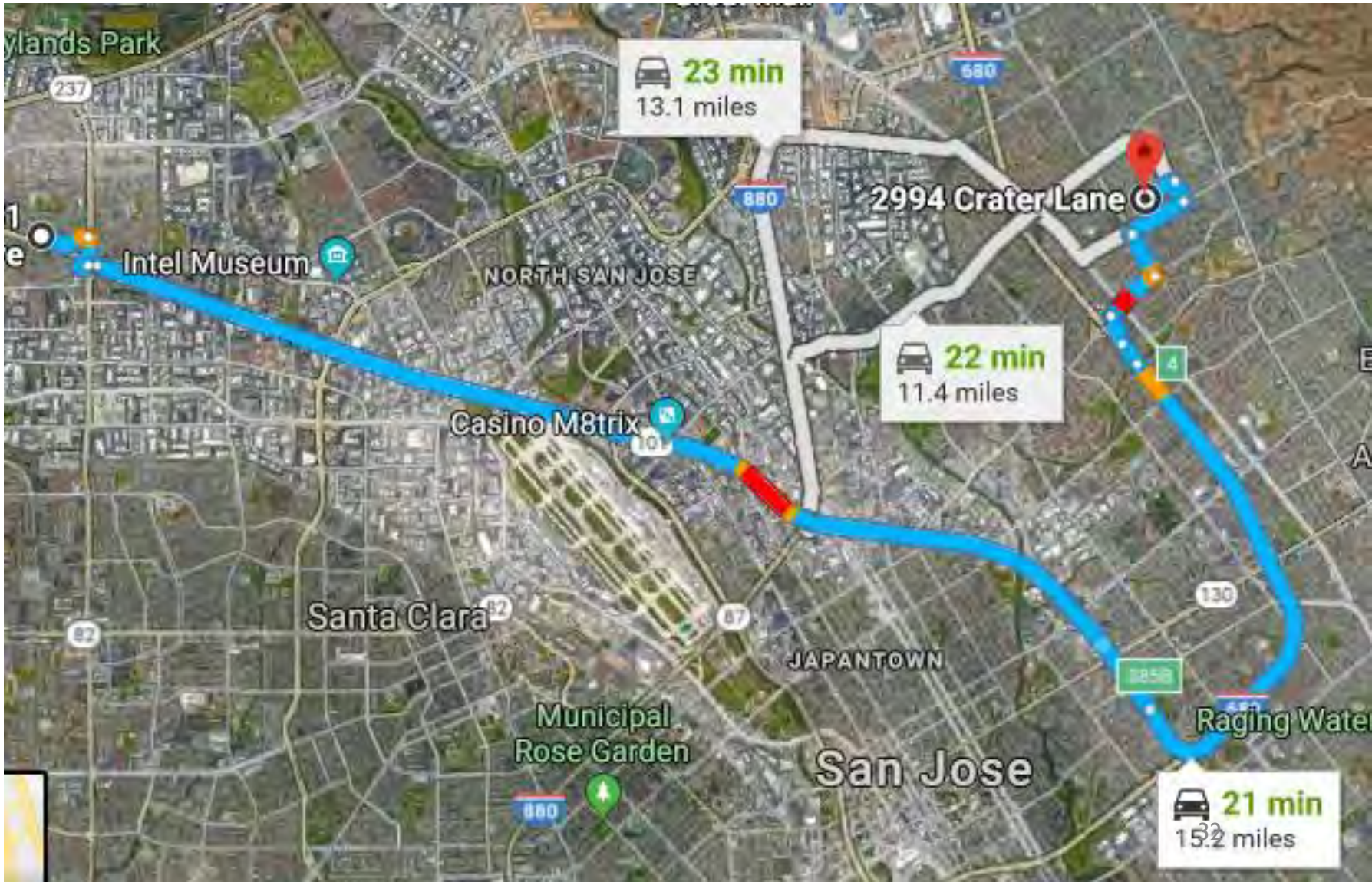
"Why street grids have more capacity", Congress for the New Urbanism, https://www.cnu.org/publicsquare/2018/07/31/why-street-grids-have-more-capacity

"Urban Sprawl as a Risk Factor in Motor Vehicle Occupant and Pedestrian Fatalities" https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448007/

Computer selected routes (AV!) do not care about VMT/length of trips and are likely to use/fill up any existing road capacity

Google map based driving (e.g. Uber, Lyft, AV) leading to longer trips on unexpected routes.

Suggested route from Sunnyvale to Berryessa on a Sunday afternoon without any traffic ignores existing NSJ cross connections adds ~5 miles to trip that could be only ~10 miles.



Charcot Extension

Discussion of Draft EIR

Updated: September 4, 2019

Executive Summary

According to the Draft Environmental Report (DEIR) the Charcot Extension Project will have at least two, significant unavoidable impacts

- Impact on recreational area at Orchard School
- Loss of "gateway" function at Paragon Drive

The DEIR discusses a number of potential alternatives. The EIR preferred alternative (2 lanes instead of 4 at Oakland Road) reduces significant impact but not to acceptable levels.

A Bike-/ped bridge alternative would have no significant negative impact and better general benefits (lower VMT compared to EIR preferred alternative)

In order to proceed with the project the City Council will have to pass a resolution of overriding consideration but EIR does not identify any significant benefits of the project. Rather the project will increase the number of car trips, increase vehicle miles travelled (VMT) and improve average speeds insignificantly (0.4-2.4 seconds / mile driven).

The DEIR raises a number of additional concerns, which are discussed in more detail below. For example, the DEIR makes unrealistic assumptions for travel time improvements for local trips.

Note: Unless action is taken by City Council, the EIR process will continue as is - with the staff preferred but problematic and potentially legally infeasible alternative. This is likely to increase the cost of the project for the City.

Recommendation: General Plan amendment changing the designation of Charcot extension from minor arterial to bike-/pedestrian crossing would achieve important transportation goals and have no significant negative impact on the neighborhood.

Content

SUMMARY OF DRAFT EIR

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II. "Significant unavoidable impacts"

1. Loss of recreational area for the school and neighborhood
2. Charcot's visual character as "Gateway" to NSJ significantly altered

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1. Overarching City goals
2. Legal Background California Code of Regulations § 15093. Statement of Overriding Considerations
3. # of Trips across 880 & VMT
4. Average speed & VHT
5. Consistency with existing plans

IV. Additional issues

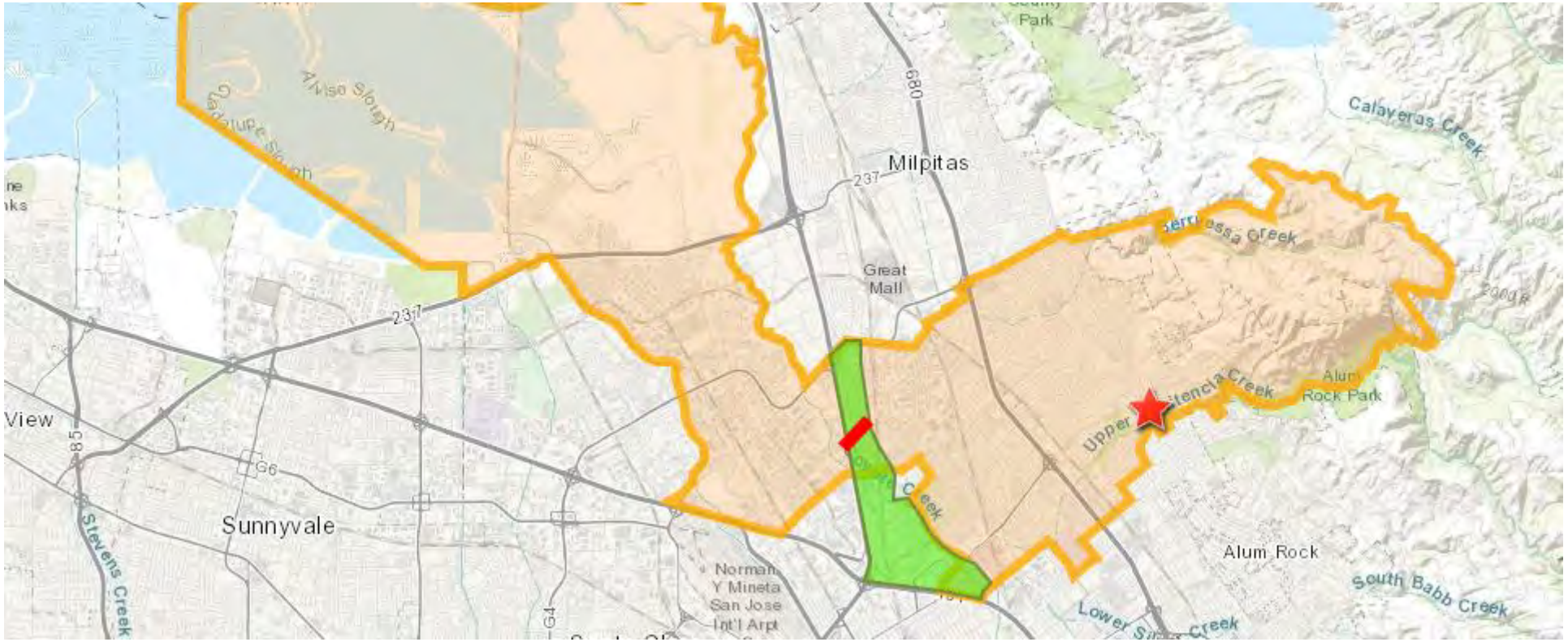
1. Impact on Pedestrians not adequately assessed
2. Limited pedestrian safety – HAWK signal
3. Mitigation measures (sound walls) create potentially unsafe alley
4. No traffic calming / No ban on truck traffic
5. Inconsistencies re. loss of school drop off parking on Silk Wood Lane
6. Inadequate air quality study
7. Time savings for local trips questionable
8. Neighborhood cut-through traffic ignored for analysis

ANNEX

1. Issues methodology VMT analysis
2. Issue methodology transportation analysis
   Impact of multi-modal improvements
3. Inconsistency re. impact of loss of parking on Silk Wood Lane to other school access points
4. Reasons for peak hour congestion east-west corridor not addressed by Charcot Extension or any alternatives
5. Alternatives/strategies/instruments to reduce SOV
6. Bike/pedestrian bridge – supporting material

1. Project Overview

Project location in North San José (NSJ), City Council District 4 "Cutting through" a Community of Concern



City Council District 4 – "Uptown"

Only census district in D4 considered a community of concern by MTC (i.e high percentage of residents with low-income, minority background)

Location of Charcot Extension project

Location of community meeting

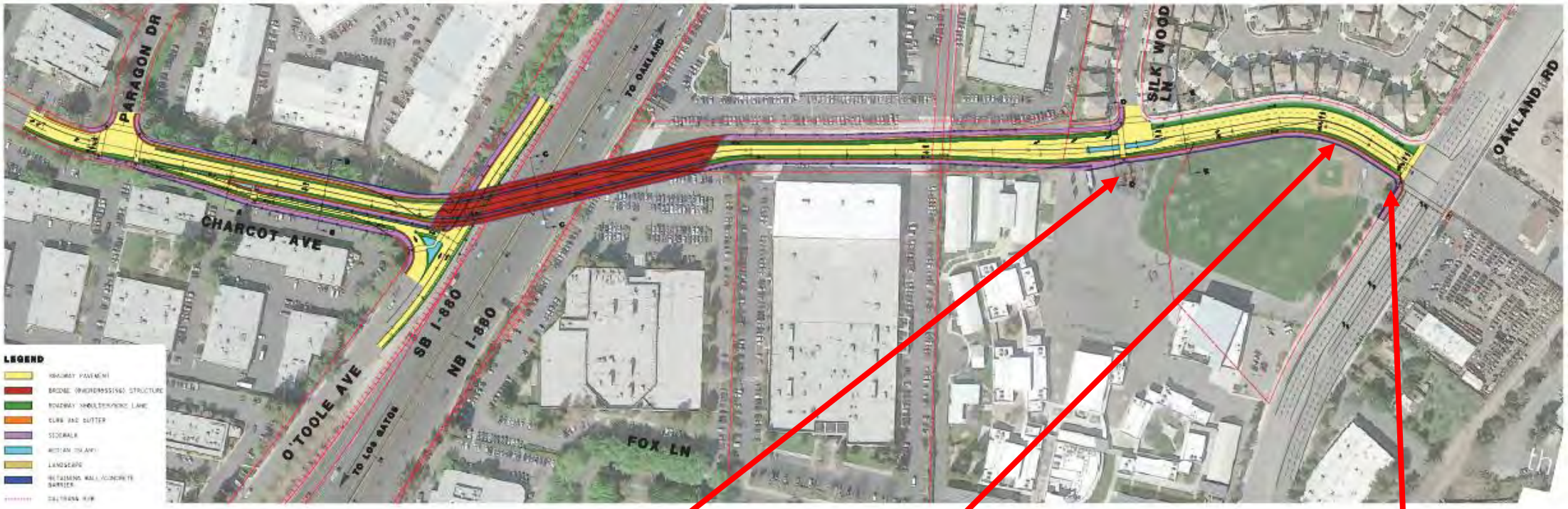
Project basics

- Seeks to extend Charcot Avenue across 880 to Oakland Rd.
- Will widen existing Silk Wood Lane (potentially to four lanes)
- Will add protected bike lanes
- No connection to 880
- Requires right-of-way from Orchard school and other parcels.
- Will introduce up to 13.900 cars/day into school zone. 1,490 during AM peak hours; 1,720 PM.
- Cost: 50+ million USD of which currently allocated:
  - 7.1 million City funds*2,
  - 37 million VTA Measure B,
  - remainder TBD

*"Charcot Avenue is currently designated as a minor arterial; however, it is anticipated to be re-designated as a major arterial in the future." (DEIR, Appendix I – Initial Site Assessment, p. 6)

*2 2019-2020 Proposed Capital Budget & 2020-2024 Capital Improvement Program

Project design



No left turns into or out of Silk Wood Lane

Cut into ballfield area

Turn lane configuration discussed in "alternatives"

Silk Wood Lane: now and then

II. “Significant unavoidable impacts”

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as proposed. The following significant unavoidable impacts have been identified resulting from the proposed project. (CEQA)

Loss of recreational area for the school and neighborhood

"The applicant's proposal to have the residential development and the park separated by the future extension of Charcot Avenue is not supported by staff." (SJ City Staff memo to SJ City Council, March 10, 2004)

"Impact REC-2: The right-of-way required for the project would directly impact recreational facilities at Orchard Elementary School and reduce the area available for recreation. Mitigation is included in the project but the loss of recreational acreage at this location cannot be fully mitigated." (DEIR, p. xii)

Acc. to the San José Parks Greenprint 2009 plan Orchard School was relocated to this area to increase access to recreational facilities in an otherwise underserved area. (DEIR, p. 130)

The schools facilities are also open to and serve the surrounding neighborhoods.

ORCHARD SCHOOL RECREATIONAL FACILITY | FIGURE 3.16-

Charcot's visual character as "Gateway" to NSJ significantly altered

"Impact AES-3: The project would substantially alter the visual character along Charcot Avenue between Paragon Drive and O'Toole Avenue by removing approximately 37 mature trees. The trees and adjacent raised berms dominate the existing setting and screen views of the office buildings and associated parking from the road, and vice-versa**. This segment of Charcot Avenue is designated as a "Gateway" in the *Envision San José 2040 General Plan*.** Due to the constraints posed by the presence of existing utility lines and the adjacent business parks, the planting of replacement trees as mitigation for this visual/aesthetic impact is not feasible." (DEIR, p. vii)

Also, this assessment is mostly based on the impact on fast moving motorist. The visual and aesthetic impact on slower moving people walking or riding a bike is not assessed adequately,

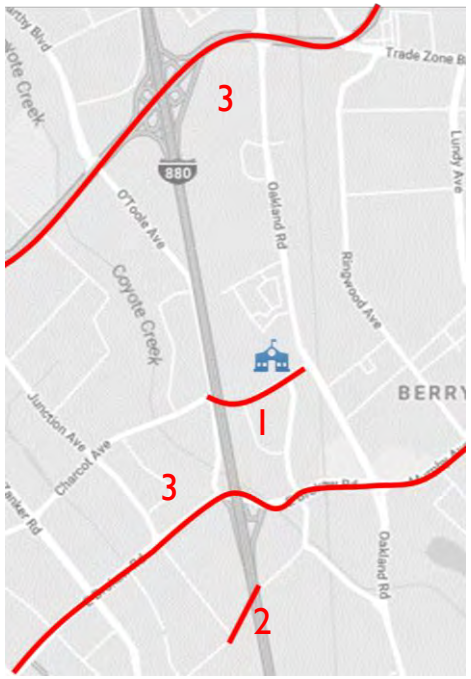
III. Evaluation of Alternatives

Alternatives discussed in the EIR

No project

Does not meet objectives
No safe bike-/ped-crossing

PRO: Less VMT than project



Other locations

Fox Lane (1) / South of Brokaw (2) / Widening Brokaw or Montague (3)

Not feasible acc. to DEIR
(mostly because of costs for right-of-way acquisition)

Various turn lane configurations on Oakland / Charcot

All will have significant, unavoidable impacts
(see below)

Bike-/Ped-Overpass

No new capacity for cars

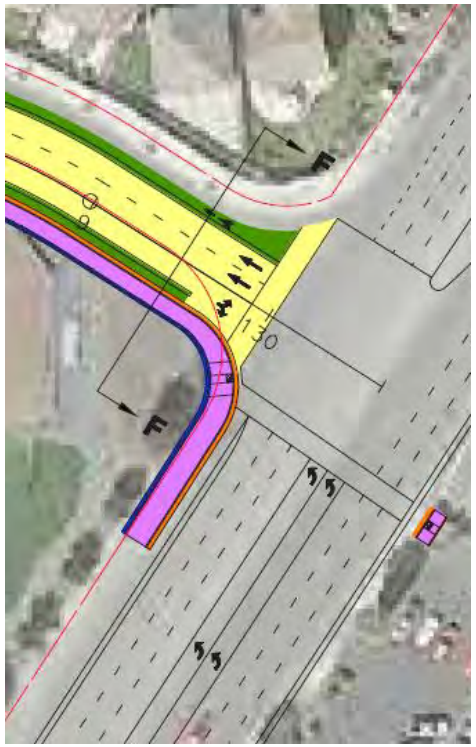
PRO: Less VMT than project
Impacts mostly limited to construction (see below)

Turn lane alternatives

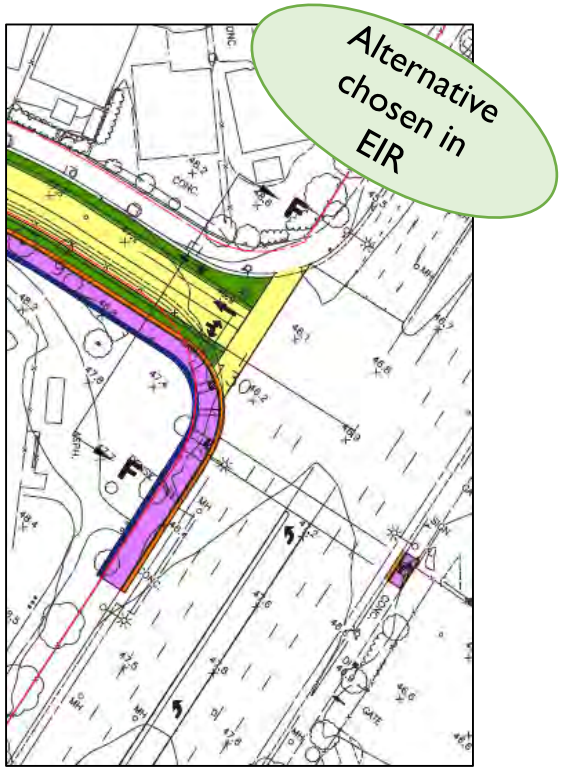
The environmental impacts of Alternatives F, G, and H are "very similar to each other and to those of the proposed project. As described above in Section 7.4, ***the overall differences in impacts are negligible.*** *[…] The one category where there is a* ***notable difference*** *between the proposed project and Alternatives F, G, and H* ***is the impacts to the recreational land and facilities at Orchard School.*** *While* ***none of the alternatives completely avoid this significant impact,*** *[…]* ***Alternative H has the smallest impact*** *at 5,590 ft2 (0.1 acre). This net loss compares to 19,410 ft2 (0.44 acre) under the proposed project, 11,480 ft2 (0.26 acre) under Alternative F, and 12,770 ft2 (0.29 acre) under Alternative G." (DEIR, p. 220)*

Current Proposal: Double Left-Turn Lanes on both Oakland Road and Charcot Avenue

Alternative F: Single Left-Turn Lane from Oakland Road to Charcot Avenue



Alternative G: Single Turn Lane on Charcot Avenue at Oakland Road

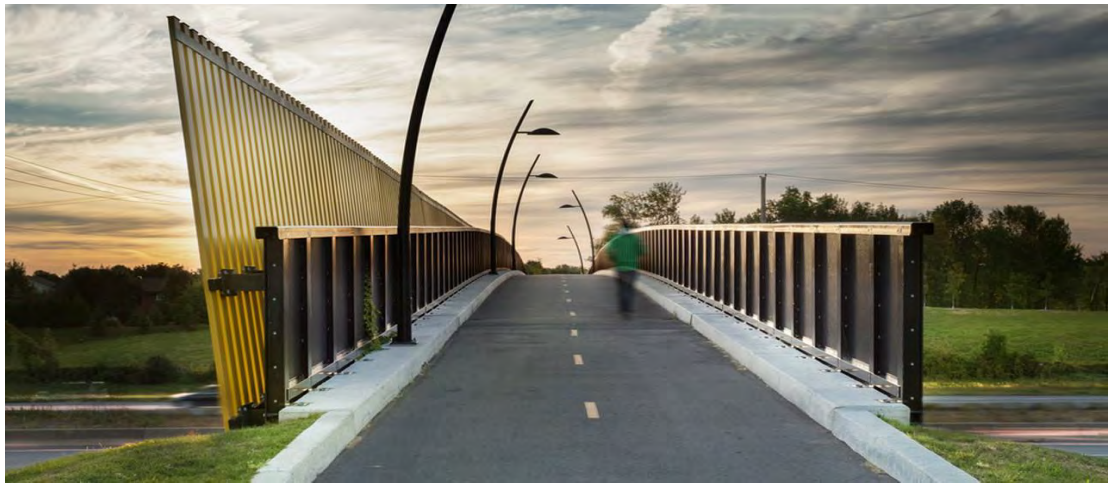


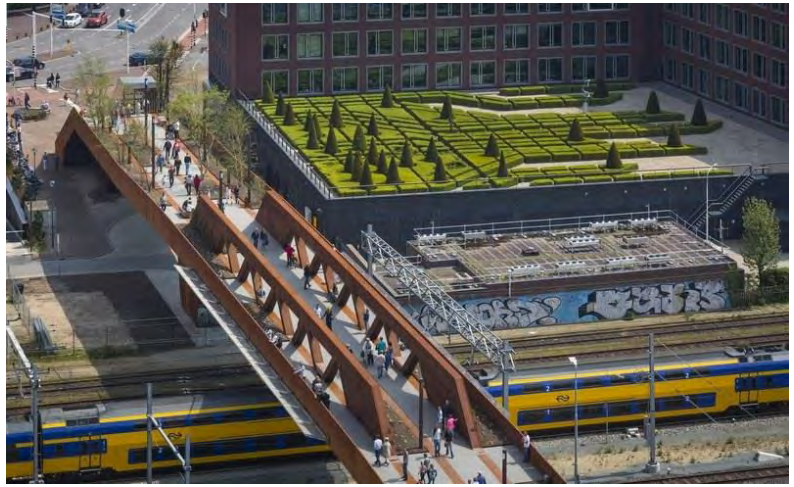
Alternative H: Single Turn Lanes on Both Charcot Avenue and Oakland Road

Bike/pedestrian bridge from Charcot to Oakland Rd

"Other than the No Project Alternative, Alternative E (New Overcrossing for Bicycles and Pedestrians Only) would have the fewest adverse environmental impacts. It would avoid the significant removal of trees, the long-term increases in noise, long-term emissions of criteria air pollutants and TACs, and impacts to the recreational land and facilities at Orchard School. Alternative E's impacts would be mostly limited to those associated with the construction of the bicycle/pedestrian facility."

(DEIR, p. 200)





IV. Discussion of potential benefits and overriding considerations

Overarching City goals

City Transportation Goals (excerpt)

- **Decrease driving alone**—from 76% today to 40% by 2040 and 12% by 2050—by significantly increasing rates of walking, biking, and transit use.
- **Overall decrease of 40% in VMT by 2040,** Climate Smart furthers the goals to a 57% reduction by 2050
- **Vision Zero**

General Plan Policies (excerpt)

- CD-3.2 Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs.
- CD-4.10 When development is proposed adjacent to existing or planned parks or along park chains, include frontage roads along the public park in that development in order to maximize access to park lands, to provide separation between urban land uses and park lands without the use of "back-up" design, and to maximize public exposure and view of park lands for scenic and security purposes.

Legal Background California Code of Regulations § 15093. Statement of Overriding Considerations

- *(a)* ***CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.*** *If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."*
- *(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record.* ***The statement of overriding considerations shall be supported by substantial evidence in the record.***

Potential benefit of the project	Issue
Reduction in # of car trips	Project increases # of car trips
Reduction in VMT (vehicle miles travelled)	Project increases VMT
Reduction in travel times as measured by average speed	Reduction negligible (~0.4 seconds/mile driven)
Reduction in travel times as measured by VHT (vehicle hours travelled)	Overall increase in VHT makes reduction meaningless
Consistency with existing plans	Plans based on outdated LOS standard

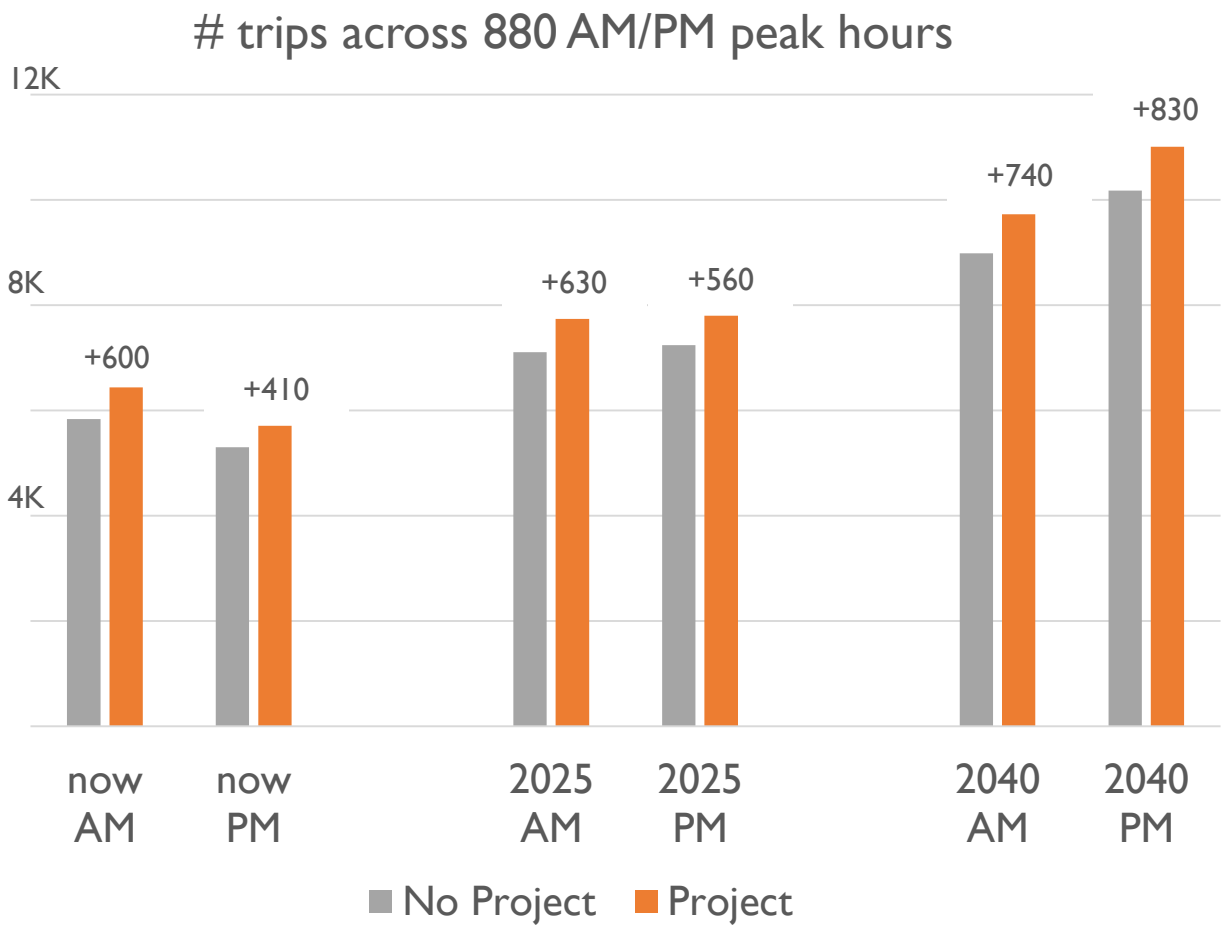
Charcot will increase not decrease car usage I (trips across 880)

By evaluating traffic volumes on road segments crossing 880 with or without the Charcot Extension, induced demand from the project can be calculated.

"No project" represents crossings of 880 on Montague (segment 7 in the analysis) and Brokaw (segment 11).

"Project" represents crossings on Montague, Brokaw and Silk Wood/Charcot (segment 4).

The Charcot Extension will induce new trips which in turn is likely to create adverse impacts (e.g. additional GHG from additional trips)



Source: DEIR – Appendix K "Transportation Analysis", pages 34-36

Charcot will increase not decrease car usage II (vehicle miles travelled)

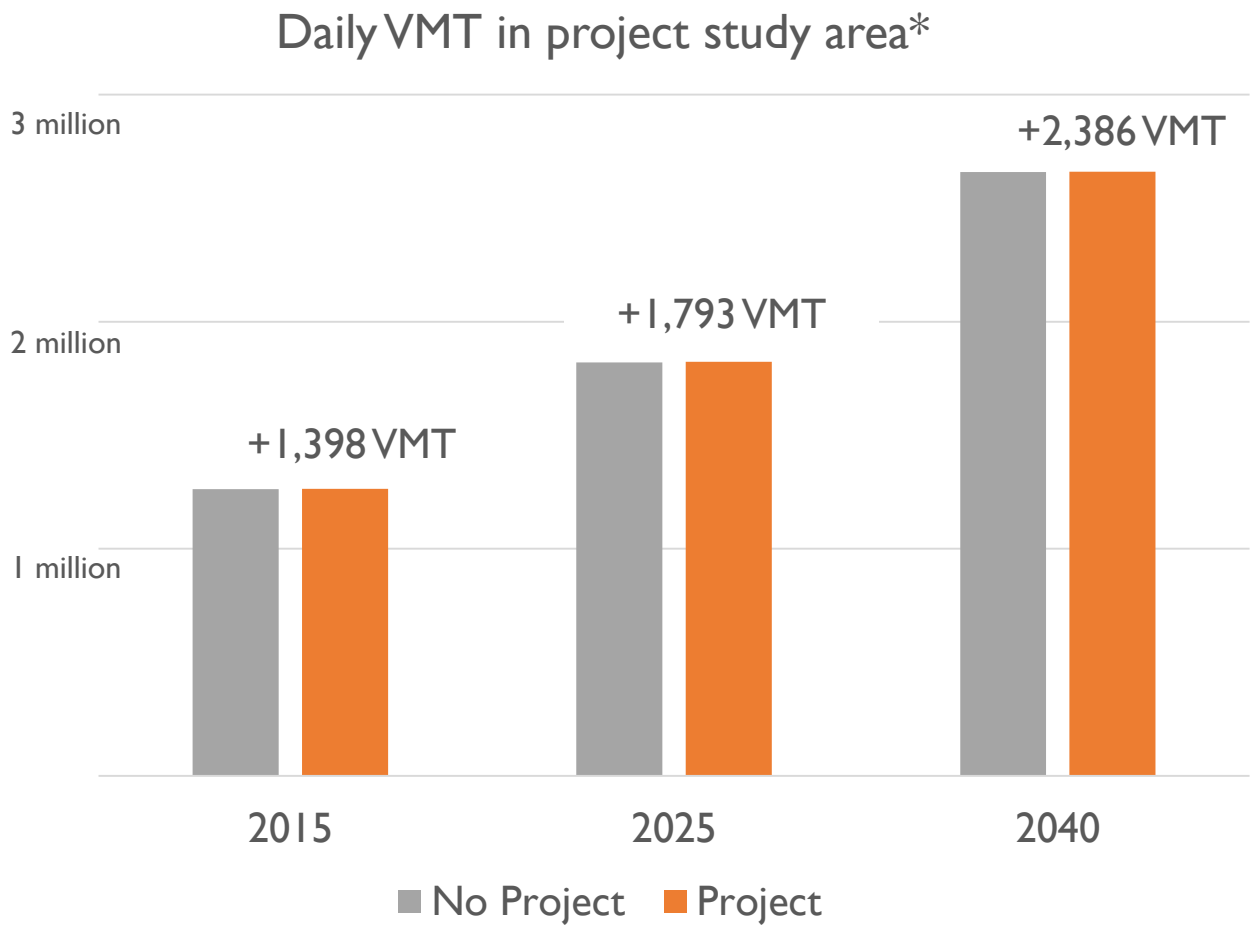
Charcot will increase daily cars usage measured in vehicle miles travelled (VMT) by ~1,400/day today and up to ~2,400/day in 2040.

This adds up to a total of ~16 million additional VMT driven between now and 2040.

NOTE:

City goal: Overall decrease of 40% in VMT/capita by 2040, Climate Smart furthers the goal to a 57% reduction by 2050

Traffic Analysis projects an increase by about ~1.4 million daily VMT (increase of 111% over 2015) for the area in the vicinity of the project alone.



Source: DEIR, page 151

*For the "project study area" and a more detailed discussion of the methodology of the VMT study, please see Annex

Impact on average car speed negligible

Charcot will **reduce average travel times by 0.4 second per mile driven under current conditions**.

Now:

- A 1-mile trip taken at 25.22 mph (no project) takes 2 minutes 22.7 seconds
- A 1-mile trip taken at 25.28 mph (project) takes 2 minutes 22.3 seconds

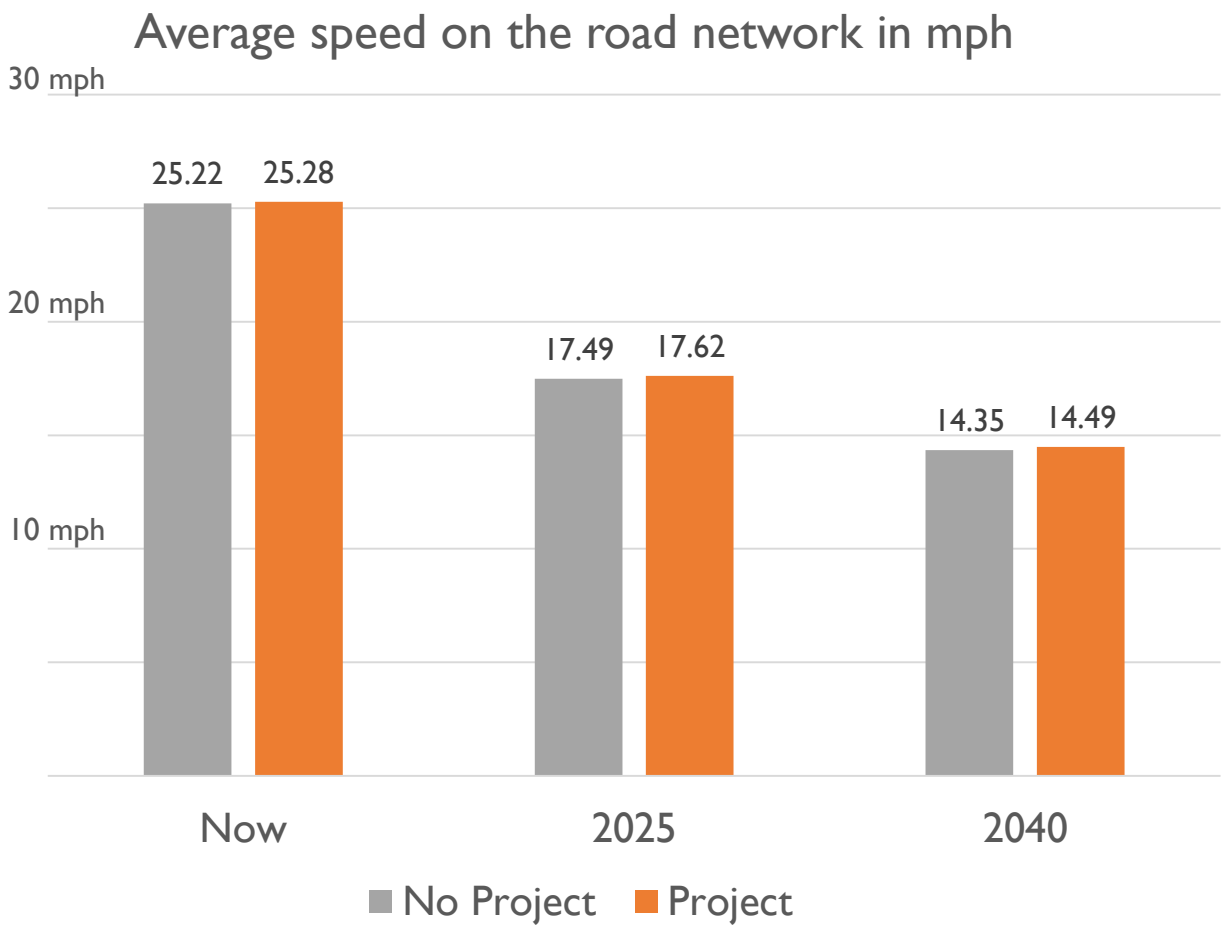
Difference: 0.4 seconds/mile

2040:

- A 1-mile trip taken at 14.35 mph (no project) takes 4 minutes 10.8 seconds
- A 1-mile trip taken at 14.49 mph (project) takes 4 minutes 8.4 seconds

Difference: 2.4 seconds/mile

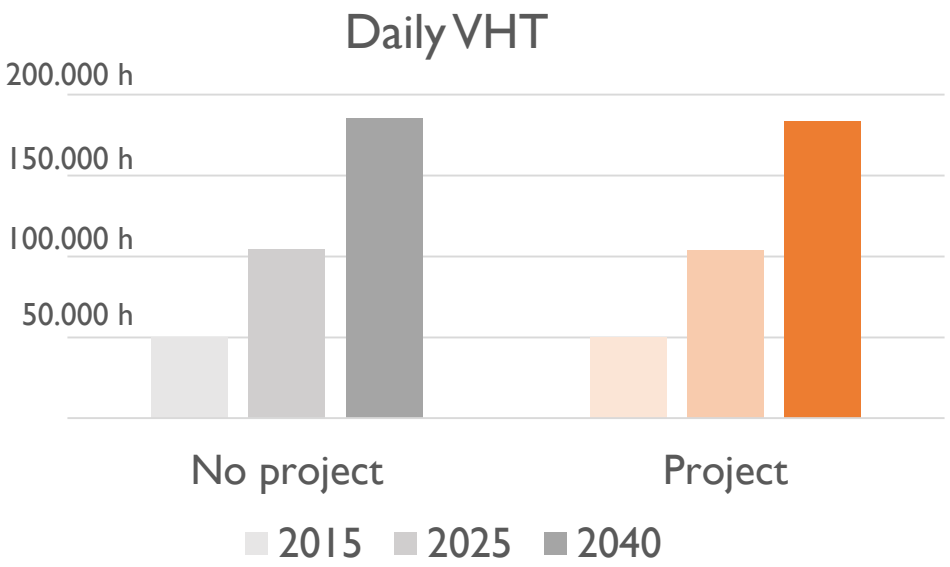
Source: DEIR, page 161



The EIR does not seem to specify if this data is related to the project area or the city as a whole ("As another measure of the overall effect of a project on the roadway system, the City's TDF model calculates total vehicle-hours-traveled (VHT) and average speeds on the roadway network for both No Project and Project conditions.")

Time spent in traffic will increase regardless

- The DEIR states that the project will - despite increasing VMT - decrease time spent driving (VHT: vehicle hours travelled) by 0.1-0.9% due to the marginally higher speeds.
- The DEIR argues that the very marginal time improvements for individual drivers (0.4 sec/mile driven, see above) add up to significant reductions in driving time overall because of the huge number of drivers. As total traffic is expected to more than triple by 2040, the DEIR basically argues that more people will save more time more often.
    - Notes: saving 1 second a day, doesn't add up to additional 365 seconds on New Years Eve.
    - 3600 people all working out for one second, doesn't equal one 1h-workout.
    - Similar: If you eat one bag of chips per month the difference between regular and light version is small, if you eat one bag per day, the difference might become meaningful, but eating one bag per day is not healthy to begin with. VHT is equally unhealthy.*
- **From the perspective of an individual driver, any potential temporary relief from Charcot will be eaten up immediately by generally worsening traffic conditions.**



Issues with VHT in general

- ignores trips walking/biking/transit
- Ignores # of people per car
- decrease in VHT here is marginal compared to other potential measures (e.g. replacing 40 individual trips with one bus reduces VHT by 97.5% for these trips)
- VHT can be decreased by questionable measures (e.g. increasing speed limits)
- Focus on delays makes it similar to LOS

Source: DEIR, page 151

*not a scientific statement, used for illustrative purposes only.

Consistency with existing plans I:
Plans based on outdated LOS standard

- The DEIR mentions as project objectives
  - Implement a programmed roadway network improvement project identified in the **Envision San José 2040 General Plan**; and
  - Implement a planned major roadway improvement project, as set forth in the **North San José Area Development Policy and the North San José Deficiency Plan**.

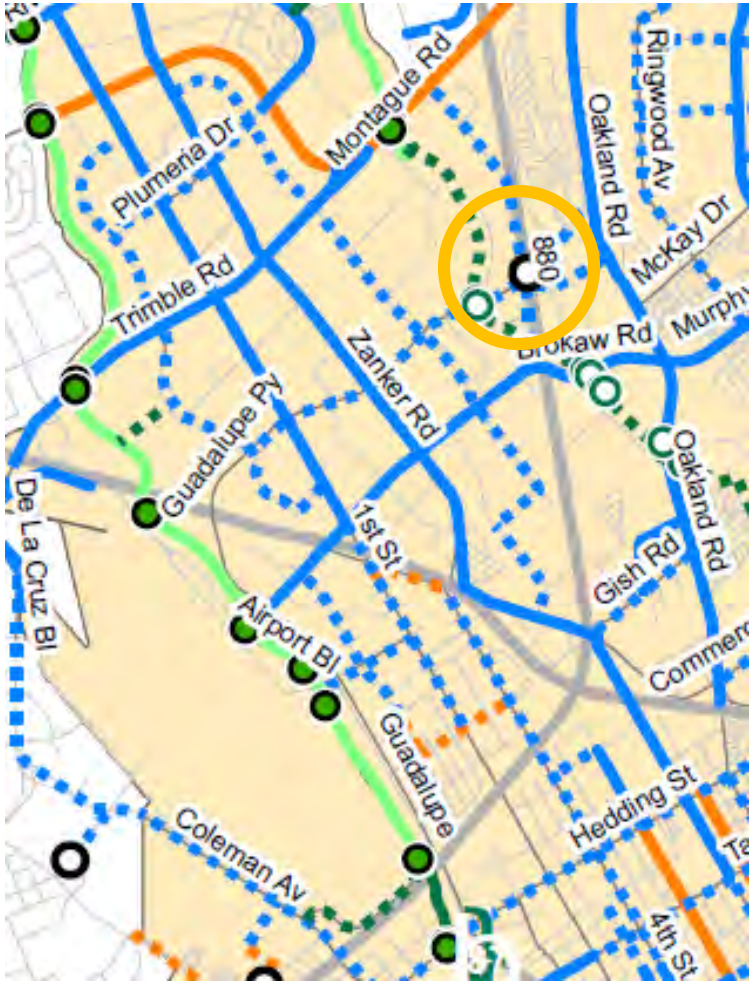
- Charcot was added in 1994 to the General Plan transportation network to improve LOS across 880.
  - *"The additional capacity at the eastbound approaches to I-880 […] is expected to attract slightly heavier traffic volumes and* ***improve the screenline level of service from LOS E to LOS D****"* (GP 2020 EIR Traffic Analysis, p. 219)

- NSJ Deficiency plan (p. 13-15)
  - "The City of San Jose has identified several physical improvements to non-CMP intersections **that will further offset CMP [i.e. LOS] deficiencies**. […]: Charcot Avenue Extension"
    - It should be noted that the DEIR doesn't show any LOS intersection improvements at CMP intersections or otherwise.

Consistency with existing plans II: Compatibility with San Jose Bike Plan 2020

- The DEIR notes for the "no project alternative" that it would be inconsistent with the San José Bike Plan 2020. (DEIR, p. 188)

- **The DEIR omits that the project in its current form is also inconsistent with the San José Bike Plan 2020 that seems to designate the crossing of Charcot and 880 as a "Pedestrian Over Crossing".**



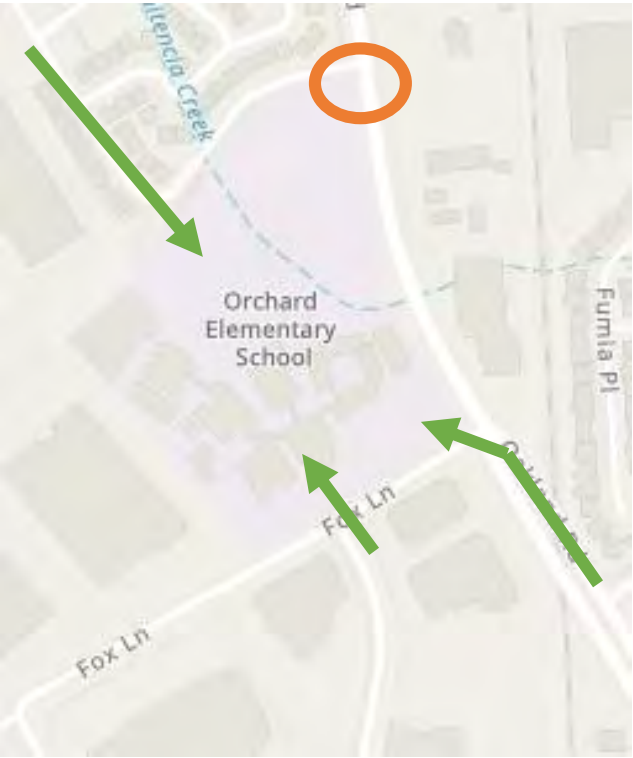
V. Additional issues

Impact on Pedestrians not adequately assessed

The DEIR neglects to provide a meaningful assessment of the impact on pedestrians and bicyclists.

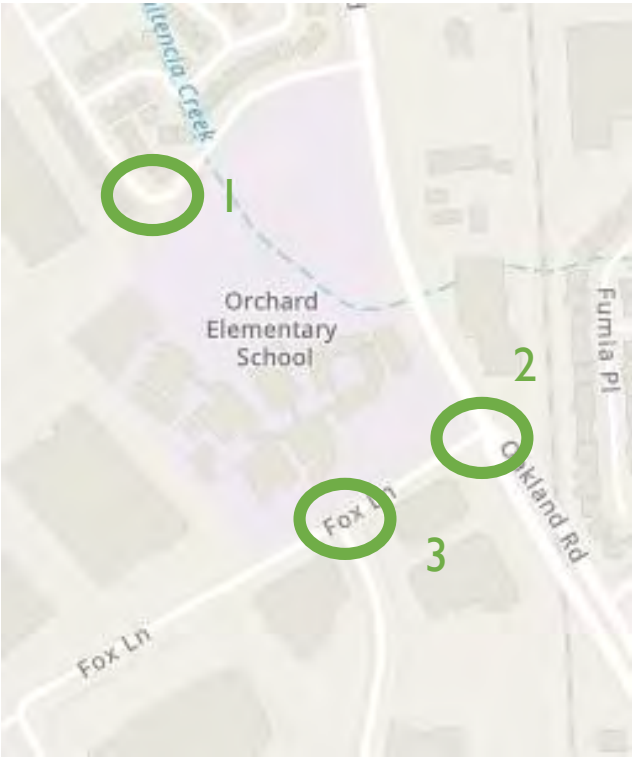
Current pedestrian and bicycle activity in the area is not counted adequately. No quantitative assessment of future activity is provided for either use of the Charcot extension or crossing the extension to access the school.

Construction activity on Charcot will likely block a major pedestrian access route. Impact is not yet assessed:
"A Construction Management Plan will be developed and implemented to ensure the safety of all persons that will be affected by construction."
(DEIR – Appendix B, response 34.24)



Major pedestrian crossings and access routes to Orchard School (green)

Location of pedestrian count done by the City of San José (orange)
Number of pedestrian: 10 (AM), 13 (PM)



Locations used for pedestrian count pilot study done by Orchard PTA and California Walks:
AM (locations 1 / 3): 198 / 167
PM (locations 2 / 3): 79 / 273

Source Pedestrian Count City: DEIR Appendix K, page 49

Pedestrian Count Pilot Study photo documentation

Top left: Students, families and counters bracing the rain in the morning (Location 1: Silk Wood Lane, site of future Charcot Extension)

Top right: Crossing guards on Oakland Road and Fox Lane (Location 2)

Bottom left: School traffic on Silk Wood Lane, site of future Charcot Extension (Location 1)

Photos: Jaime Fearer

Limited pedestrian safety – HAWK signal

"Eastbound traffic on the future four lane arterial will likely be traveling downhill at a high rate of speed approaching the [...] street crossing to the school site."
(SJ City Staff memo to Planning Commission, February 19, 2004)

The DEIR proposes to install a HAWK Signal along Charcot Avenue at Silk Wood Lane next to Orchard School. (DEIR, p. 166).

> *"Studies have also shown that 97% of drivers comply and yield to pedestrians at HAWKs"* (San Jose Streets Smart "HAWK Pedestrian Signal Guide", p1). This means in turn 3% of drivers do not comply and yield to pedestrians.
>
> Given that 13,900 cars will use Charcot every day by 2040 (DEIR, p. 157), this equals to **417 cars per <u>day</u> that will not comply with the HAWK signal and yield to pedestrians in this school crossing.**
>
> 13,900 cars/day * .03 = 417
>
> NOTE: The HAWK signal is only activated when pedestrians are present

Mitigation measures (sound walls) create potentially unsafe alley

The sound barriers proposed as mitigation measures would create a 600 ft long alley with 6+ feet high walls on either side, divided by traffic with no side exits, no view from one end to the other and very limited visibility from the neighborhood or the school grounds.

The impact of this configuration on pedestrians (for example, girls and boys attending Orchard Middle school) is not evaluated in the EIR – only impact on motorists.

This can also be a safety issue for the school. A suspicious person trying to get access to the school by climbing the walls will only be visible at the very last moment when they are on top of the wall.

Also there is limited visibility from the school yard to activities going just outside the school gate.

General Plan Policy CD-5.3 Promote crime prevention through site and building designs that facilitate surveillance of communities by putting "eyes on the street." Design sites and buildings to promote visual and physical access to parks and open space areas.

Source: DEIR Appendix B – Visual Impact Assessment

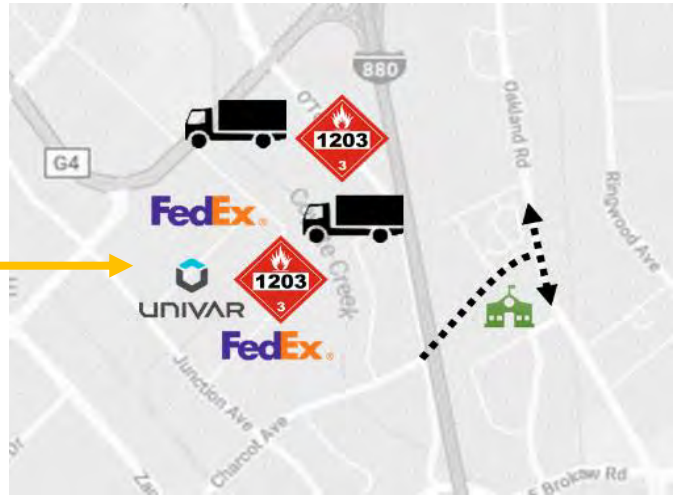
No traffic calming / No ban on truck traffic

The DEIR seems to exclude the possibility of additional traffic calming measures on Charcot:

"Speed bumps (or road humps) may be used on low speed, low volume residential roadways with adverse speed conditions, as defined by San José's Traffic Calming Council Policy. **Charcot would not be eligible for road humps**, per Council Policy, as it is not a local, residential roadway. […]

Truck Ban: **The City's ban on select trucks over a certain tonnage** is only applicable for residential streets and **is not intended for Charcot Avenue.** " (DEIR – Appendix B "Response to NOP comments", Response 34.2, p. 20)

Univar
(see right)



Sources of potentially significant truck traffic

Hazmat crews cleaning up a spill from a leaking Univar truck on a 880 on-ramp near Hayward (August 2018). Both north- and southbound lanes on 880 needed to be closed because of the spill. A shelter-in-place order was issued for an ~137 acre area next to the incident site. Trucks would be travelling about 50ft away from classrooms.

https://sanfrancisco.cbslocal.com/2018/08/24/leaking-tank-acid-shuts-down-southbound-880-hayward-traffic/

Inconsistencies re. loss of school drop off parking on Silk Wood Lane

Losing parking along the north side of Silk Wood Lane is a concern for the school community (see DEIR – Appendix B "Responses to NOP comments" – comments 15.1, 17.1, 34.8, 44.1, 45.4, 48.3, 51.1, 51.2), e.g.:

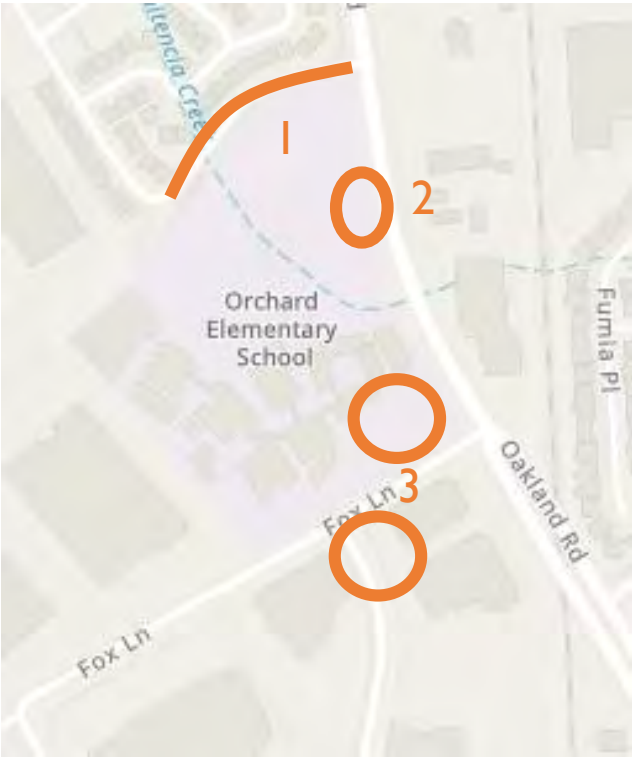
> *"Silkwood Lane is often used as parking, what will be done to help accommodate the parking issue especially since you will be taking away additional parking that parents use to pick up / drop off their kids?"* (Comment 17.1)

The DEIR agrees:

> *„The north side of Silkwood Lane provides on-street parking."* (DEIR, p. 147)
>
> *"**The project will remove the existing on-street parking along the north side of Silkwood Lane**."*
> (DEIR – Appendix K "Transportation Analysis", p. 50)

Yet, the City's response to the community concern is:

> *"**The project will not take away any parking from this area**. The portion of Silk Wood Lane adjacent to Orchard School is not a designated drop-off and pick-up location and is signed as a "No Stopping Any Time" zone."* (DEIR – Appendix B "Responses to NOP comments" – Response 17.1, similar: Responses 15.1, 34.8, 44.1, 45.4, 48.3, 51.1, 51.2)



Main drop-off/parking for Orchard School
1: Silk Wood Lane (to be eliminated)
2: Event Center Oakland Road
3: Fox Lane

Inadequate air quality study

All air quality assessments used in the DEIR are based on theoretical models, not actual measurements on site.
Sporadic actual measurement on site have shown higher exposure rates than what the theoretical models seem to show.
It raises the question, if cumulative effects of the existing environment and project conditions still meet legal limits.

Data in air quality analysis inconsistent with data in transportation analysis

No Project	**VMT 2025**	**VHT 2025**	**Speed 2025**	**VMT 2040**	**VHT 2040**	**Speed 2040**
Transportation Analysis	1,821,479	104,144	25.22	2,659,078	185,249	14.35
Air Quality Analysis	4,789,277	209,093	22.90	6,080,580	340,160	17.88

Project	**VMT 2025**	**VHT 2025**	**Speed 2025**	**VMT 2040**	**VHT 2040**	**Speed 2040**
Transportation Analysis	1,823,272	103,460	25.28	2,661,463	183,620	14.49
Air Quality Analysis	4,787,047	205,279	23.32	6,092,019	336,012	18.13

Cars/h	**Peak AM 2025**	**Peak PM 2025**	**Peak AM 2040**	**Peak PM 2040**	**Average speed**
Transportation Analysis	1240	1250	1490	1720	TBD*
Air Quality Analysis	776	818	1026	1082	25 mph

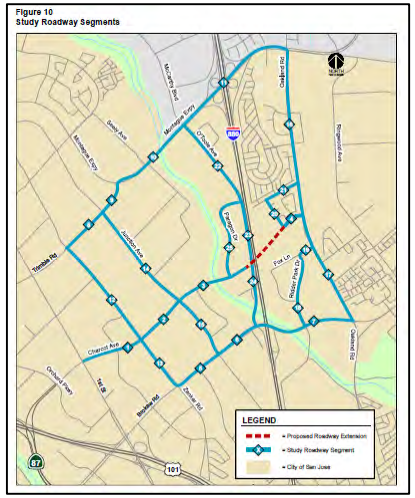
*"*As is standard practice, upon completion of the extension, the City will undertake a speed study to reevaluate speed limits along the entire length of Charcot Avenue. The speed limit on any segment will not, however, be set higher than 35 mph."* (Response 34.7). *"In accordance with State law, the speed limit on all roads around the school, including Oakland Road and Charcot Avenue, will be 25 mph whenever children are present."* (Response 48.5) **Since sound walls will prevent motorists from assessing if children are present within school boundaries, it can probably be expected that most drivers will ignore any posted 25mph speed limit**.

Neighborhood cut-through traffic ignored for analysis

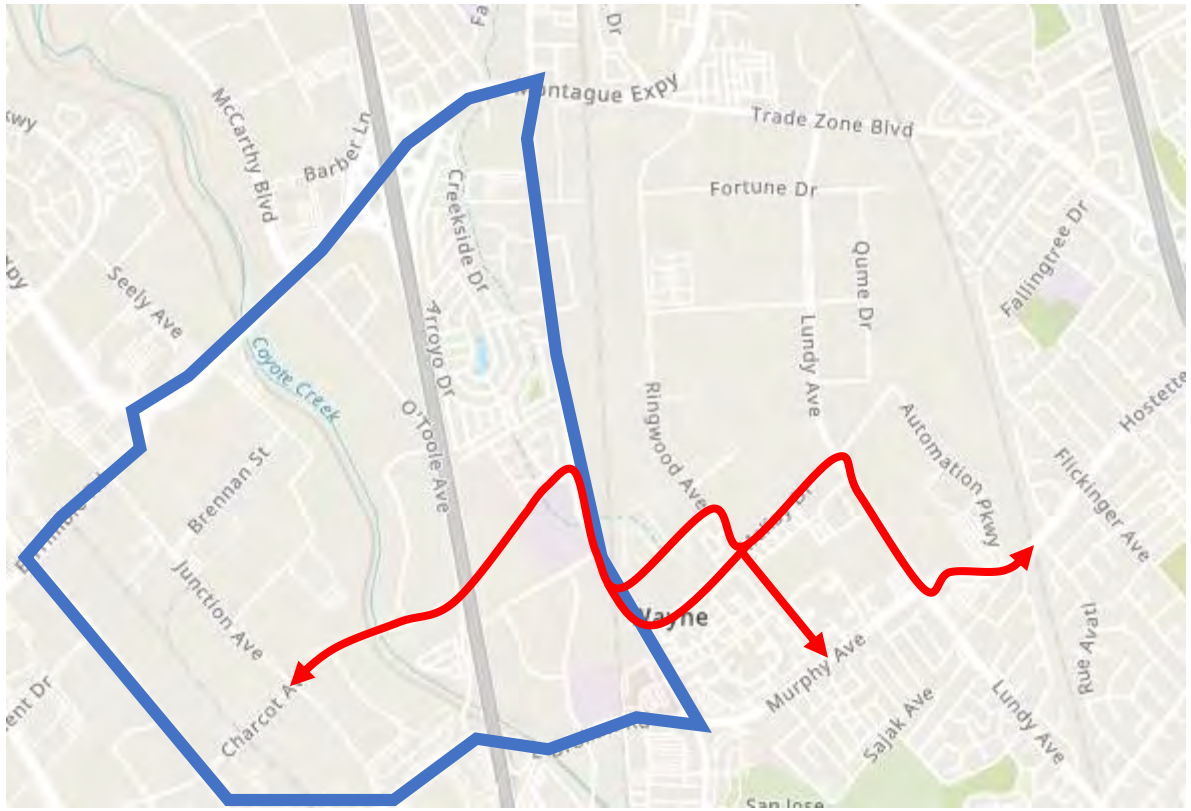
There already seems to be significant cut-through on the neighborhood streets east of Oakland Rd (see picture below).

Traffic analysis excludes this area from its analysis for unknown reasons.

Back up of traffic on local street



DEIR, Appendix K "Transportation Analysis" p. 32



Red: Potential neighborhood cut through traffic using Wayne and McKay to get to Charcot Extension and avoid slow down on Murphy Ave / Brokaw Rd
Blue: Area used for detailed traffic flow analysis

Time savings for local trips questionable

To quantify the benefit of the Charcot Extension for local trips, the DEIR tries to estimate future travel times between locations east and west of the project. Only very few trip combinations are projected to see a meaningful (i.e. >2 min) reduction in travel time.

In order to calculate future travel times the DEIR assumes:

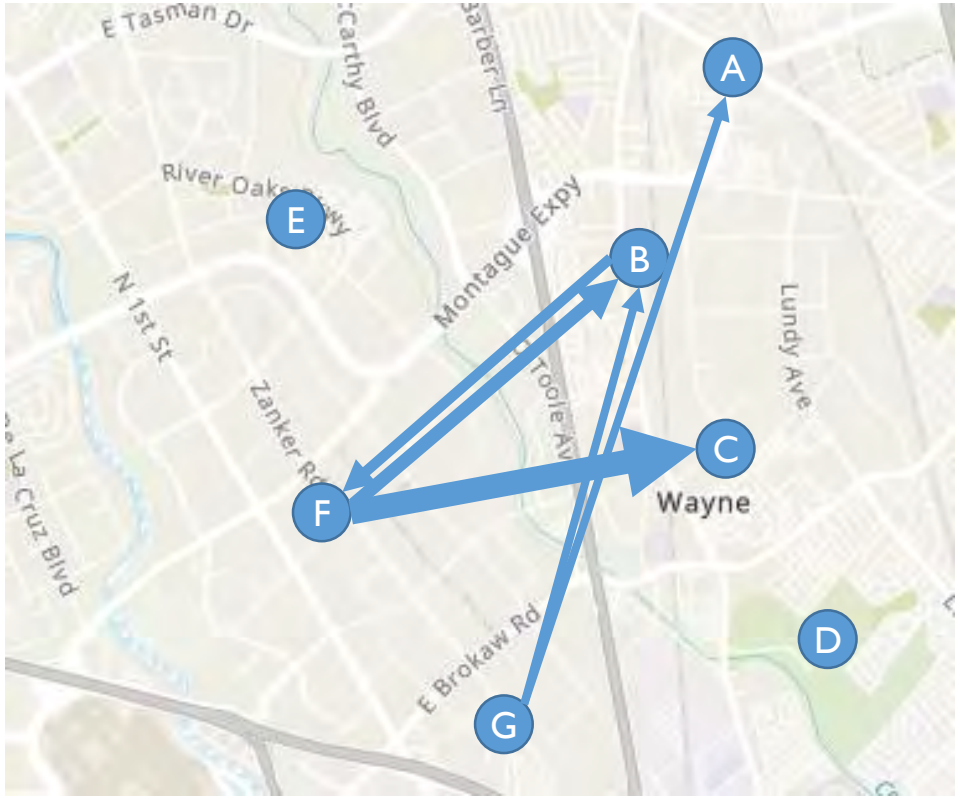
> *"that it would take approximately **30 seconds** to travel between Oakland Road and O'Toole Avenue via the proposed extension."*

Given the length of the extension of 0.6 miles (DEIR p. vi) **this suggests that cars will go <u>on average</u> an unlikely 72 mph on the Charcot extension – through the school zone and during commute hours.**

> 0.6 miles / .5 min = 1.2 miles / min
> = 72 miles / 60 min = 72mph
>
> Google Maps shows the distance between Oakland Rd and O'Toole Ave as shorter (~2200 ft). This would still equal to an <u>average</u> speed of ~50mph not considering time needed to stop at a crosswalk or to then accelerate to 50+mph.

If the extension were to actually reduce travel time for local trips, navigation apps like Google Maps & Waze will guide regional traffic through Charcot till travel time is equal to Montague/Brokaw eliminating any local time savings.

Source: DEIR, pages 161/162



Start and end location of trips that will supposedly benefit the most from the Charcot extension. Trips shown with assumed reduction times of at least three minutes. Highest assumed reduction F to C (9 minutes). DEIR assumes "the use of the proposed extension is expected to be minimal outside of a two-mile radius."

ANNEX

Issues methodology VMT analysis

"The sphere of influence of a project is defined as the area in which driving patterns are expected to change due to the project."
(City of San José Transportation Analysis Handbook, p 53)

There is no explanation why a 1.5 mile radius was chosen as a sphere of influence. It seems to argue that the project will have no impact on travel from Berryessa to North San José or beyond the radius into Santa Clara.

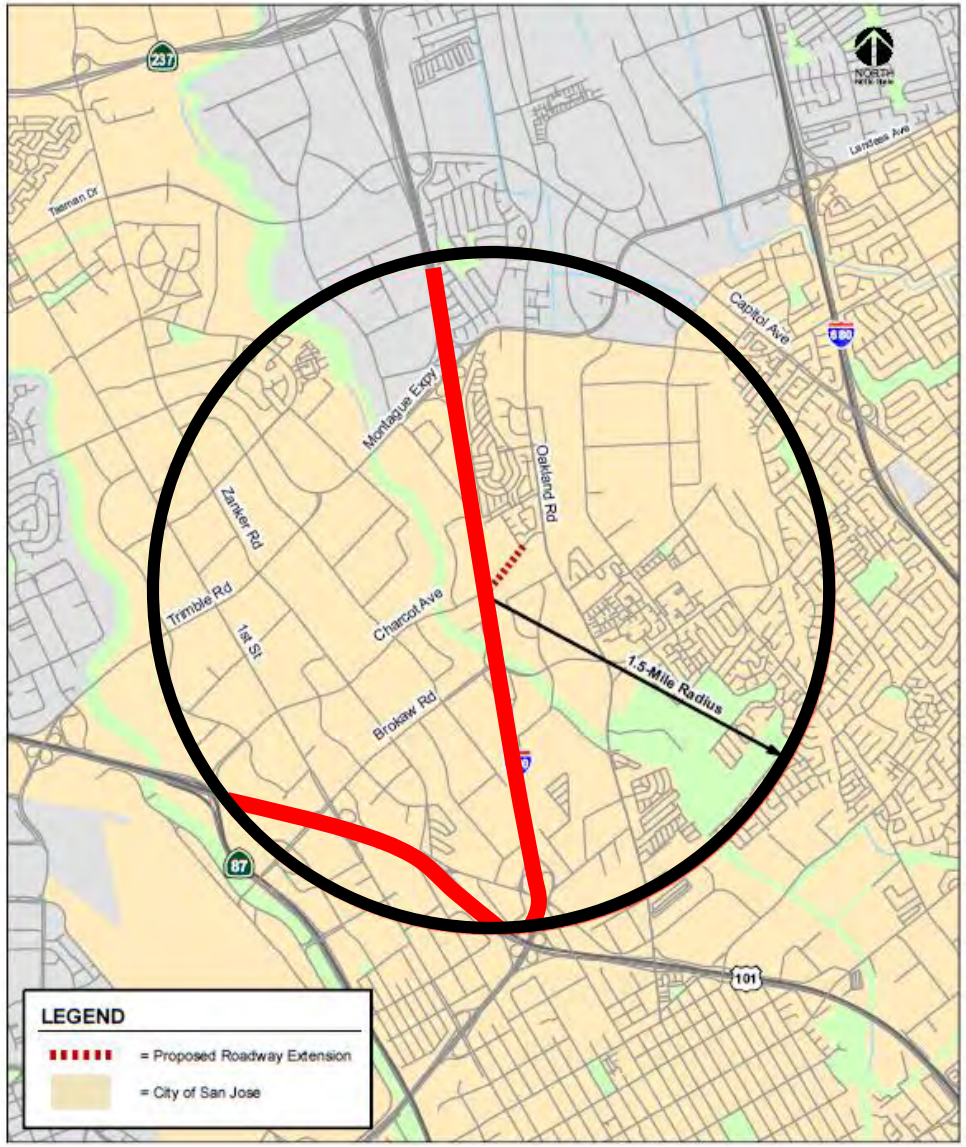
VMT analysis Sphere of Influence analysis seems to include:

- 101 and 880 highways

DEIR then argues that VMT increase from Charcot is insignificant compared to traffic volumes on 101 and 880.

State guidance on VMT analysis seems to indicate that using a "multiplier" would be a more appropriate way of determining additional VMT than the transportation demand model (TDM) used here.
"OPR recommends applying elasticities directly from the academic research in order to assess induced VMT. Doing so not only bypasses the model noise and impact area dilemmas described above, it also captures the effects of land use change as required by CEQA and which travel demand models cannot capture."
(California Senate Bill 743 Implementation Assistance Project Using Vehicle Miles Traveled to Evaluate Transportation Impacts in CEQA: Case Study Examples and Insights - Summary of SR 210 Case Study, p5)

Figure 5
VMT Sphere of Influence



Issue methodology transportation analysis
Impact of multi-modal improvements

The report evaluates the benefit of creating a "new overcrossing for bicycles and pedestrians only" and comes to the conclusion:

> ***"Traffic circulation for the Bicycle/Pedestrian Overcrossing Only would be the same as for the No Project Alternative*** *under existing, year 2025, and year 2040 conditions, as described in Section 3.17." (page 189, DEIR)*

If a major investment such as the here discussed freeway crossing for bikes and pedestrians does not result in any reduction in car trips, it raises the question if smaller City projects such building new bike lanes and improving sidewalks will actually have the intended effect of reducing car usage as City staff and Council - including other sections of the same DEIR - often proclaim.

> *"Walkable and bikeable streets reduce the need for passenger car journeys and encourages active forms of transport, public transport infrastructure, and personalized mobility solutions. This reduces vehicle miles traveled (VMT), a metric of vehicular use which can be a proxy for traffic collisions, and the emissions associated with car journeys."(*Climate Smart San José, p. 89)
>
> *"The project would provide a new bicycle and pedestrian crossing of I-880, which would facilitate those forms of non-motorized travel. The proposed project would also shorten pedestrian and bicycle travel routes and provide the opportunity to utilize walking and bicycling as an alternative travel mode, which would lead to a reduction in the number of vehicle trips."* (DEIR, p. 66)
>
> *"By providing improvements that will facilitate bicycle and pedestrian use, the operational phase would reduce vehicle trips and thereby reduce energy consumption" (DEIR, p. 67)*

The issue seems to stem from using a simplified traffic model that does not accurately capture the effect of bicycle and pedestrian improvements on car usage. The transportation analysis for the EIR for example does not provide any estimates on bicycle and pedestrian usage for the new overcrossing.

Inconsistency re. impact of loss of parking on Silk Wood Lane to other school access points

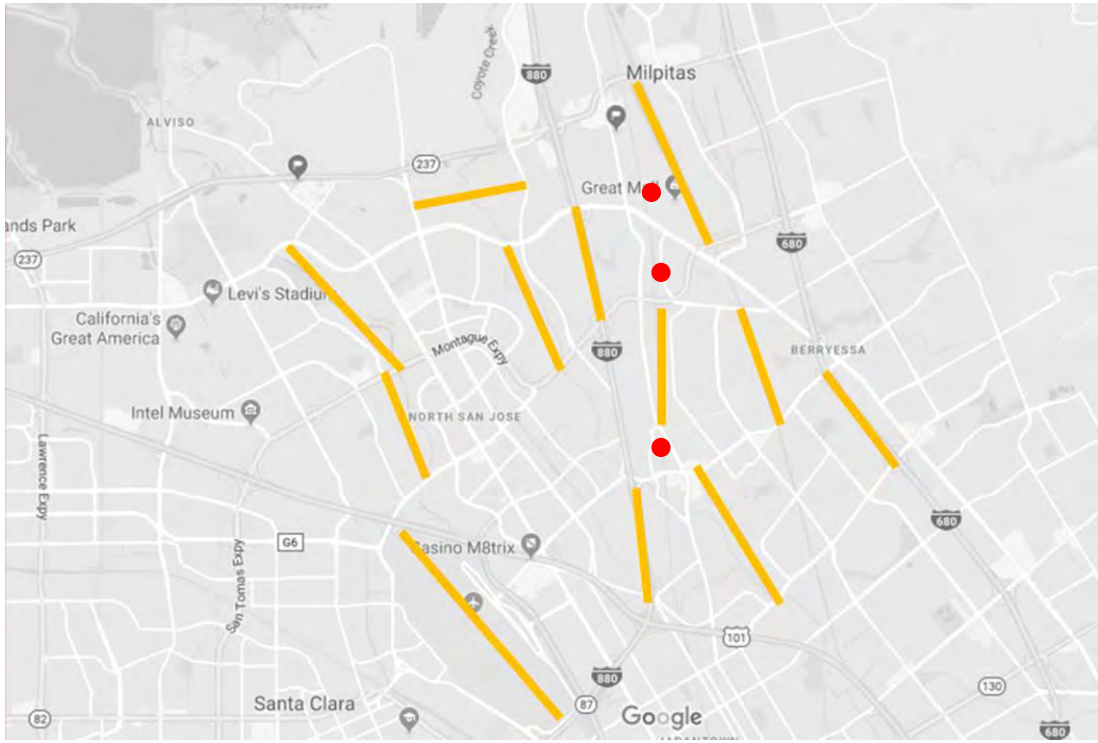
- Statements about the impact of the loss of parking on Silk Wood Lane to other school access points are also inconsistent:
  - "**The Charcot extension will have no effect on the school's access points, drop-off/pick-up areas, and/or parking lots that are located on Fox Lane and Oakland Road**." (p. 50)
  - "These changes will substantially curtail this informal use of Silkwood Lane for student drop-off/pick-up because the only remaining on-street parking will be along the north-south segment of Silkwood Lane that connects to Rock Avenue. **This, in turn, will result in a greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas**."(p. 50)
- But then again, the quantitative traffic analysis (p. 34-36) shows no impact to Fox Lane as traffic volume will supposedly stay the same as without the project, which is inconsistent with "greater use":

Table 8
Existing and Existing Plus Project Roadway Segment Traffic Volumes

#	Roadway	Location	AM				PM				ADT	
				Existing+	Change			Existing+	Change			Existing+
			Existing	Project	Volume	Percent	Existing	Project	Volume	Percent	Existing	Project
18	Ridder Park Drive	North of Oakland Road	730	730	0	0%	500	500	0	0%	6,700	6,700
19	Fox Lane	West of Oakland Road	620	620	0	0%	440	440	0	0%	6,100	6,100

Reasons for peak hour congestion east-west corridor **NOT** addressed by Charcot Extension or any alternatives

- **Regional imbalance of housing and jobs**
- Currently **limited** convenient **transit** options
- **Bottlenecks** with ~7 lanes merging into 3-4 (on Trimble/Montague eastbound and Trade Zone/Montague westbound)
- **At-grade rail crossings** causing back up which can take time to dissolve
- Large number of **commuters driving alone**
- **Suburban layout of Berryessa** promotes car usage
- Large number of **available parking in NSJ** promotes car usage
- Remaining **major barriers** (see map)
- Remaining **large street grid** in NSJ



Major barriers (i.e. ± 1 mile between crossings) (yellow) and at-grade rail crossings (red) between Berryessa, North San Jose and employment centers further west after Charcot is extended over 880.

NOTE: Distance between Berryessa and jobs in NSJ generally <6 miles (i.e. within biking distances for significant part of the population if sufficient safe and attractive facilities are provided)

Alternatives/strategies/instruments to reduce SOV

- **Additional transit routes**
  - Bus line from Berryessa (east of 680) to NSJ
  - Keep direct light rail vom Berryessa to NSJ in addition to light rail to MV
  - Direct light rail connection from Milpitas BART to NSJ/1st corridor
- **Reduce available parking** in NSJ
- Continue expanding **HOV and express lanes on high- and freeways**
- Provide/encourage additional amenities in NSJ (retail, entertainment, restaurants) to **stagger commute times**
- Address regional housing and jobs imbalance
- **Traffic calming measures**
- **Multi-modal improvements e.g. Tasman Corridor Study**, pedestrian improvements (sidewalk gaps) and masterplan, improved bike paths, addressing other accessibility issues
- **Additional TDM-Strategies**

"Reductions in cumulative traffic impacts will be largely dependent upon long term changes in the behavior of commuters. Such changes will be necessary in order to reduce the overwhelming dependence on single occupant automobile transportation"
(NSJ EIR)

Many of these items may already be in progress or even outside of City jurisdiction.

Replacing or de-prioritizing Charcot could free up staff and resources to support them further.

Bike/pedestrian bridge – supporting material

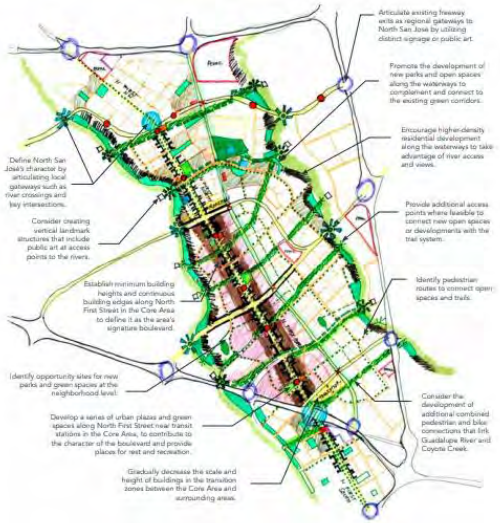
Supports the City's goal of shifting people to other transportation modes

- Creates a more attractive, and even safer, route for people biking into NSJ
- Encourages people to use public transit
- Sets a signal for the direction of further transportation planning in NSJ
- Supports the walkability goals of the NSJ Task Force
- Strengthens San José's position as a leader in sustainable transportation policy

Financially: Less expensive to construct and to maintain in the long term

Create a sense of "place"

- One of the biggest challenges for NSJ is to create a sense of place – "Creating a 'there-there' in NSJ requires the creation of walkable, mixed-used communities" (Liccardo, Nguyen, Peralez)
- A well-designed pedestrian bridge serving as a distinct gateway location into NSJ and connecting to the Coyote Creek Trail system and the planned green lush parkway on Charcot leading to the Guadalupe River is much more likely to create this sense of place than a car-centric overpass



Liccardo, Nguyen, Peralez "Memo: North San José Area Development Policy", April 8, 2016, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2131&meta_id=567696

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Recommendations to Improve Pedestrian & Bicycle Safety for the Orchard School District in San Jose

October 2018

California Walks
Stepping Up for Health, Equity, & Sustainability

Berkeley SafeTREC
SAFE TRANSPORTATION RESEARCH AND EDUCATION CENTER

OTS
CALIFORNIA OFFICE OF TRAFFIC SAFETY

Acknowledgements

Planning Committee

Robin Roemer	Orchard Parent-Teacher Association
Wendy Gudalewicz	Orchard School District
Stephen Ngo	Office of San José Councilmember Lan Diep (District 4)
Cordell Bailey	City of San José Department of Transportation
Jessica Zenk	City of San José Department of Transportation
Ben Pacho	Silicon Valley Bicycle Coalition
Vignesh Swaminathan	Crossroads Labs

We would like to thank the Planning Committee for inviting us into their community and for hosting the Community Pedestrian and Bicycle Safety Training at the Orchard School District in San José, California.

We would like to thank Lynn Dinsay-Limqueco and the Orchard Parent-Teacher Association for providing dinner, and the Orchard School District for providing the venue, A/V support, and printing in support of this training.

We would like to acknowledge the many community members and agencies present at the workshop and their dedication to pedestrian and bicycle safety. Their collective participation meaningfully informed and strengthened the workshop's outcomes.

Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration

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Recommendations to Improve Pedestrian & Bicycle Safety for the Orchard School District in San Jose

By Jaime Fearer, Chris J. Johnson, Tony Dang, California Walks;
Katherine Chen, Garrett Fortin, UC Berkeley Safe Transportation Research & Education Center

Introduction

At the invitation of the Orchard Parent-Teacher Association (Orchard PTA), California Walks (Cal Walks), the University of California at Berkeley's Safe Transportation Research and Education Center (SafeTREC), and the Planning Committee collaboratively planned and facilitated a Community Pedestrian and Bicycle Safety Training (CPBST) at Orchard School in San José, CA. The CPBST is a joint project of Cal Walks and SafeTREC that aims to leverage a community's existing strengths to develop a community-driven pedestrian and bicycle safety action plan and to identify pedestrian and bicycle safety priorities and actionable next steps in collaboration with community partners.

The Orchard PTA requested a workshop to 1) provide the Orchard School District and the City of San José staff, community organizations, and residents with a toolkit for promoting pedestrian and bicycle safety to inform future active transportation projects; 2) strengthen working relationships between various agencies and organizations and other stakeholders to ensure the best outcomes for students biking and walking to school at Orchard School District; and 3) develop consensus regarding pedestrian and bicycle safety priority and actionable next steps, 4) best prepare for existing and proposed safety threats for students walking and bicycling to Orchard School District.

Cal Walks and SafeTREC (Project Team) facilitated the workshop on September 13, 2018 from 4:00 p.m. to 7:30 p.m. in the multi-purpose room at Orchard School District. Dinner, childcare, and simultaneous English-to-Spanish interpretation were provided to maximize community participation. Nineteen (19) individuals attended the workshop, including Orchard PTA representatives and parents, the District superintendent and school principal, a representative from the office of San José District 4 Councilmember Lan Diep, representatives from the office of Santa Clara County Supervisor Dave Cortese, and representatives from the San José Department of Transportation.

The three and a half (3.5) hour training consisted of: 1) an overview of multidisciplinary approaches to improve pedestrian and bicycle safety using the intersectional 6 E's framework including: Equity & Empowerment, Evaluation, Engineering, Education, Encouragement, and Enforcement; 2) walking assessments along three key routes; and 3) small group action-planning discussions to prioritize recommendations for Orchard School District's active transportation efforts. The Planning Committee's goal was to support the School District and the City's efforts to best prepare for existing and proposed safety challenges for students walking and biking to Orchard School District. This report summarizes the workshop proceedings, as well as recommendations for projects, policies, and programs for pedestrian and bicycle safety for students at Orchard School District in San José.

Background

The CPBST is a joint project of Cal Walks and SafeTREC that aims to leverage a community's existing strengths to develop a community-driven pedestrian and bicycle safety action plan and to identify pedestrian and bicycle safety priorities and actionable next steps in collaboration with community partners. For each training, the program convenes a local multi-disciplinary planning committee to tailor and refine the training's curriculum to meet the community's needs. The Project Team conducted a pre-training site visit to collect on-the-ground observations of existing walking and biking conditions to adapt the CPBST curriculum and to provide context-specific strategies for the community's existing conditions.

Planning Process

For each training, the program convenes a local multi-disciplinary planning committee to tailor and refine the training's curriculum and focus to meet the community's needs. The Project Team conducts pre-training site visits to collect on-the-ground observations of existing walking and biking conditions to adapt the CPBST curriculum and to provide context-specific strategies for the community's existing conditions. The Orchard CPBST planning process was initiated in April 2018. The planning process consisted of:

- **Community Plans and Policies Review:** Cal Walks conducted a review of current community planning documents to inform the training with local context and prepare to build off existing efforts. The following documents were reviewed prior to the site visit:
    - Vision Zero San José Two-Year Action Plan (2017)
    - Envision San José 2040 General Plan (2011)
    - North San José Area Development Policy (2017)
    - North San José Deficiency Plan (2006, update expected March 2019)
    - Charcot Avenue Extension Project Plans (ongoing)
- **Analysis and Mapping of Pedestrian and Bicycle Injury Data:** SafeTREC used the Statewide Integrated Traffic Records System (SWITRS) and the Transportation Injury Mapping System (tims.berkeley.edu) to analyze pedestrian and bicycle injury data near Orchard School District in San José, as well as Census data to create collision rates based on population. Patterns of injury

collisions, victim characteristics, and demographics were analyzed to inform the planning process for the CPBST.

- **Identification of Priority Discussion Topics for Training:** The Planning Committee identified pedestrian and bicycle access to Orchard School District—including addressing existing conflicts at the designated school arrival and dismissal area south of school—and proposed construction of a new overpass over I-880 that would touch down at Silk Wood Lane immediately north of the school grounds as the priority discussion topics for the training. Additionally, the Planning Committee identified the following goals for the CPBST:
    - To identify priority risk areas for immediate and long-term safety efforts. Using community experience and input, rank vulnerabilities and opportunities to:
        - Improve existing conditions at pick-up/drop off area;
        - Inform the final design of the proposed Charcot overpass to minimize potential conflict; and
        - Identify additional route improvements.
- **Site Visit:** The Project Team facilitated an in-person site visit on August 2, 2018, with the Planning Committee at the Orchard School District board room to 1) review existing pedestrian and bicycle collision data; 2) collect qualitative data based on in-person observations of existing conditions and travel behaviors; and 3) conduct preliminary walking assessments of the focal neighborhood. Site visit findings were used to develop the workshop presentation, including providing local infrastructure examples and developing the walk/bike assessment route maps. During the site visit, the Planning Committee identified Orchard PTA, Orchard School District staff, San José Department of Transportation, San José Vision Zero program, and San José Council District 4 as key stakeholders to invite to the CPBST.

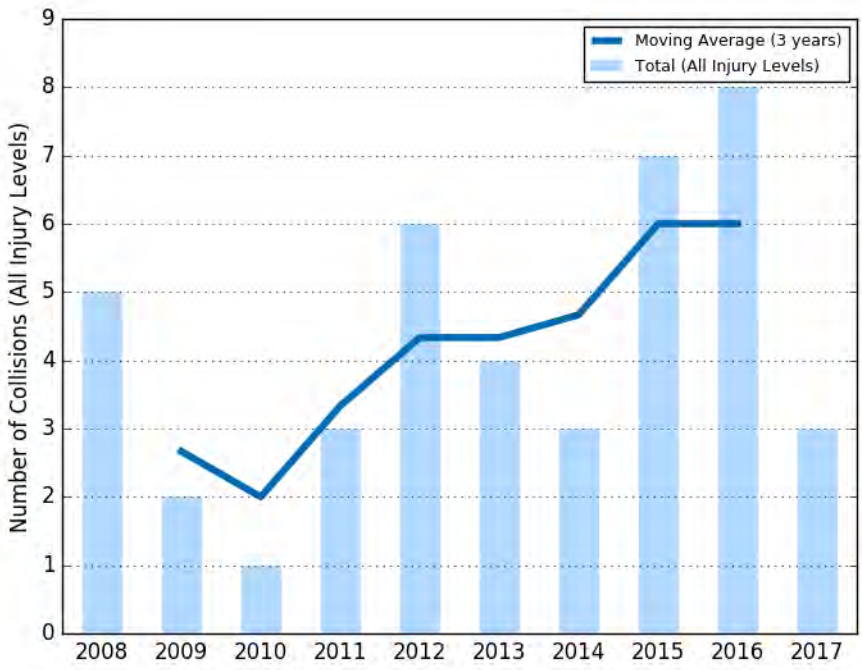
Existing Conditions

Pedestrian & Bicycle Collision History[1]

Between 2013-2017, there were 25 pedestrian collisions, including three fatalities and three severe injuries within the Orchard School District's attendance boundaries. Sixteen percent (16%) of the crashes do not include an identified primary collision factor. For the remaining collisions with identified primary collision factors, driver failure to yield to pedestrians with the right-of-way accounts for the largest proportion (24.0%), and pedestrians failing to yield to drivers when crossing outside a crosswalk[2] accounting for 20.0% of collisions. Over the same time period, pedestrian collisions appear to be on an upward trajectory.

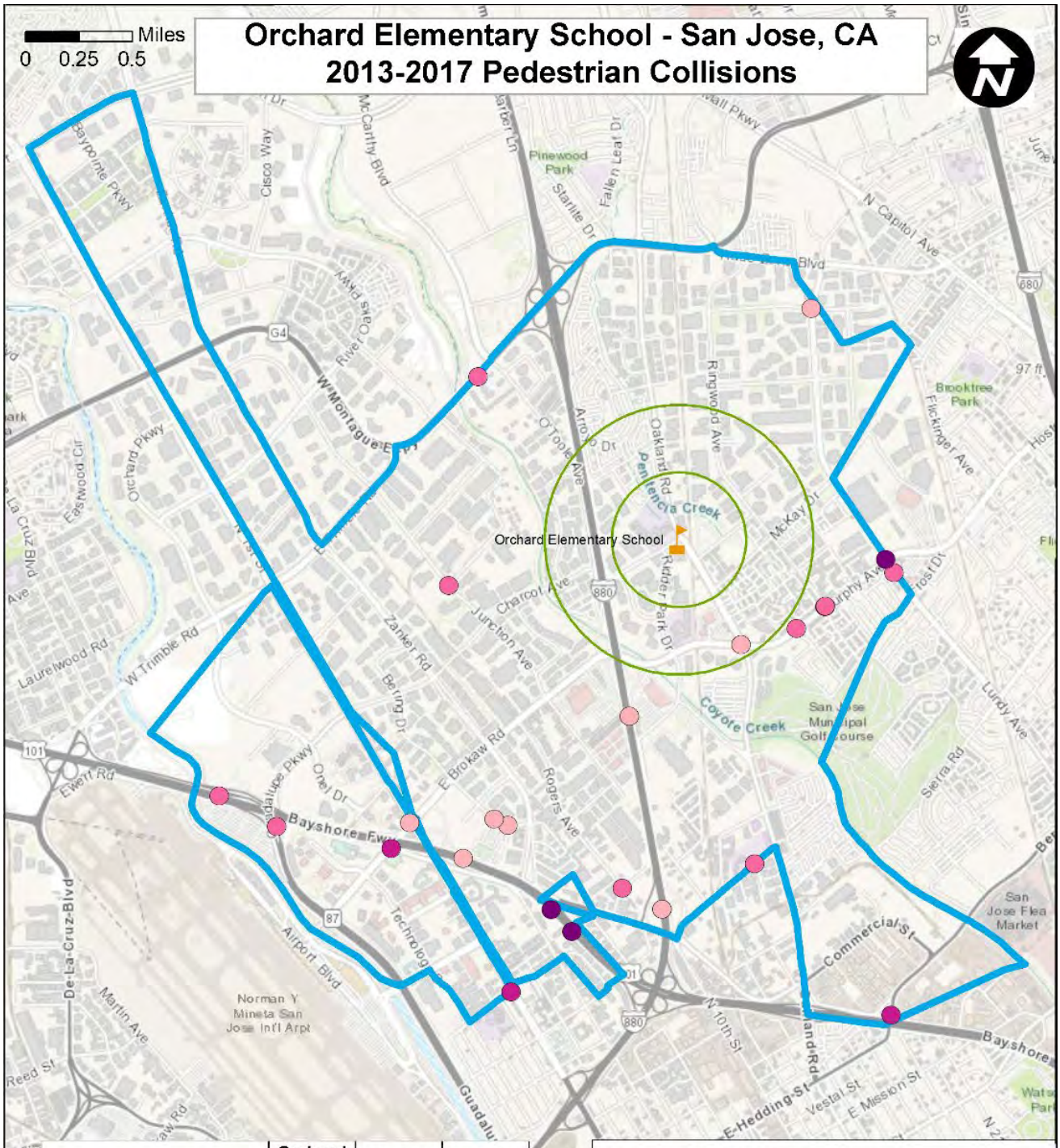
The graphics below show pedestrian collisions within the Orchard School District boundary (represented by the blue line on the map).

Pedestrian Collision Trend
with 3-year moving average



[1] 2016 and 2017 SWITRS data are provisional as of March 2018, except where otherwise noted.

[2] Pedestrians have the right-of-way in marked and unmarked crossings, and drivers are legally required to yield to pedestrians in these instances. However, when pedestrians cross outside of marked or unmarked crossings, pedestrians must yield the right-of-way to drivers. A pedestrian is legally able to cross outside of a marked or unmarked crossing between two intersections where one or none of the intersections is signalized but only if the pedestrian yields the right-of-way to oncoming drivers. This is not the same as the term "jaywalking," which refers to crossing outside of a marked or unmarked crossing between two signalized intersections.



	Orchard School District	1/2 Mile Radius	1/4 Mile Radius
Fatal	3	0	0
Injury (Severe)	3	0	0
Injury (Other Visible)	10	0	0
Injury (Complaint of Pain)	10	1	0
Total	26	1	0

Source: SWITRS 2013-2017; Provisional 2016 and 2017 as of December 2018.

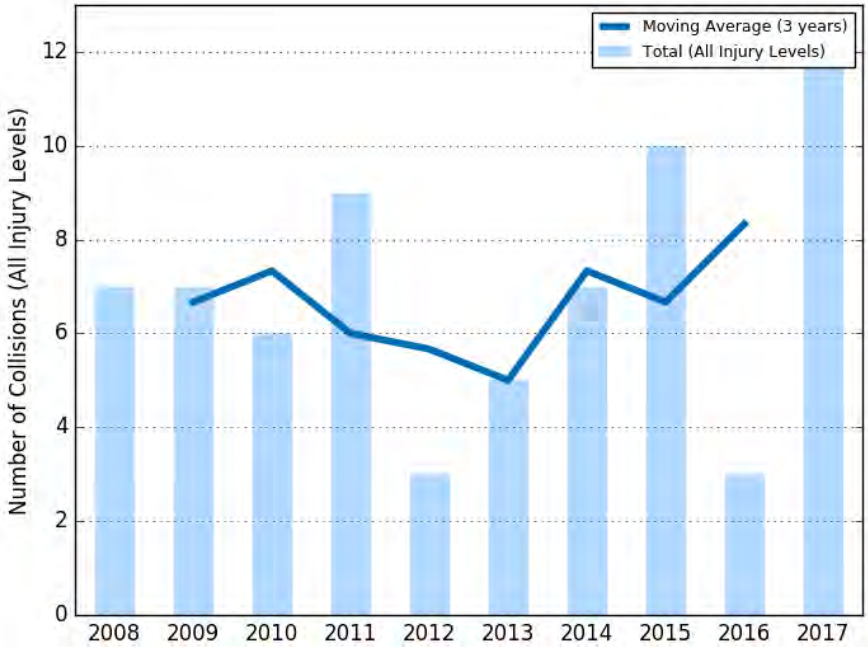
Overall Collision Summary

- Fatal (3)
- Injury (Severe) (3)
- Injury (Other Visible) (10)
- Injury (Complaint of Pain) (10)

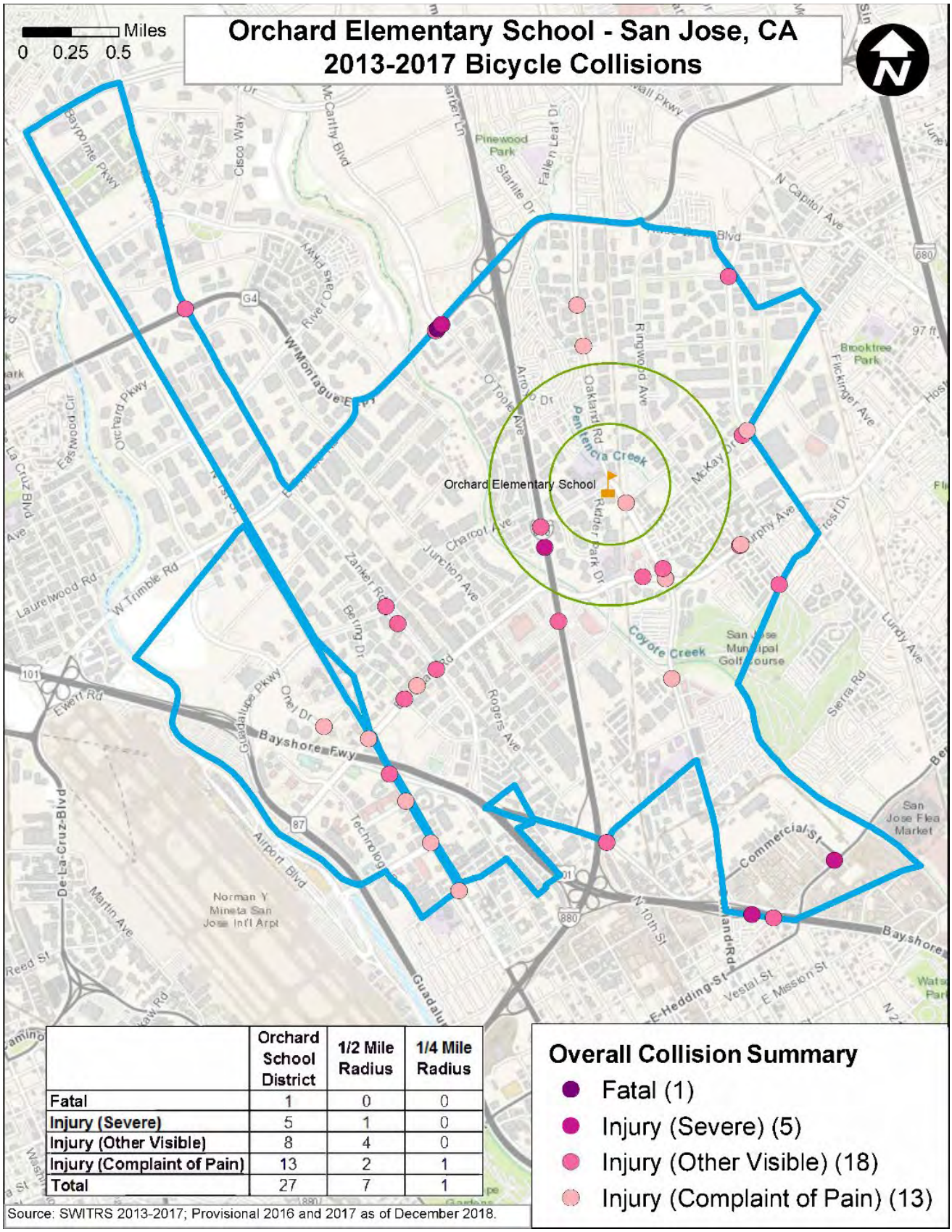
Between 2013-2017, there were 37 bicycle collisions, including one fatality and five severe injuries within the Orchard School District's attendance boundary.[3] Collisions in this time period are distributed throughout the area. As with the pedestrian collision data, a large number of the collisions (nearly 35.1%) lack an identified primary collision factor.[4] Failure to stop at a red light and wrong-way riding were the most frequent citation with each cited in 10.8% of the citations. Over the same time period, bicycle collisions appear to be on an upward trajectory, though there was a notable dip in 2016.

The graphics below show bicycle collisions within the Orchard School District boundary (represented by the blue line on the map).

Bicycle Collision Trend
with 3-year moving average



[3] 2016 and 2017 SWITRS data are provisional as of March 2018, except where otherwise noted.
[4] Over half of the collisions that do not have a primary collision reported occurred in 2016 or 2017; that data is provisional so this data might be pending.



	Orchard School District	1/2 Mile Radius	1/4 Mile Radius
Fatal	1	0	0
Injury (Severe)	5	1	0
Injury (Other Visible)	8	4	0
Injury (Complaint of Pain)	13	2	1
Total	27	7	1

Source: SWITRS 2013-2017; Provisional 2016 and 2017 as of December 2018.

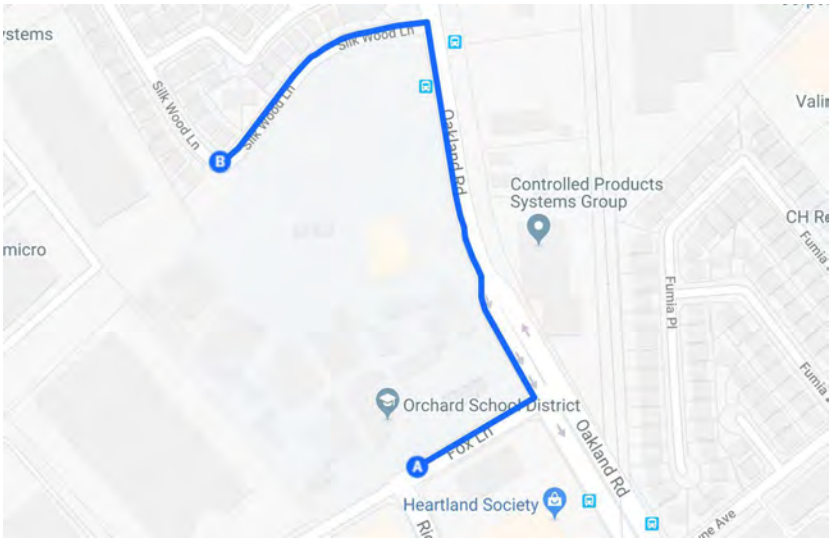
A full discussion of the pedestrian and bicyclist collision data prepared by SafeTREC can be found in Appendices A and B.

Walkability & Bikeability Assessment Reflections

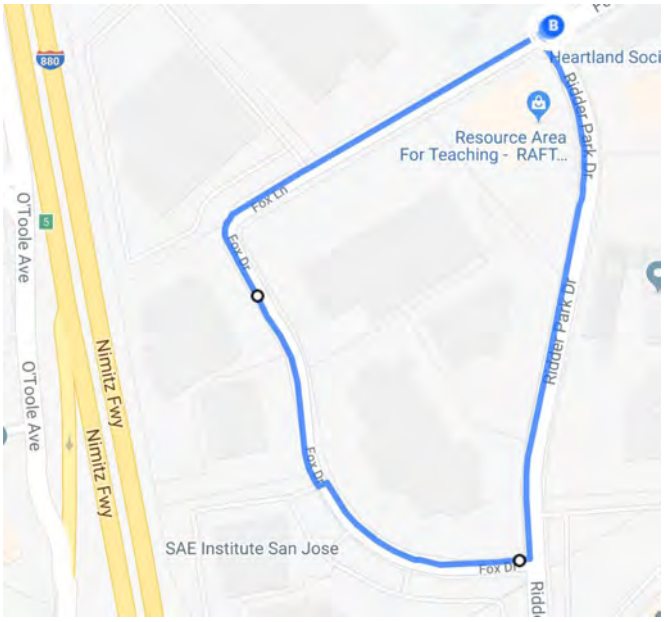
Participants were asked to 1) observe infrastructure conditions and the behavior of all road users; 2) assess the qualitative and emotional experience of walking or biking along the route; 3) identify positive community assets and strategies which can be built upon; and 4) consider how the walking and biking experience might feel different for other vulnerable users.

Workshop participants conducted walking and biking assessments along three key routes:

Route 1: Oakland Road & Silk Wood Lane



The first walking route focused on Oakland Road, the entrance to the school on Fox Lane, and the informal back entrance to the school on Silk Wood Lane where many students walking to school enter the campus. The Planning Committee selected this route to assess the formal and informal arrival and dismissal areas for the school (Silk Wood Lane and Fox Lane) and to assess conditions along Oakland Road, a heavily traveled bike and pedestrian route and a very wide high-speed arterial street that carries a high volume of commuter traffic passing through the neighborhood. The Planning Committee also identified this section of Silk Wood Lane as an area the City should assess due to the planned construction of the Charcot overpass, which would touch down on the east side of I-880 on Silk Wood Lane. Starting the walking assessment at Orchard School District, participants walked northeast on Fox Lane, turned northwest on Oakland Road, and then southwest on Silk Wood Lane, re-entering the school campus at the back gate.

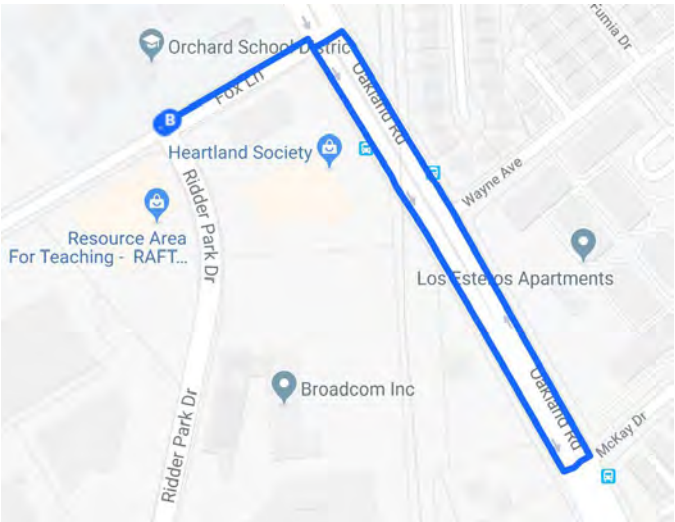


Route 2: Fox Lane & Ridder Park Drive

The second walking route focused on the crossing at the Fox Lane/Ridder Park Drive intersection in front of Orchard Elementary School, Ridder Park Drive and its Rectangular Rapid Flash Beacon (RRFB) crossing, Fox Drive,

and Fox Lane. The Planning Committee selected this route to assess conditions in front of the school's entrance, to observe nearby enhanced crossing treatments, and to better understand traffic patterns in the adjacent office parks. Participants exited the school property on Fox Lane, walked south on Ridder Park Drive to Fox Drive, continued on Fox Drive north to Fox Lane, and then finished by walking east on Fox Lane back to the school.

Route 3: Fox Lane & Oakland Road



The third walking route focused on Oakland Road from Fox Lane south to McKay Drive. The Planning Committee selected this route to assess conditions along Oakland Road, the high-speed arterial that carries a large volume of commuter traffic through the community. Starting the walking assessment at Orchard School District, participants walked east on Fox Lane to Oakland Road, south on Oakland Road, crossed east on McKay Drive, and then returned to the school on Oakland Road and Fox Lane.

Following the walking and biking assessment, the participants shared the following reflections:

- **Crossing and Intersection Challenges for People Walking and Biking**

Participants shared numerous challenges with pedestrian crossings and with driver movements at intersections near the school. Directly in front of Orchard Elementary School, participants noted the lack of a curb ramp at the sole marked crossing at the Fox Lane/Ridder Park Drive intersection leading to the school, as well as the very large turning radius of the intersection, which contributes to many drivers, including large freight trucks, rolling through the stop sign directly into the school crossing. Participants on Route 2 appreciated the improved crossing on Ridder Park Drive that includes RRFBs, high-visibility crosswalk markings, and curb extensions. All participants expressed support for implementing similar crosswalk enhancements to the Fox Lane/Ridder Park Drive crossing leading to the school.

The crosswalk in front of Orchard School lacks enhancements, including a curb ramp on the school side and high-visibility markings.

Participants identified a frequent conflict area for southbound bicyclists continuing on Oakland Road with drivers turning right onto Fox Lane. Particularly in the morning during school arrival hours, many parents are queued up on Oakland Road waiting to turn right onto Fox Lane. Bicyclists must navigate through vehicles that are legally positioned in the bike lane and others who are illegally positioned in the through travel lane to turn right onto Fox Lane.

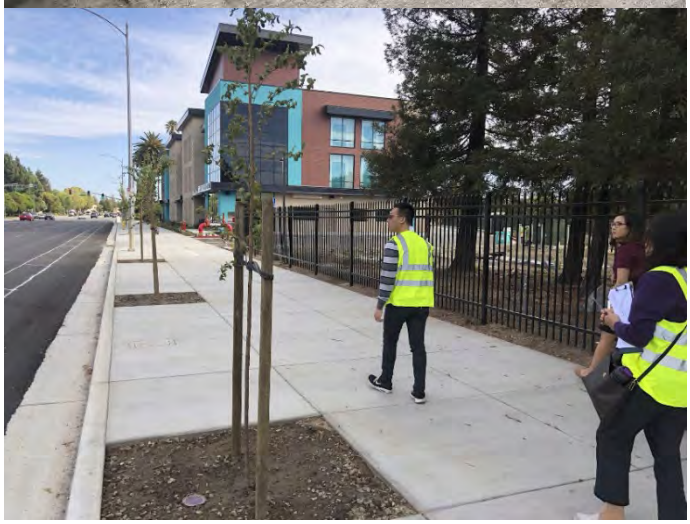
Oakland Road is a very wide, high-speed major arterial street. While marked crossing on the southern leg of the Oakland Road/Fox Lane intersection is well-marked and has a fairly generous crossing time, it is still a very challenging crossing due to the sheer width of the street and high speeds.

The severe angle of the railroad tracks on the east side of Oakland Road and lack of markings or signage create challenging conditions for bicyclists.

- **Missing Sidewalks and Various Sidewalk Conditions**: Participants noted that while sidewalks are present in most of the community, there is a key sidewalk gap on the west side of Oakland Road from the railroad tracks to McKay Drive. Where sidewalks were present, particularly near the newer residential commercial developments, the sidewalks were wide, level, and landscaped. Despite the generous width of the sidewalks, participants shared that the high volume and speed of traffic made them feel unsafe and that more of a physical buffer or separation from the street is needed to create a safer, more comfortable walking environment.

Sidewalk on west side of Oakland Road abruptly ends south of the railroad tracks.

Participants on walking assessment inspecting the sidewalk gap on the west side of Oakland Road.



Newer commercial developments on Oakland Road have resulted in wide, landscaped sidewalks.

- **Conflicts with Freight Traffic**: Participants noted that a high number of freight trucks travel on Fox Lane directly in front of the school and on Ridder Park Drive as a shortcut to bypass traffic on Oakland Road. Parents and the District Superintendent commented that freight truck drivers frequently travel too fast for the existing conditions on Fox Lane, particularly during school arrival and dismissal hours. They expressed a high degree of anxiety with freight traffic traveling in such close proximity to students walking and crossing the street, and they also noted that nearby roads, including Wayne Avenue and McKay Drive have restrictions posted for trucks over five (5) tons.

Participants discuss the RRFB-enhanced crossing on Ridder Park Drive.

Freight traffic on Ridder Park Drive that could be diverted to Oakland Road.

- **Lack of Signage**: Participants highlighted the high traffic speeds along Oakland Road as one of the major reasons for residents feeling unsafe walking and biking in the community. During the walking assessment, participants noted that there was very little signage alerting drivers to the presence of the school. While school zone signage is located on Fox Lane and on Oakland Road southbound at Silk Wood Lane and northbound between Wayne Avenue and the railroad crossing, participants

believed that consistent and more visible school zone signage could help communicate the need to slow down to drivers, including the accompanying speed limit signage. Additionally, participants observed a lack of warning signage related to the railroad crossing, which is particularly challenging for bicyclists with narrower tires.

Key Opportunities to Improve Walking and Biking Safety

Following the walking and biking assessment, the Project Team facilitated small-group action planning discussions where participants prioritized and preliminarily planned infrastructure projects and community programs aimed at reducing the number of injuries and fatalities, as well as increasing the number of people and the frequency of walking and biking in the Orchard School District community.

Through a voting and self-selecting process during the training, participants chose to focus on a preliminarily plan for Crossing Enhancements at the School Entrance, Traffic Calming for Fox Lane, Temporary Demonstration Projects, and a Pilot Safety Patrol and Valet program. Participants self-selected which project they wanted to collaborate on with their fellow participants to develop a plan and discussed:

- The problem the project is intended to solve;
- The people, organizations, agencies, and resources needed to implement the project;
- Resources needed to implement the infrastructure project/community program; and
- Short-term and long-term action steps to implement the project.

Community Recommendations

Workshop participants provided the following recommendations and next steps for overall pedestrian and bicyclist safety improvements:

Infrastructure Projects:

Crosswalk Enhancements at the School Entrance: The current crosswalks in front of school at the Fox Lane/Ridder Park Drive intersection have low visibility and lack an ADA accessible curb ramp. Because the school is located in a commercial park area, there is a high volume of drivers passing through the neighborhood to get to work or using Fox Lane as a shortcut to avoid traffic on nearby arterial streets. Parents and school administration reported that some drivers roll through the stop sign as they turn right from Ridder Park Drive onto Fox Lane; workshop participants observed this behavior during the Walking and Biking Assessments.

To address these challenges, participants identified several potential improvements, including:

- Relocating the east leg of the crosswalk to the west to minimize conflicts between students crossing and right-turning drivers;
- Enhancing crosswalk visibility with the addition of school zone signage, lane markings, RRFBs, and high-visibility crosswalk markings;
- Implementing traffic calming measures, such as a raised crosswalk, curb extensions, and pedestrian safety islands; and
- Installing an accessible curb ramp for the crosswalk.

Recognizing that many of the desired improvements will require a longer timeline for implementation, participants identified using paint and temporary materials as a priority for short-term interventions. San José Department of Transportation Neighborhood Traffic Management staff in this group shared that the Department would likely prioritize the curb ramp installation as a priority and further explained that the Department identifies safety projects across the City based on a variety of factors, including crash activity, proximity to land uses that generate walking trips, and roadway geometry, and the selection of projects are coordinated with Council District staff.

To help make the case to Councilmember Lan Diep's office and to the Neighborhood Traffic Management team, participants identified the collection of traffic data and community/student voices as a key short-term action for the Orchard PTA and school administration. Other short-term actions include:

- Setting up a follow-up meeting between the Orchard School District, Orchard PTA, and San José Department of Transportation Neighborhood Traffic Management team to discuss the costs of low-cost improvements to the intersection and to explore the possibility of a public-private partnership with the Orchard PTA to raise money to help offset the cost;
- Scheduling a follow-up meeting between the Orchard School District, Orchard PTA, and Councilmember Lan Diep's office to discuss the possibility of leveraging available City funding to help supplement the Orchard PTA's fundraising;
- Conducting outreach to nearby local businesses to solicit donations to help cover the cost of the crosswalk improvements. Nearby companies previously donated to help cover the cost of the Ridder Park Drive enhanced crossing with RRFBs and curb extensions; and
- Request that the San José Department of Transportation Neighborhood Traffic Management team install additional school zone signage around the school on Ridder Park Drive, Fox Lane, and Oakland Road.

The group discussed the following long-term action steps:

- Continue dialogue with San José Department of Transportation Neighborhood Traffic Management team to collaboratively design and prioritize safety improvements for the school; and
- Identify data and performance metrics the San José Department of Transportation Neighborhood Traffic Management team uses to prioritize projects and to leverage Orchard PTA to assist with data collection.

Traffic Calming for Fox Lane: Participants noticed a number of challenges on Fox Lane, including unsafe crossings, high motorist speeds, a large volume of freight traffic, and general driver confusion and inattention. Participants prioritized the following infrastructure improvements for traffic calming:

- Refresh current school zone markings and signage on Fox Lane and add new markings and signage where needed;
- Install advance yield markings and accompanying signage for the marked crosswalk across Fox Lane at the Fox Lane/Ridder Park Drive intersection;
- Narrow driving lanes with additional lane markings/paint and add bike lanes on Fox Drive and Fox Lane;
- Install flexposts/soft-hit posts to deter U-turns;
- Convert Fox Lane to one-way west of Ridder Park Drive;
- Install temporary curb extensions at the Fox Lane/Ridder Park Drive intersection using paint and bollards/soft-hit posts in the short-term, and work toward securing funding to make them permanent in the long-term; and
- Install a raised crosswalk at the Fox Lane/Ridder Park Drive intersection leading to the school.

To implement these desired improvements, the group identified the following preliminary action steps:

- Assemble a stakeholder team to oversee development and implementation of improvements. This team should include the school district (youth, parents, and staff); residential neighbors; the surrounding business community, including Supermicro; the San José Department of Transportation, particularly Neighborhood Traffic Management and the Charcot Avenue Extension project team; San José District 4 Councilmember Lan Diep's office, and Santa Clara County Supervisor Dave Cortese's office.
- This stakeholder team would establish a concrete timeline with short-, mid-, and long-term steps that would culminate in the construction of improvements in the next three to four years.

Workshop participants developed the following initial actions and desired improvements for the stakeholder team to build off of and refine:

- Short-term Actions
    - The Orchard PTA and District Superintendent will follow up with the Department of Transportation Neighborhood Traffic Management staff on the local traffic study that began in Spring 2017; and
    - The Orchard PTA and District Superintendent will follow up with the Department of Transportation Neighborhood Traffic Management staff about paint and signage improvements along Fox Drive and Fox Lane by January 2019.
- Mid-term Actions
    - Work with the City on a traffic study within one year to potentially make Fox Lane one-way west of Ridder Park Drive. Stakeholders will also work with the Department of Transportation staff to see if the costs for such a study are included in the Charcot Avenue planning processes, and engage Supermicro for their support.
- Long-term Actions
    - Work with the City to paint and then build curb extensions at the Fox Lane/Ridder Park Drive intersection and build raised crosswalks as part of the Charcot Avenue extension planning and implementation processes.

Community Programs, Policies, and Campaigns

- **Temporary Demonstrations**: This group discussed using temporary demonstrations to increase the driver awareness of Orchard Elementary School's location and that they are driving through a school zone. The group detailed two potential types of temporary demonstration projects incorporating art: 1) a street safety mural either on Oakland Road or at the Fox Lane/Oakland Road intersection; and 2) a 3D sidewalk art installation, with a goal of implementing one or both of these projects by the beginning of the next school year in August 2019.

  Street Safety Mural: This concept involved striping non-regulatory markings on the pavement to alert drivers, particularly on Oakland Road, that they are in a school zone. Potential designs discussed included oversize yield markings with pedestrians inside in a fluorescent color; safety messages, such as "Slow Down, School Zone," in 3D block letters; and safety messages paired with the school zone and the school's logo/mascot. Recognizing that Oakland Road is a major arterial and that may make implementing a 3D art installation challenging, participants agreed that a street safety mural on Fox Lane at the intersection with Oakland Road would be a reasonable compromise and would help signal to drivers that they are entering a school community.

  3D Sidewalk Art Installation: This temporary demonstration concept would construct a small child

or human figure out of papier-mache and/or mosaic tiles that would be placed on the sidewalks along Oakland Road. These statues would be paired with large banners with safety messages to drivers, particularly communicating to drivers that they are in a school zone.

For both types of temporary demonstrations, participants outlined a similar process, set of stakeholders, and timeline, as follows:

- Key Stakeholders: Orchard School District administration, parents, Orchard PTA, Councilmember Lan Diep's Office, Department of Transportation, students, Orchard Elementary School teachers (particularly art teachers), Supermicro and other local businesses, and the Council District 4 Arts Commissioner;
- Resources Needed: art supplies (including: tiles, ceramic, paint, chicken wire, glue, soft-hit posts); teacher/school buy-in; donated time from a local artist or arts-based non-profit organization; potentially a permit from the Department of Transportation;
- Timeline:
    - End of September 2018: Participants identified the need to convene a follow-up meeting with Department of Transportation staff to understand what existing programs, policies, and procedures would apply to these temporary demonstration requests.
    - If there are existing programs, policies, and procedures in place for temporary demonstrations, then the timeline for actions would include:
        - Mid-October 2018: The Orchard PTA would finalize the design and scope of the temporary demonstrations;
        - November 2018: The Orchard PTA would secure the necessary City permits and Police Department sign-off on any temporary traffic control plans;
        - November-December 2018: The Orchard PTA would promote the demonstrations to parents and the school community, recruit volunteers, and secure materials and/or solicit donations for materials;
        - January/February 2019: Implement one or more temporary demonstration projects;
        - If there are not existing programs, policies, and procedures in place for temporary demonstrations, then the Orchard PTA will make a request to Councilmember Lan Diep's office to propose to the City Council the establishment of a formal street mural and/or temporary demonstration program. The timeline following this would largely be dependent upon the City, but the group discussed the sequence of events as follows:
            - The Department of Transportation would need to investigate if an existing Department program could accommodate or house street murals and/or temporary demonstrations;
            - If no existing program can be found, a new program would need to be drafted by the Department and submitted to the City Attorney's office for review;

- From there, the City Council Rules Committee would determine whether the proposed program would be sent to the full City Council for review/approval or whether it would need to be reviewed by the Council's Transportation and Environment Committee first; and
- Lastly, assuming the Council approves of the new program, the Department would either be allocated a budget for the program or it would have to seek outside funding (e.g., from the California Office of Traffic Safety or the Santa Clara Valley Transportation Authority/VTA) to implement the program.

Finally, this group requested traffic safety banners from the San José Department of Transportation Street Smarts program, which the Department provided to the Orchard PTA at the end of the workshop.

- **Pilot Safety Patrol and Valet:** This group focused on addressing the hectic environment of school arrival and dismissal. Faculty and staff believe that expediting the arrival process using student safety patrols who are trained to help students get quickly out of cars would improve the traffic flow for parents and the safety of students exiting vehicles.

  The City of San José Department of Transportation Streets Smarts program has an existing resource kit that the Department offered to share with the school to assist with a limited-term pilot program. The Safety Patrol and Valet program would ideally leverage existing events, such as school safety week or back to school night. Orchard Elementary School may be able to commit resources for a staff or faculty coordinator to train older students and to encourage parents to commit to an appropriate drop-off and pick-up process.

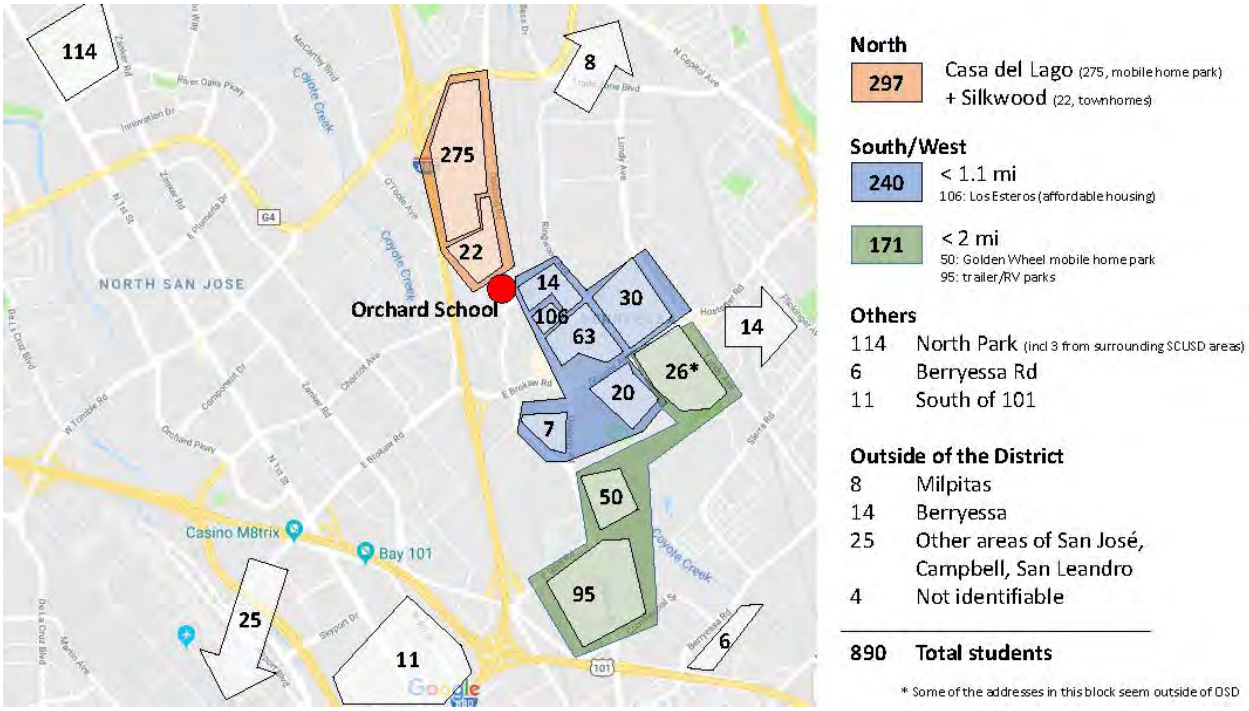
  Participants also identified the need for evaluation of the pilot program. They identified preliminary performance metrics for success, including a reduction in queue times for drivers at school arrival and dismissal, and the development of a parent questionnaire to collect qualitative feedback.

Cal Walks/SafeTREC Recommendations

California Walks and SafeTREC also submit the following recommendations for consideration by the City of San José and the Orchard School District:

- **Leverage the Charcot Extension Planning Process:** The Charcot Avenue Extension Project will continue to progress in coming years. The Project Team recommends that the San José Department of Transportation continue to work closely with the Orchard School District and surrounding community to plan for a multi-modal overpass that prioritizes safety, particularly the safety of vulnerable users. While the future crossing at Silk Wood Lane is currently proposed to be controlled with a HAWK signal, the Project Team recommends fully signalizing the intersection, striping the crossings with high-visibility markings, installing curb extensions at all corners, and enabling a Leading Pedestrian Interval (LPI) during school hours. The Project Team also encourages the City to consider raised crosswalks at this intersection. The Charcot Avenue Extension has the potential to negatively impact street crossing for a significant portion of elementary age students who currently live in the developments north of the school campus and currently enjoy a very low-volume, low-speed residential crossing. Orchard PTA estimates that over 200 students use this crossing per day, while the City of San José's projects an 10,000 additional cars will use this route per day with the Charcot Avenue Extension Project. Therefore, the Project Team ***encourages the Department of Transportation to explore the planning and funding of crosswalk improvements at the Fox Lane/Ridder Park Drive intersection as part of the Charcot Avenue Extension Project***, as the new overpass has the potential to change traffic patterns both at the north and south sides of the School Campus.

Student Residence Count
Orchard School District



- **Improve the Oakland Road Railroad Crossing for Walking and Biking:** Oakland Road is a popular walking route for students who live south of Orchard Elementary School and those who want to access the commercial development to the south at the Oakland Road/Brokaw Road intersection. The railroad crossing on the west side of Oakland Road, south of Fox lane and north of Wayne Avenue, is currently dangerous for children and completely inaccessible for wheelchair users, parents with strollers, and other users with limited mobility. The Project Team ***recommends that the San José Department of Transportation and railroad operator work with stakeholders to improve the pedestrian railroad crossing on the west side of Oakland Road and to improve the crossings on both sides of Oakland Avenue for bicyclists.***
- **Improve Nearby Bus Stops:** The bus stops near Orchard School on Oakland Road are minimally signed, and there are no benches or shelter. The Project Team ***recommends that the City and VTA develop bus stop enhancements, including installing benches, trash cans, pedestrian-scale lighting, and shelters.*** In lieu of constructing shelters, the City and VTA may reach out to organizations like Our City Forest to plant shade trees at the bus stops.
- **Explore the Feasibility of Relocating Oakland Road/Fox Lane Crossing**: Currently there is only one marked crosswalk across Oakland Road on the southern leg of the Oakland Road/Fox Lane intersection. Because Oakland Road is a very wide, high-speed arterial and because there are a lot of southbound drivers on Oakland Road turning right onto Fox Lane, the Project Team ***recommends the Department of Transportation study the relocation of the marked crosswalk from the***

southern leg to the northern leg of the Oakland Road/Fox Lane intersection to determine safety benefits or risks for students traveling northbound on the east side of Oakland Road would no longer need to cross Fox Lane after crossing Oakland Road.

- **Investigate On-Campus Improvements for Arrival and Dismissal:** Orchard Elementary School's campus appears to have some flexibility in the ways in which students who arrive by car can be dropped off or picked up. The Project Team ***recommends that Orchard Elementary School explore some of the following changes to its arrival and dismissal procedures in the coming year***:
    - Have additional staggered arrival and dismissal times;
    - Open the parking lot off of Oakland Road for vehicular drop-off and pick-up; and
    - Continue to use the existing drop off zone in front of school for vehicular drop-off and pick-up and move special needs bus drop-off and pick-up to the pull-out on the west side of the campus.
- **Join the City of San José's Walk n' Roll San José Program:** Orchard Elementary School is not one of the current Walk n' Roll San José schools. The City supports participating schools by hosting bike rodeos and safety assemblies, by providing traffic safety education to the students, by participating in International Walk to School Day and Bike to School Day, and by increasing traffic enforcement near the school through the San José Police Department's Operation Safe Passage program. The Project Team ***recommends that Orchard Elementary School apply to become a Walk n' Roll San José school, and that the San José Department of Transportation prioritize that application***, given the challenges the school site faces with the Charcot Avenue Extension Project construction on the horizon.

Appendix A

Pedestrian and Bicycle Collision Data Analysis
Workshop Handout

2013-2017 ORCHARD SCHOOL DISTRICT DATA ANALYSES

Community Pedestrian and Bicycle Safety Training Workshop
September 13, 2018 | San Jose, CA

The goal of the Community Pedestrian and Bicycle Safety Training (CPBST) is to make communities safer and more pleasant for walking and bicycling. This workshop will train local residents and safety advocates in pedestrian and bicycle safety as well as create opportunities for collaboration with local officials and agency staff.

This fact sheet highlights 2013-2017 pedestrian and bicycle collision data available to help your community better prioritize recommendations that emerge from this workshop. The workshop focuses on the geography of the Orchard School District in San Jose, CA.

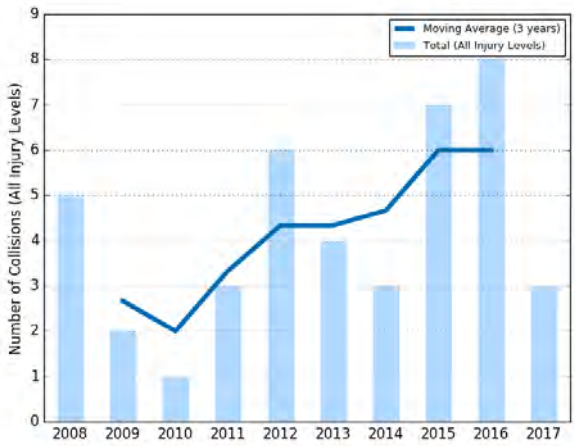
PEDESTRIANS

42 people were killed or injured in **42** pedestrian collisions in the last 10 years (2008-2017).

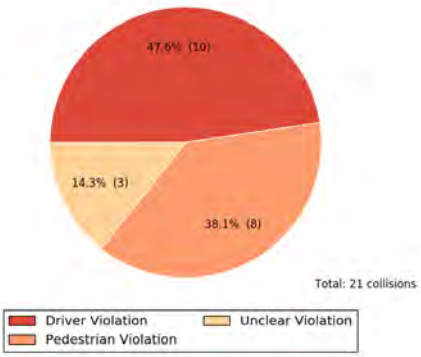
The **three-year moving average** line showed an upward trend in pedestrian collisions, though is currently flat.*

There were **8** pedestrian collisions in 2016, but an average of **6** pedestrian collisions per year for the 3-year rolling average between 2015 and 2017.

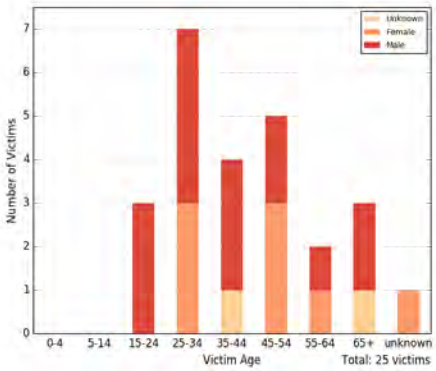
*This line is useful for tracking change over time, especially when the number of collisions changes a lot between years. Data points are shown at the midpoint of the three years of data specified. 2016 and 2017 SWITRS data is provisional, so trends may change as the data is more complete.



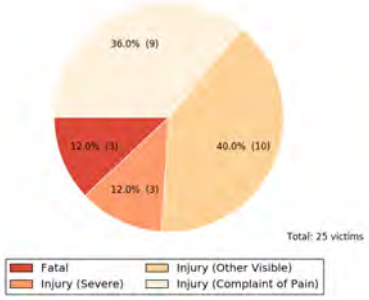
47.6% driver violations
VS.
38.1% pedestrian violations



*Unclear violations were committed either by the driver, pedestrian or bicyclist. There were also four collisions where the violation was not reported.



60.0% of victims were male
12.0% of victims were age 65+



24.0%
of victims (or 6 people) were KILLED or SEVERELY INJURED

Data Source: California Statewide Integrated Traffic Records System (SWITRS). Collision data for 2016 and 2017 are provisional at this time.

Funding for this program was provided by a grant from the California Office of Traffic Safety through the National Highway Traffic Safety Administration.

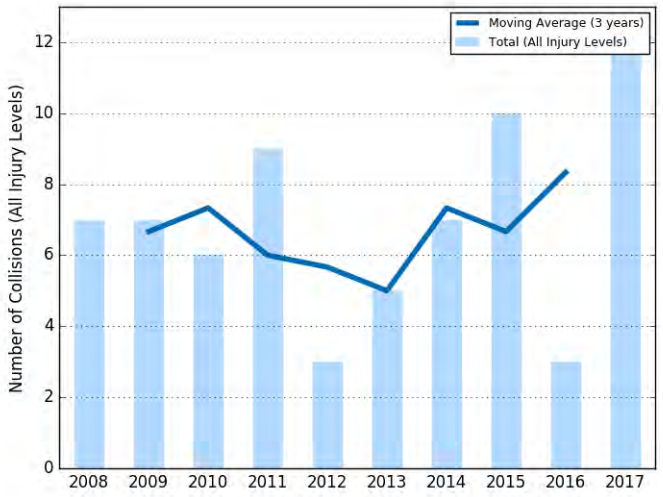
BICYCLES

69 people were killed or injured in **69** bicycle collisions in the last 10 years (2008-2017).

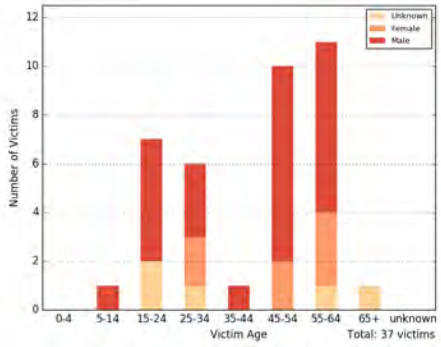
The **three-year moving average** line shows a **upward** trend in bicycle collisions.*

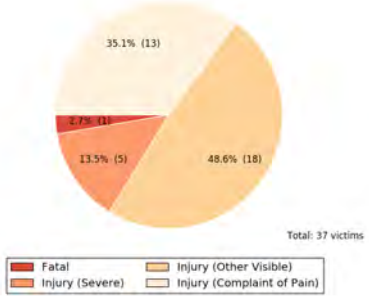
There were **3** bicycle collisions in 2016, but an average of **8.33** bicycle collisions per year for the 3-year rolling average between 2015 and 2017.

* This line is useful for tracking change over time, especially when the number of collisions changes a lot between years. Data points are shown at the midpoint of the three years of data specified. 2016 and 2017 SWITRS data is provisional, so trends may change as the data is more complete.



Bicycles **must follow all the same rules of the road as vehicles.** As a result, we can**not** break down violations by driver vs. bicyclist.





67.6% of victims were male

8.1% of victims were age 18 or younger

56.7% of victims were age 45-64

16.2%
of victims (or 6 people)
KILLED or SEVERELY INJURED

SUMMARY

32.5 pedestrian fatalities & injuries per 100,000 population over the last five years, which is **11.7% more than** Santa Clara County and **9.5% less than** California

32.3 bicyclist fatalities & injuries per 100,000 population over the last five years, which is **18.0% less than** Santa Clara County and **3.0% less than** California

	Yearly Population Rate of Fatalities & Injuries per 100,000 Population Calculated Over a 5-year Period*	
	Pedestrian	Bicyclist
San Jose	32.5	32.3
Santa Clara County	29.1	39.4
California	35.9	33.3

Source: U.S. Census Bureau, Population Division (intercensal population data for 2016).

* The rate per population is calculated by adding the number of fatalities and injuries from 2012 to 2016 divided by five times the population in 2016.

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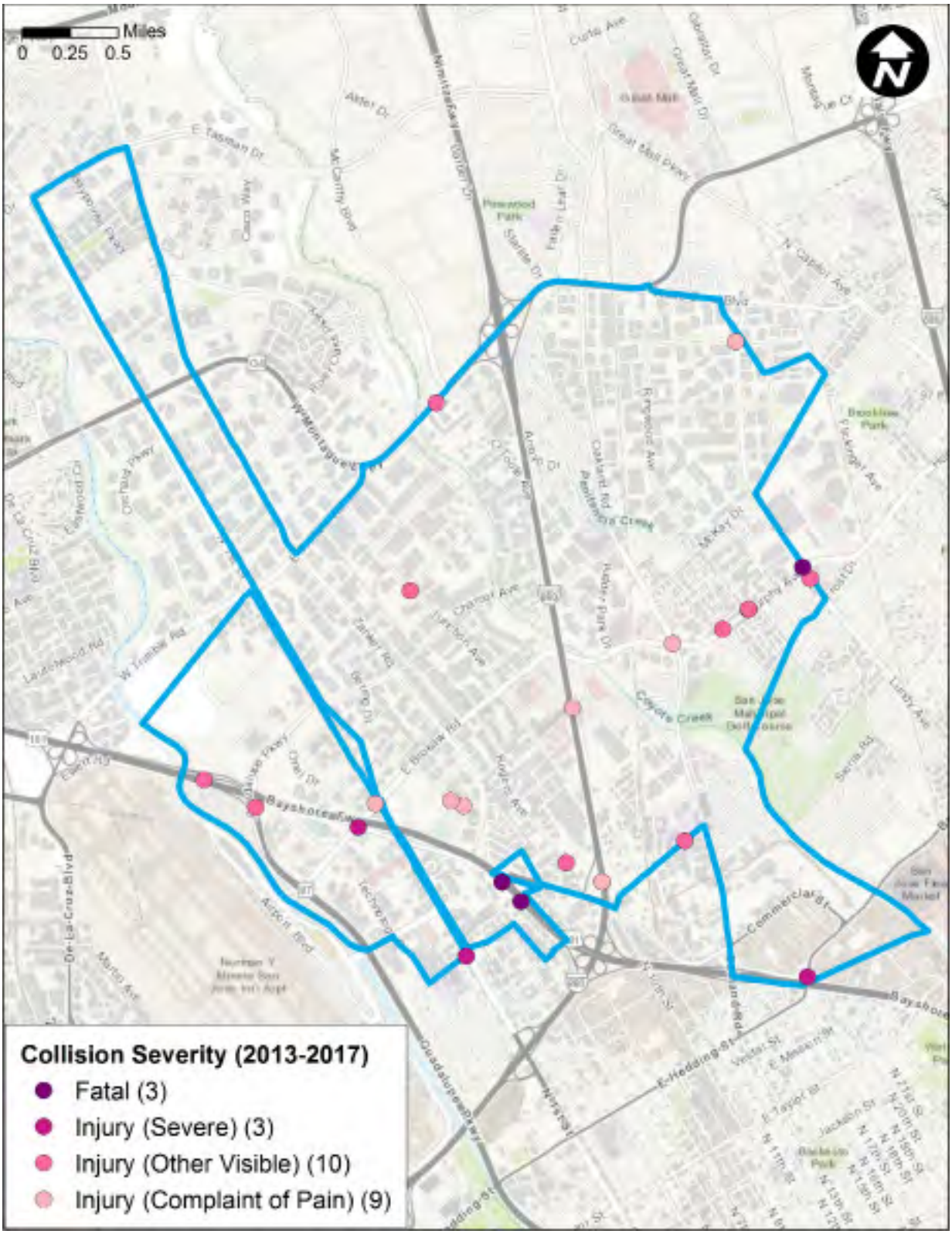
California Walks

OTS CALIFORNIA OFFICE OF TRAFFIC SAFETY

Pedestrian Collisions 2013-2017

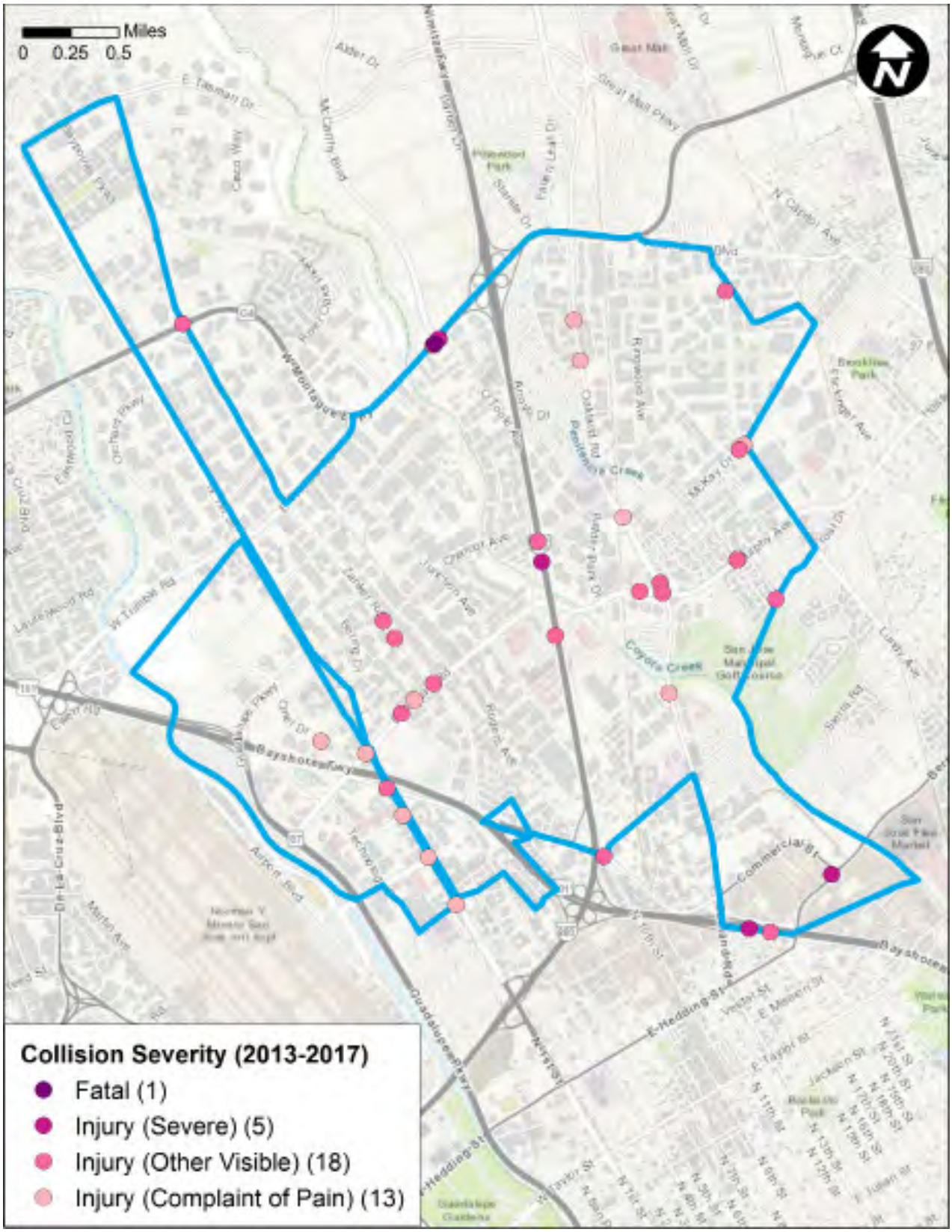
Orchard School District - San Jose, CA



Data Source: California Statewide Initegrated Traffic Records System (SWITRS). Collision data for 2016 and 2017 are provisional as of June 2018.

Bicyclist collision locations, 2013-2017

Orchard School District - San Jose, CA



Data Source: California Statewide Initegrated Traffic Records System (SWITRS). Collision data for 2016 and 2017 are provisional as of June 2018.

Appendix B

Pedestrian and Bicycle Collision Data Analysis
Site Visit Presentation

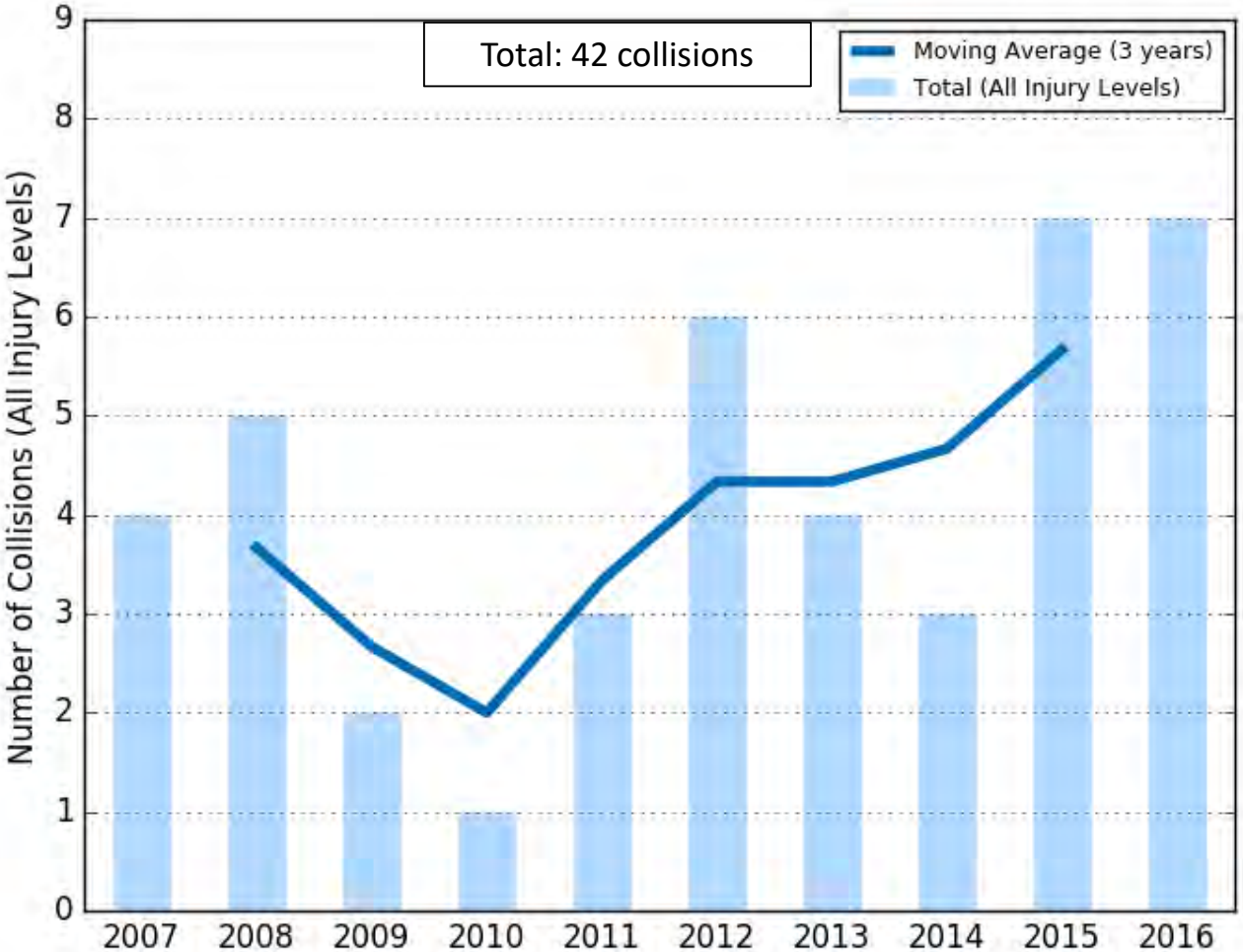
Community Pedestrian and Bicycle Safety Workshop Site Visit

San Jose, CA – Orchard Elementary School District

August 2, 2018

Pedestrian Injury Collision Trend

with 3-year moving average



Note: 2015 and 2016 Statewide Integrated Traffic Records System (SWITRS) data are provisional as of November 2017.

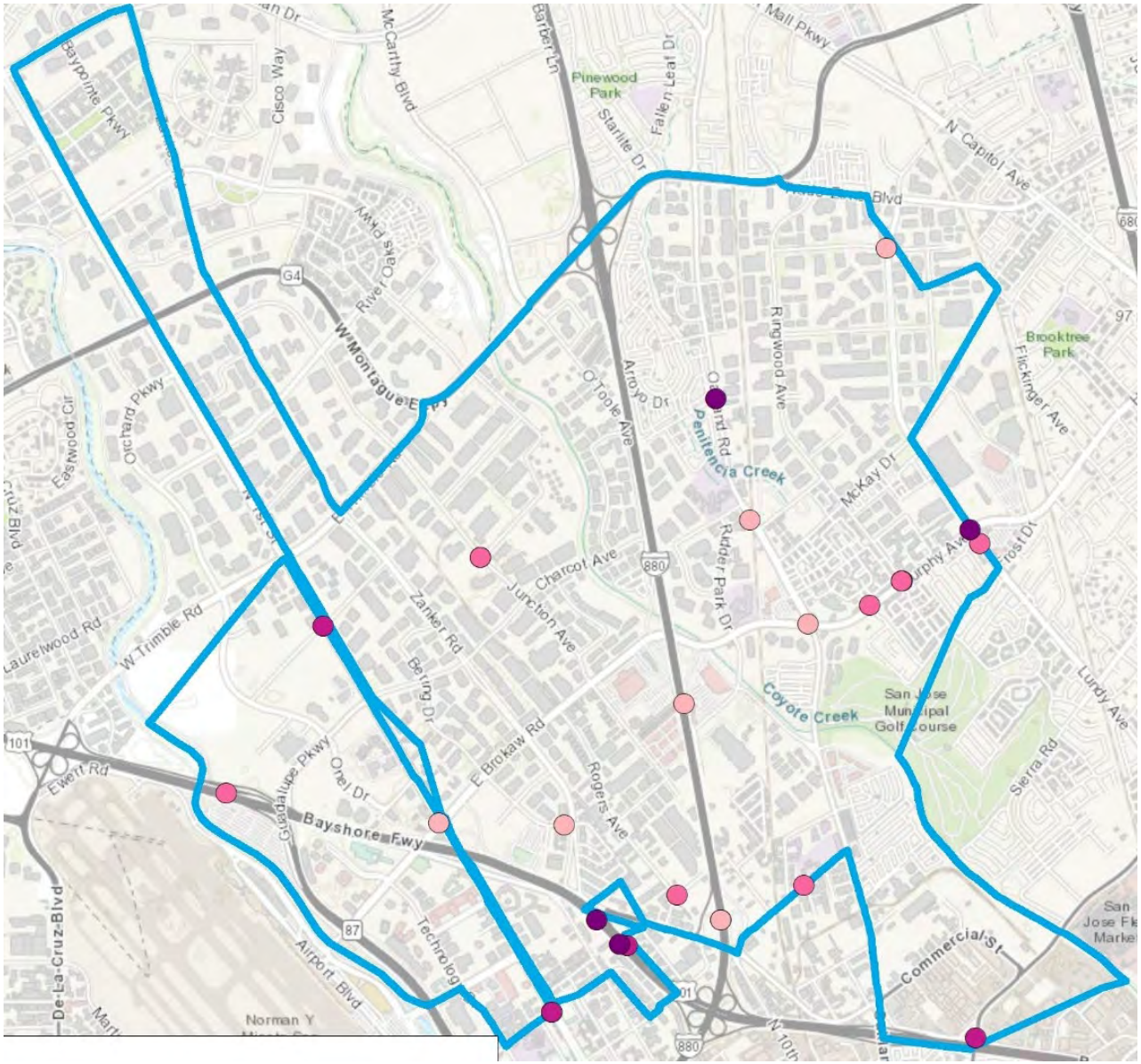
Pedestrian Injury Collisions

2012-2016

Total: 27 collisions mapped

Collision Severity (2012-2016)

- Fatal (4)
- Injury (Severe) (4)
- Injury (Other Visible) (8)
- Injury (Complaint of Pain) (11)



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

Pedestrian Collisions and Income

2012-2016

Total: 43 collisions mapped

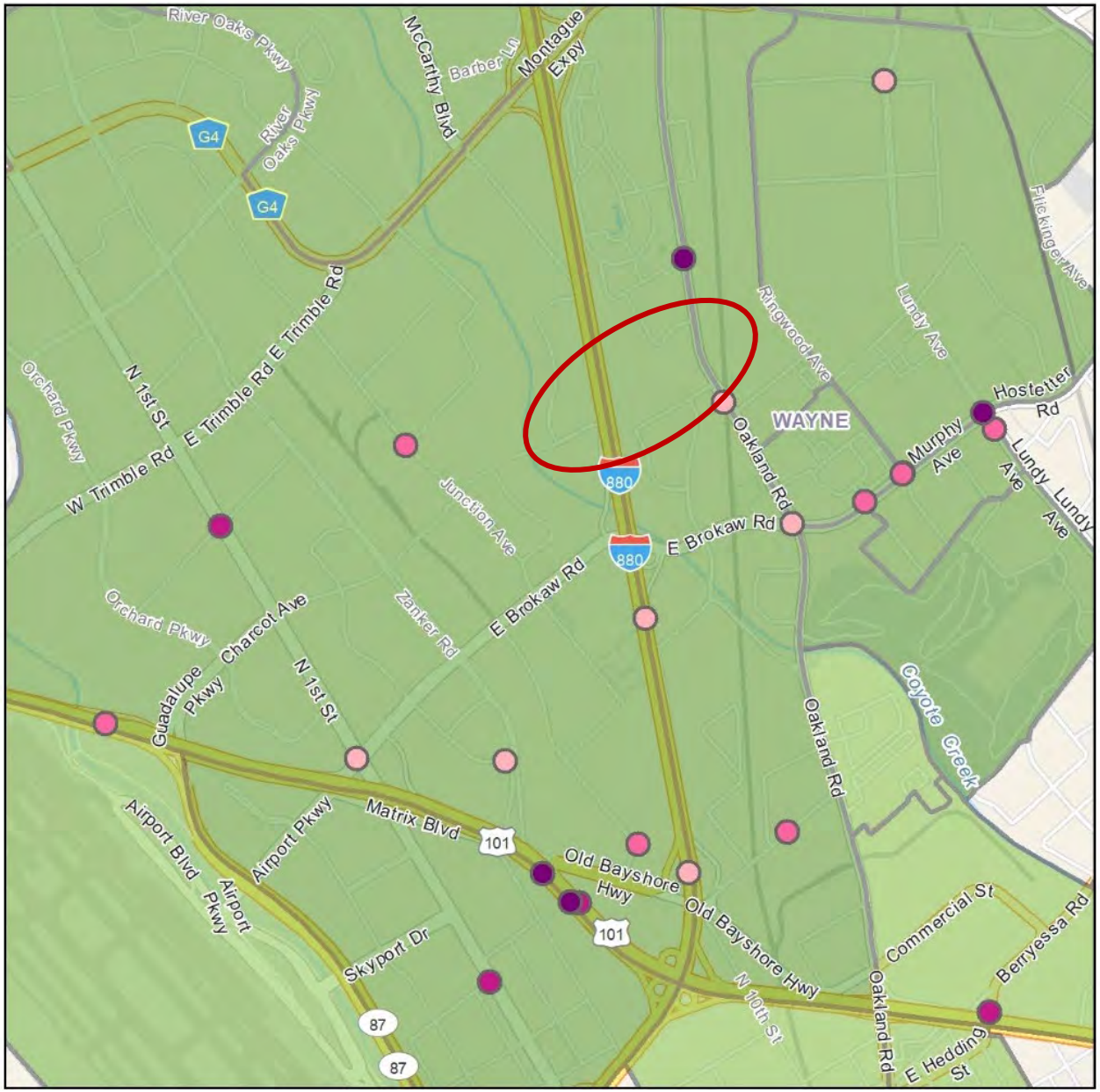
Collision Severity (2012-2016)

- Fatal (4)
- Injury (Severe) (4)
- Injury (Other Visible) (8)
- Injury (Complaint of Pain) (11)

2017 Median Household Income

- 50K - 75K
- > 75K

Source: SWITRS, 2012-16; Demographics – ESRI, US Census Bureau; ACS



Note: 2015 & 2016 SWITRS data is provisional as of November 2017.

Pedestrian Collisions by Time of Day and Day of Week Total: 27 collisions

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
09:00PM-11:59PM	0	0	1	1	1	0	0	3
06:00PM-08:59PM	1	1	2	1	1	0	0	6
03:00PM-05:59PM	3	3	1	0	0	1	1	9
Noon-02:59PM	1	1	0	0	1	0	0	3
09:00AM-11:59AM	0	0	0	0	1	1	0	2
06:00AM-08:59AM	0	1	0	0	1	1	0	3
03:00AM-05:59AM	0	0	0	0	0	0	0	0
Midnight-02:59AM	0	0	0	0	0	0	1	1
	5	6	4	2	5	3	2	

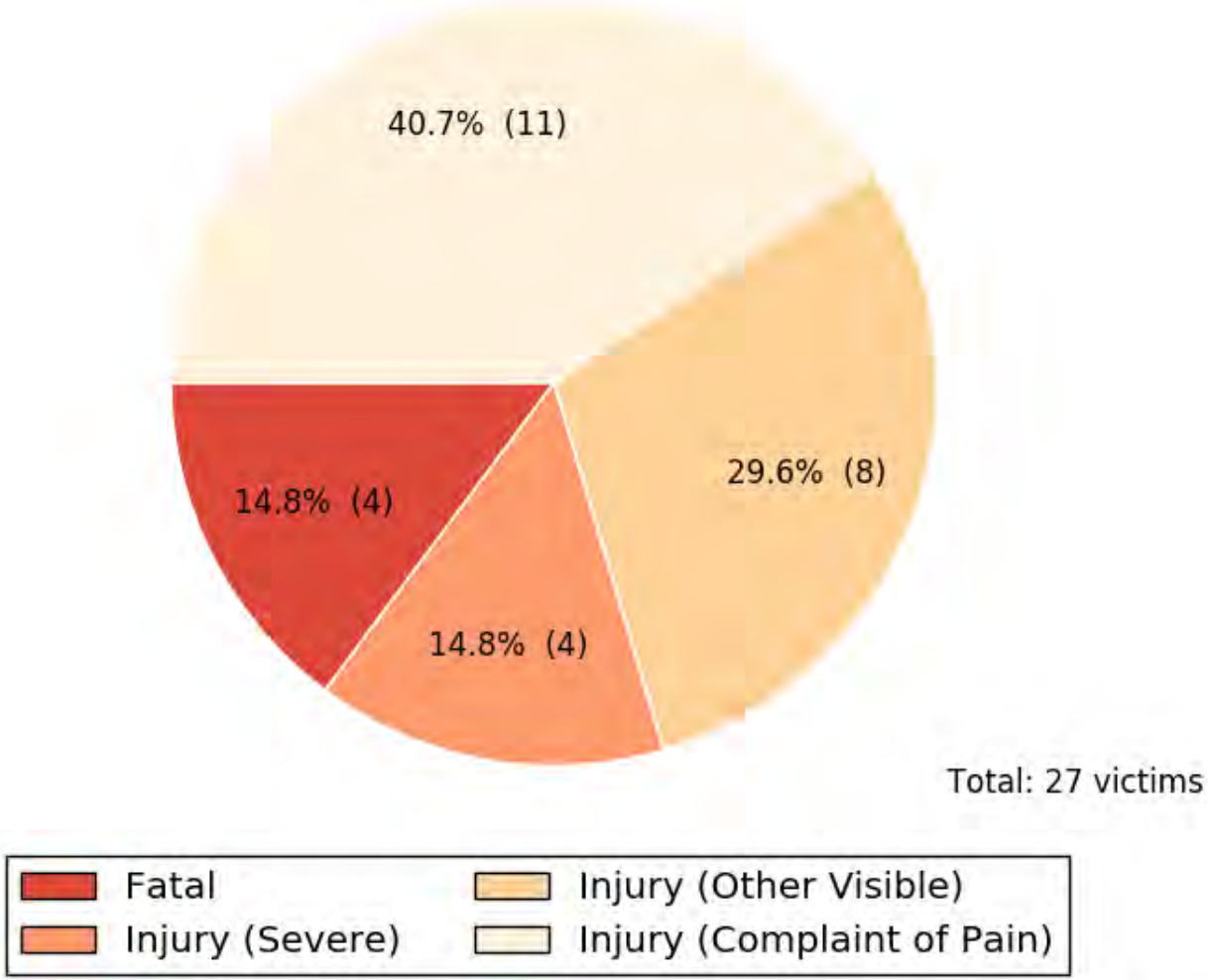
*The colors in this graph refer to how frequently a collision occurs at that time and day

Top 10 Violations in Pedestrian Collisions (with # and %)

CVC No.	Description	Freq.	Percent
0	Unknown	10	37.0%
21950	Driver failure to yield right-of-way to pedestrians at a crosswalk	6	22.2%
21954	Pedestrian failure to yield right-of-way to vehicles	4	14.8%
22107	Unsafe turning with or without signaling	2	7.4%
21453	Red or Stop, vehicles stop at limit line or X-walk. When making right turn at a red light/stop sign driver required to yield to any vehicle approaching so closely as to constitute an immediate hazard	1	3.7%
21456	"Walk" pedestrian failure to yield right-of-way to vehicles already in crosswalk	1	3.7%
21804	Driver failure to yield right-of-way when entering/crossing a highway	1	3.7%
21955	At intersections, pedestrians can't cross anywhere except at a crosswalk	1	3.7%
21956	Pedestrian failure to walk close to the edge of the roadway when there is no sidewalk present	1	3.7%
Total		27	100.0%

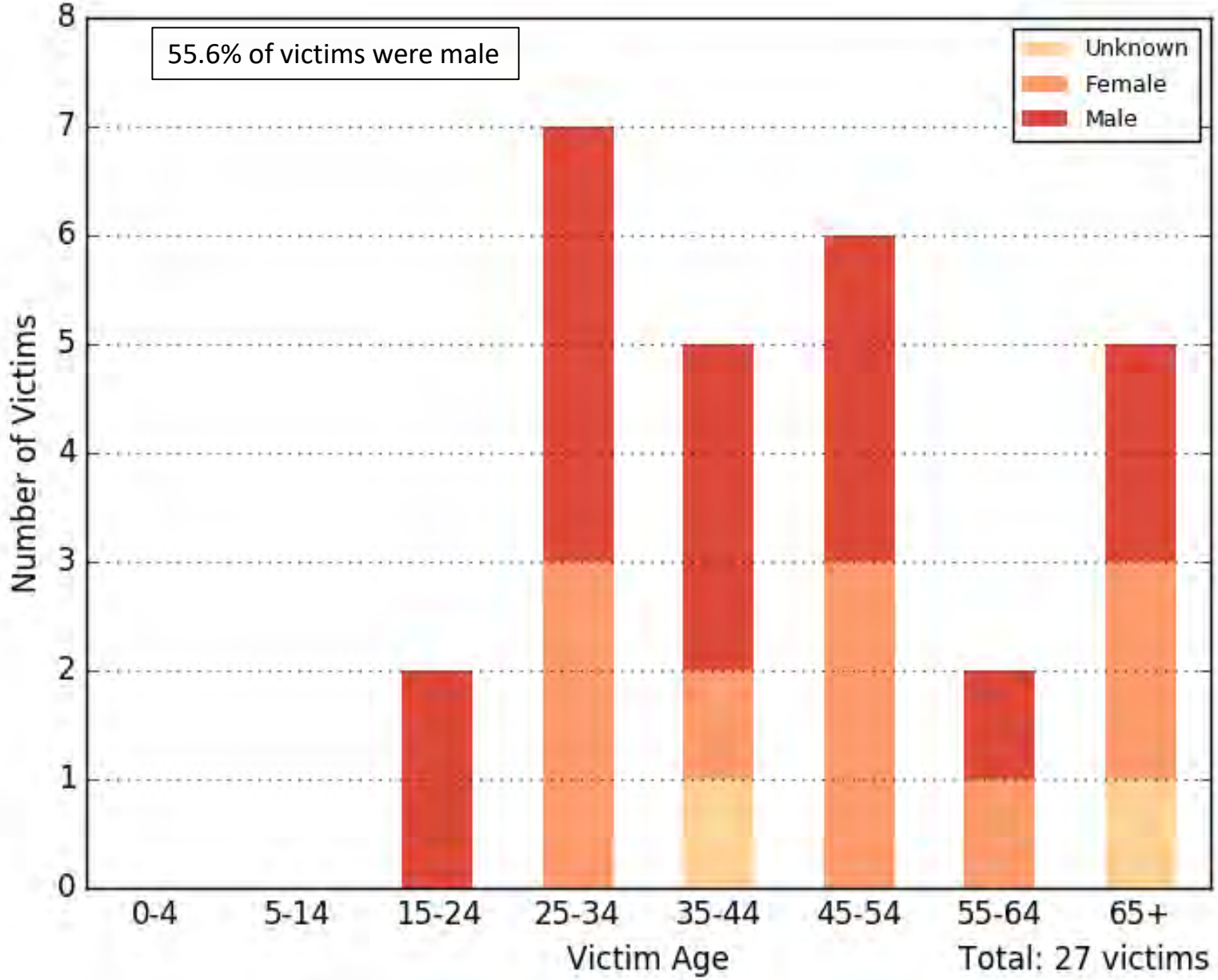
Total: 27 collisions

Pedestrian Victim Injury Severity



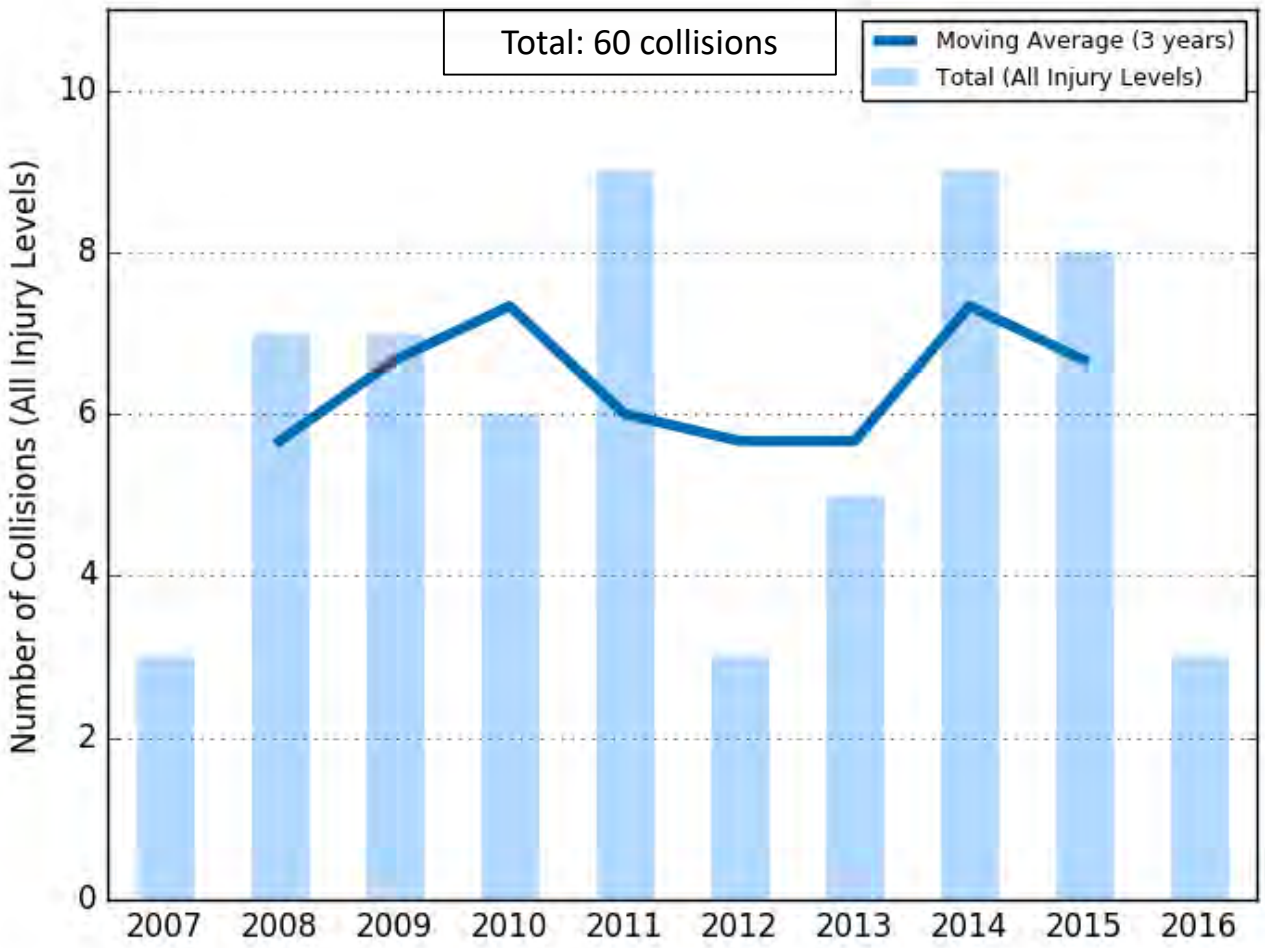
Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

Pedestrian Victims by Age and Gender



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

Bicycle Injury Collision Trend
with 3-year moving average



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

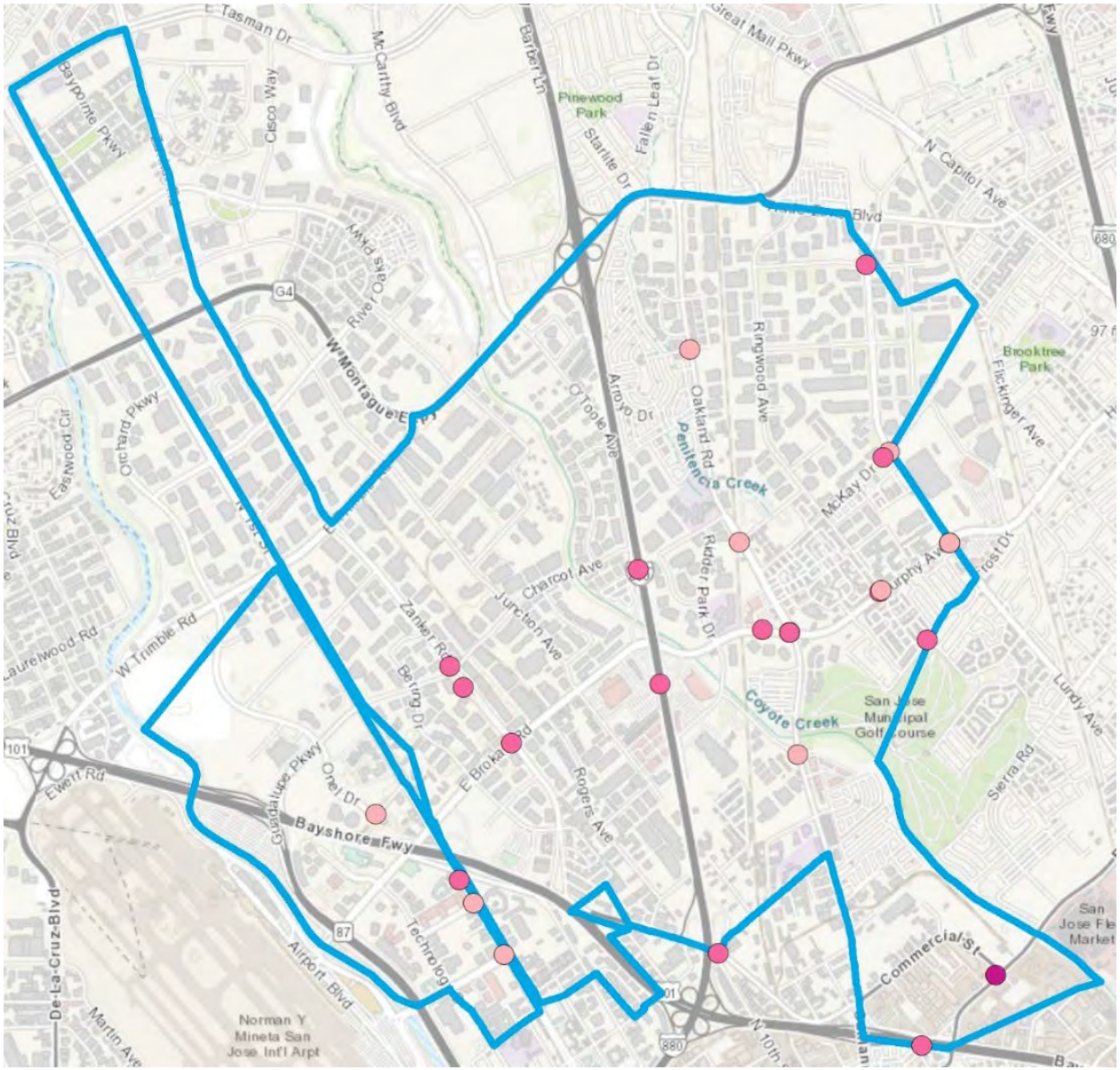
Bicycle Injury Collisions

2012-2016

Total: 28 collisions mapped

Collision Severity (2012-2016)

- Injury (Severe) (2)
- Injury (Other Visible) (15)
- Injury (Complaint of Pain) (11)



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

Bicycle Collisions and Income

2012-2016

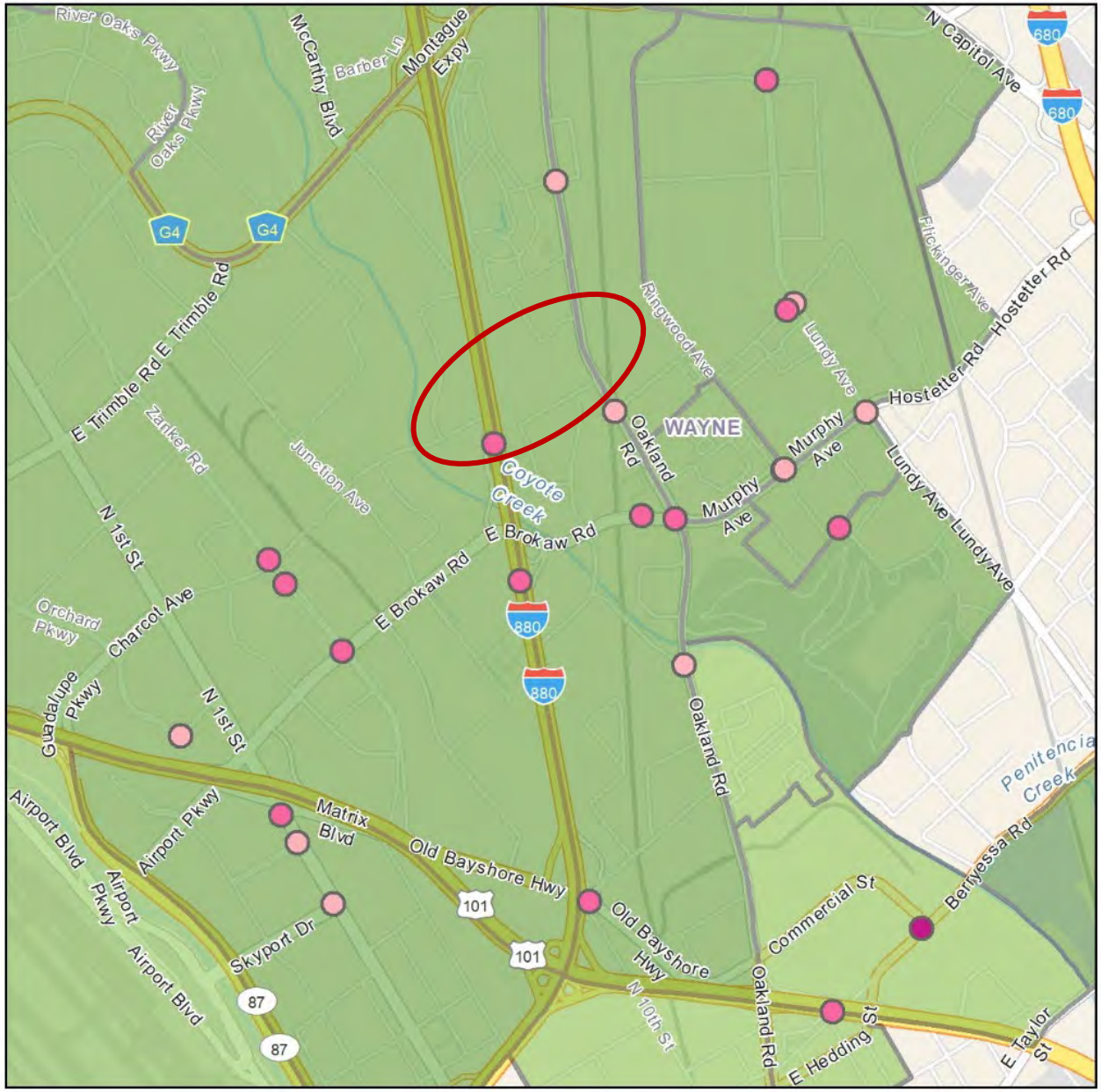
Total: 28 collisions mapped

Collision Severity (2012-2016)

- Injury (Severe) (2)
- Injury (Other Visible) (15)
- Injury (Complaint of Pain) (11)

2017 Median Household Income

- 50K - 75K
- > 75K



Source: SWITRS, 2012-16; Demographics – ESRI, US Census Bureau; ACS

Note: 2015 & 2016 SWITRS data is provisional as of November 2017.

Bicycle Collisions by Time of Day and Day of Week

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
09:00PM-11:59PM	0	0	0	0	1	1	0	2
06:00PM-08:59PM	0	0	3	2	0	0	0	5
03:00PM-05:59PM	2	2	1	2	0	0	0	7
Noon-02:59PM	0	0	0	0	3	1	1	5
09:00AM-11:59AM	1	0	0	0	1	0	0	2
06:00AM-08:59AM	2	2	0	1	0	0	0	4
03:00AM-05:59AM	0	0	1	1	0	0	0	2
Midnight-02:59AM	0	0	0	0	0	0	0	0
	4	4	5	4	5	2	1	

*The colors in this graph refer to how frequently a collision occurs at that time and day

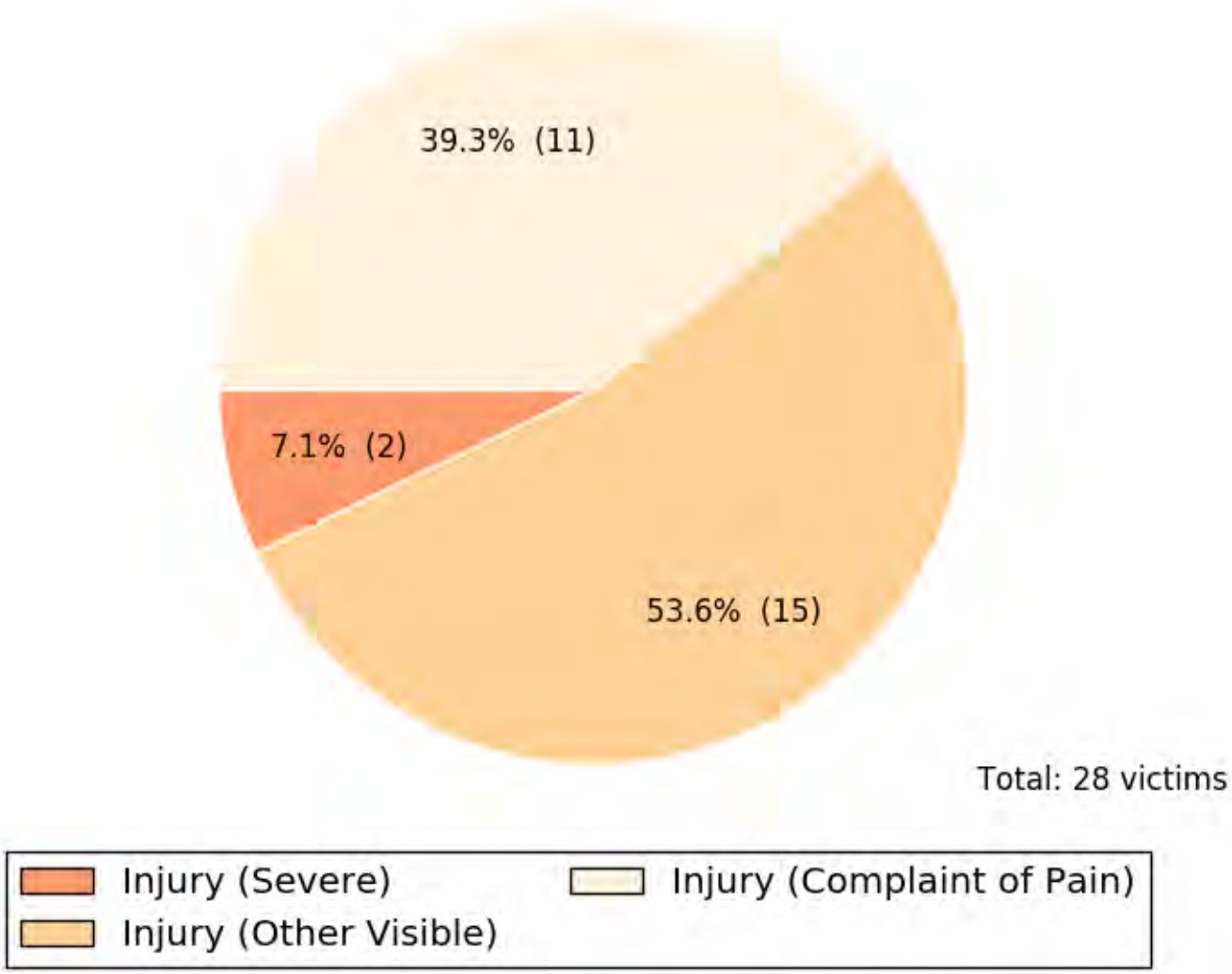
Total: 28 collisions

Top 10 Violations in Bicycle Collisions (with # and %)

CVC No.	Description	Freq.	Percent
0	Unknown	11	39.3%
21650	Failure to drive on right half of the roadway (with some exceptions)	4	14.3%
21453	Red or Stop, vehicles stop at limit line or X-walk. When making right turn at a red light/stop sign driver required to yield to any vehicle approaching so closely as to constitute an immediate hazard	3	10.7%
21804	Driver failure to yield right-of-way when entering/crossing a highway	3	10.7%
21703	Followed another vehicle too closely	2	7.1%
21658	Failure to drive vehicle in single lane	1	3.6%
21803	Drivers approaching an intersection controlled by a yield sign must yield to approaching/entering vehicles	1	3.6%
21950	Driver failure to yield right-of-way to pedestrians at a crosswalk	1	3.6%
22100	Left and right-hand turns should be made as close to the respective roadway edges as possible	1	3.6%
22350	Speeding on the highway	1	3.6%
Total		28	100.0%

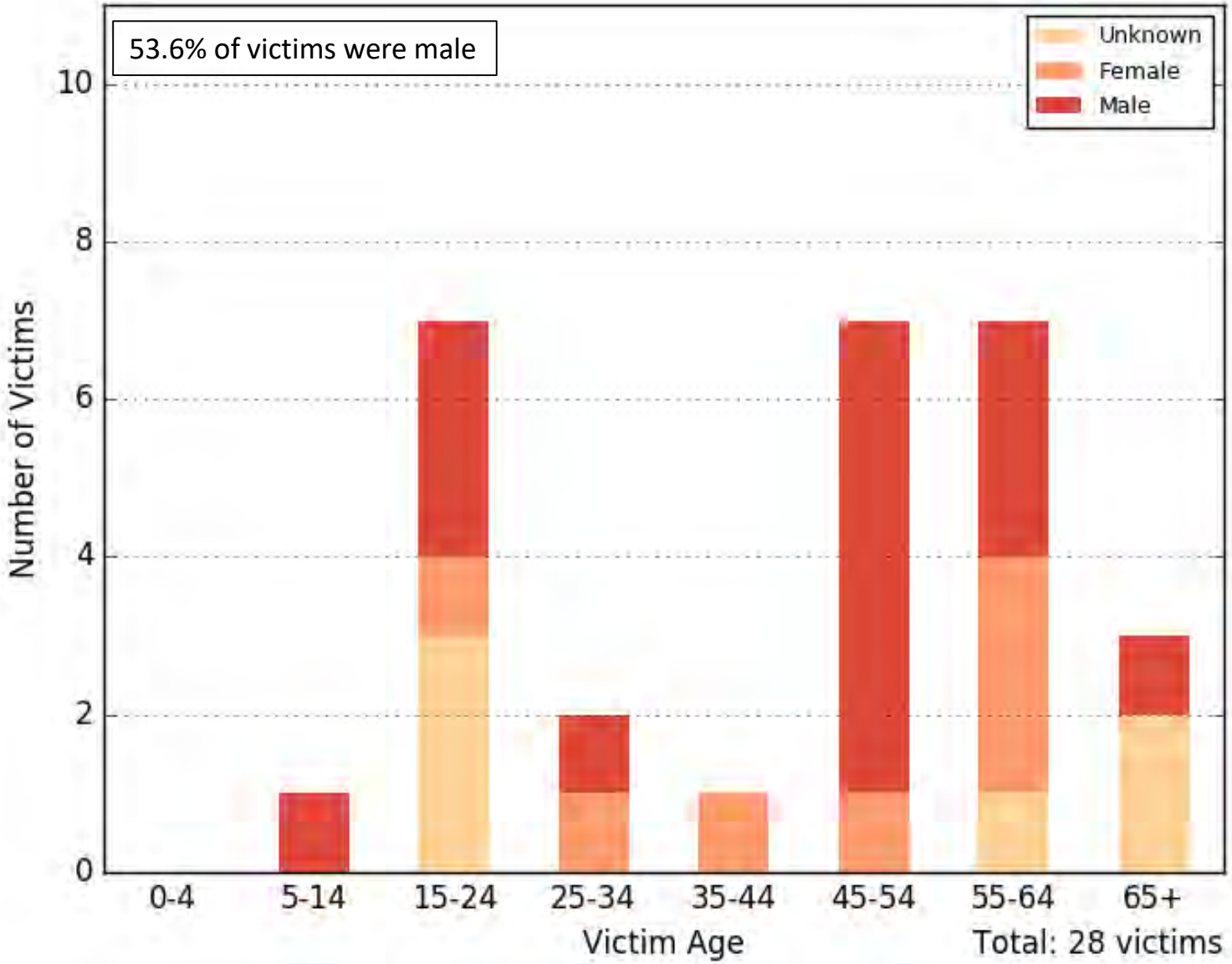
Total: 28 collisions

Bicycle Victim Injury Severity



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

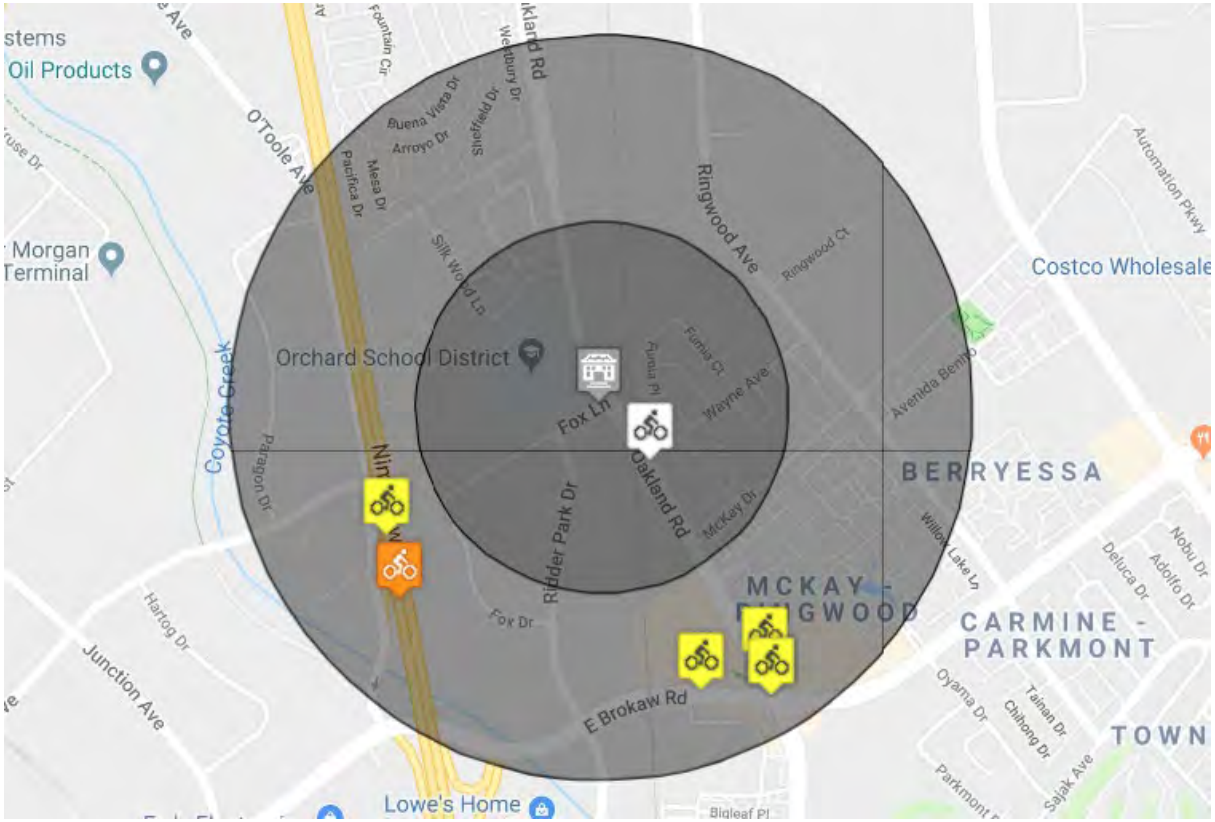
Bicycle Victims by Age and Gender



Note: 2015 and 2016 SWITRS data are provisional as of November 2017.

Orchard Elementary

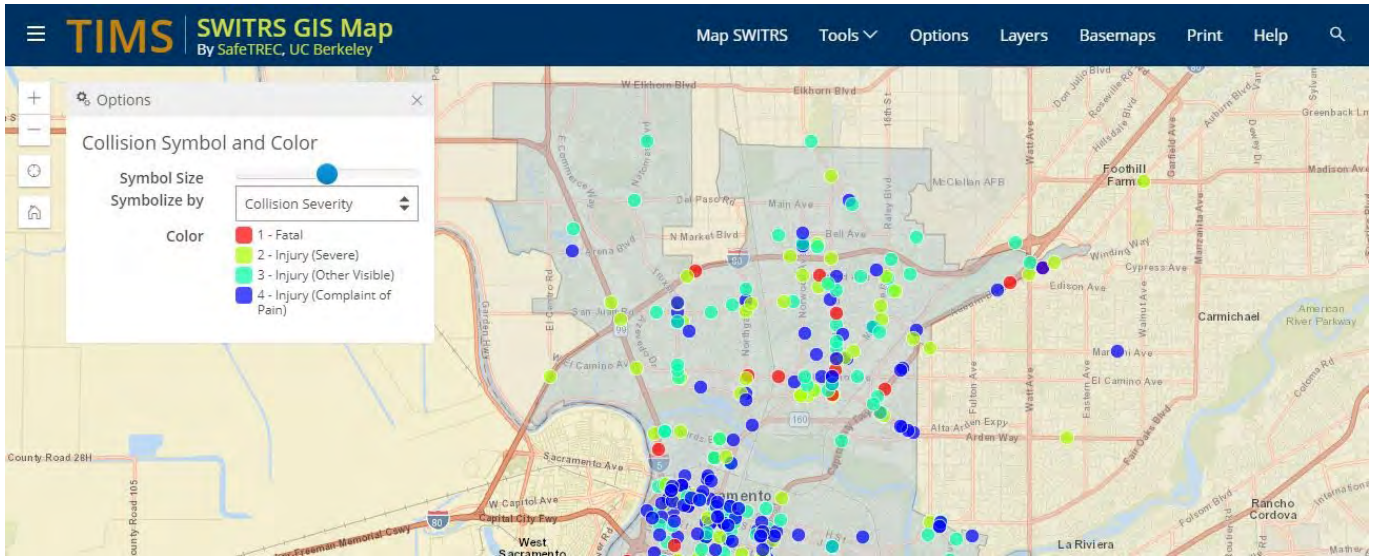
921 Fox Lane | San Jose| Santa Clara County | CDS: 43696330000000



Radius	Fatal	Severe Injury	Visible Injury	Complaint of Pain	Pedestrian	Bicycle	Total
<¼ mi.	0	0	0	1	0	1	**1**
¼ - ½ mi.	0	1	4	2	1	6	**7**
Total	0	1	4	3	1	7	**8**

The Transportation Injury Mapping System (TIMS) is a web-based tool that allows users to analyze and map data from California's Statewide Integrated Traffic Records System (SWITRS).

To further explore collision data, register for a free account to access the tools and resources on TIMS.
https://tims.berkeley.edu/



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AREAS OF CONTROVERSY

Several areas of controversy were identified in a series of San Jose 2020 General Plan Task Force meetings and community hearings. Primary issues of concern identified during these meetings are summarized below:

Urban Reserves: Timing of development, extension/expansion of public services, increases in local traffic, and loss of open space.

Intensification Corridors: Land use impacts associated with increased intensity, change in neighborhood character, increases in local traffic.

Traffic: Local and regional increases in traffic congestion, operation of freeways and local roadways.

Hillsides: Geologic constraints and public safety, impacts of elimination of future development.

Schools: Impacts of growth on school facilities and services. In addition to the concerns expressed by the San Jose 2020 General Plan Task Force and community, the school districts within the City of San Jose have also expressed their concerns regarding the potential effects on the provision of school services. Eight school districts formed a consortium and hired Community Systems Associates, Inc., an expert in school facilities master planning and financing, to represent their interests during the General Plan update process. CSA has submitted written comments that state their belief that the adoption of the General Plan update would result in significant impacts to the provision of school services.

Growth: Impacts of growth on traffic, public services, and parks/open space.

General Plan 1993 Annual Review Amendments

None of the minor land uses changes associated with the General Plan Annual Review Amendments would result in significant impacts to sanitary sewer capacity.

Increased sanitary sewer flows from implementation of the General Plan update would result in potentially significant impacts upon sanitary sewer lines.

Comparison of Existing General Plan and General Plan Update

Implementation of both the existing and updated General Plans would significantly increase demands upon sanitary sewer services. The General Plan update would result in somewhat greater impacts than the existing General Plan associated with the proposed increase in residential development (900 units).

MITIGATION

The following General Plan goals and policies would reduce the sanitary sewer impacts to a nonsignificant level.

SERVICES AND FACILITIES
Level of Service Goal

Goal 2. Achieve the following level of service for these City services:

- For sanitary sewers, level of service D.
- For sewage treatment, to remain within the capacity of the Water Pollution Control Plant.

Sewage Treatment

Policy 7. The City should monitor and regulate growth so that the cumulative sewage treatment demand of all development can be accommodated by San Jose's share of the treatment capacity of the San Jose/Santa Clara Water Pollution Control Plant.

Policy 8. The operation of the Water Pollution Control Plant should comply with the water quality standards for the South San Francisco Bay established by the Regional Water Quality Control Board and implemented through NPDES (National Pollutant Discharge Elimination System) permits.

Policy 9. The City should continue to encourage water conservation programs which result in reduced demand for sewage treatment capacity.

COMMUNITY DEVELOPMENT
Hillside Development

Policy 3. Hillside residential development at urban densities (one dwelling unit per acre or greater) should be located only where adequate services and facilities can be feasibly provided and

damage to such services and facilities, due to landslides, fire or other environmental hazards, can be reasonably avoided.

Policy 16. To avoid any extraordinary maintenance and operating expenses, the City should not locate public improvements, communication facilities, and utilities in hillside areas with identified soils and/or geologic hazards. When the location of public improvements, communication facilities, and utilities in such areas cannot be avoided, effective mitigation measures should be implemented to maximize their potential to remain functional during and after a seismic event.

The following project-level mitigation would be required at the time that specific projects are implemented to reduce sanitary sewer impacts:

- Development of the South Almaden Valley Urban Reserve would require the installation of supplementary sewers in portions of Camden Avenue and Almaden Expressway. Field testing of the Camden Avenue and Almaden Expressway sewers is required to determine the length and size of the supplementary sewers needed.

- Development of the intensification corridors and converted sites may require improvements to the sanitary sewer system (described above) to provide for adequate capacity.

The sanitary sewer impacts would be reduced to a nonsignificant level with implementation of the above mitigation.

N. SCHOOLS

EXISTING SETTING

Schools Serving San Jose

The City of San Jose is served by a total of 19 public school districts, serving elementary, middle, and high school students. Thirteen of these districts are elementary school districts, three are high school districts, and three are unified school districts. A list of these districts is provided in Table 23. Eleven of the 19 school districts serve only students from San Jose. Eight of the district boundaries encompass portions of San Jose, as well as other cities including Campbell, Cupertino, Los Altos, Los Gatos, Monte Sereno, Morgan Hill, Santa Clara, Saratoga, and Sunnyvale. Maps delineating the boundaries of the 19 school districts are provided in Figures 44-46.

The total enrollments and capacities of the 19 schools districts serving San Jose are presented in Table 23. As shown in Table 23, the school districts vary widely in geographic size, number of schools, and enrollment. The largest school district consists of 28 schools with an enrollment approaching 30,000 students (San Jose Unified), and the smallest district consists of only one school with an enrollment of about 350 students (Luther Burbank).

IMPACTS

Methodology and Scope of Review

The degree of specificity required in an EIR must correspond to the degree of specificity of the activity addressed in the EIR. The EIR for a construction project is necessarily more detailed in the specific effects of the project than an EIR for the adoption of a local general plan because the effects of construction can be predicted with greater accuracy. An EIR for general legislative action such as the adoption or amendment of general plans should focus on the secondary effects that can be expected to follow from the adoption of the Plan. The EIR for the construction projects that implement the Plan will need to be more detailed. (Guidelines section 15146)

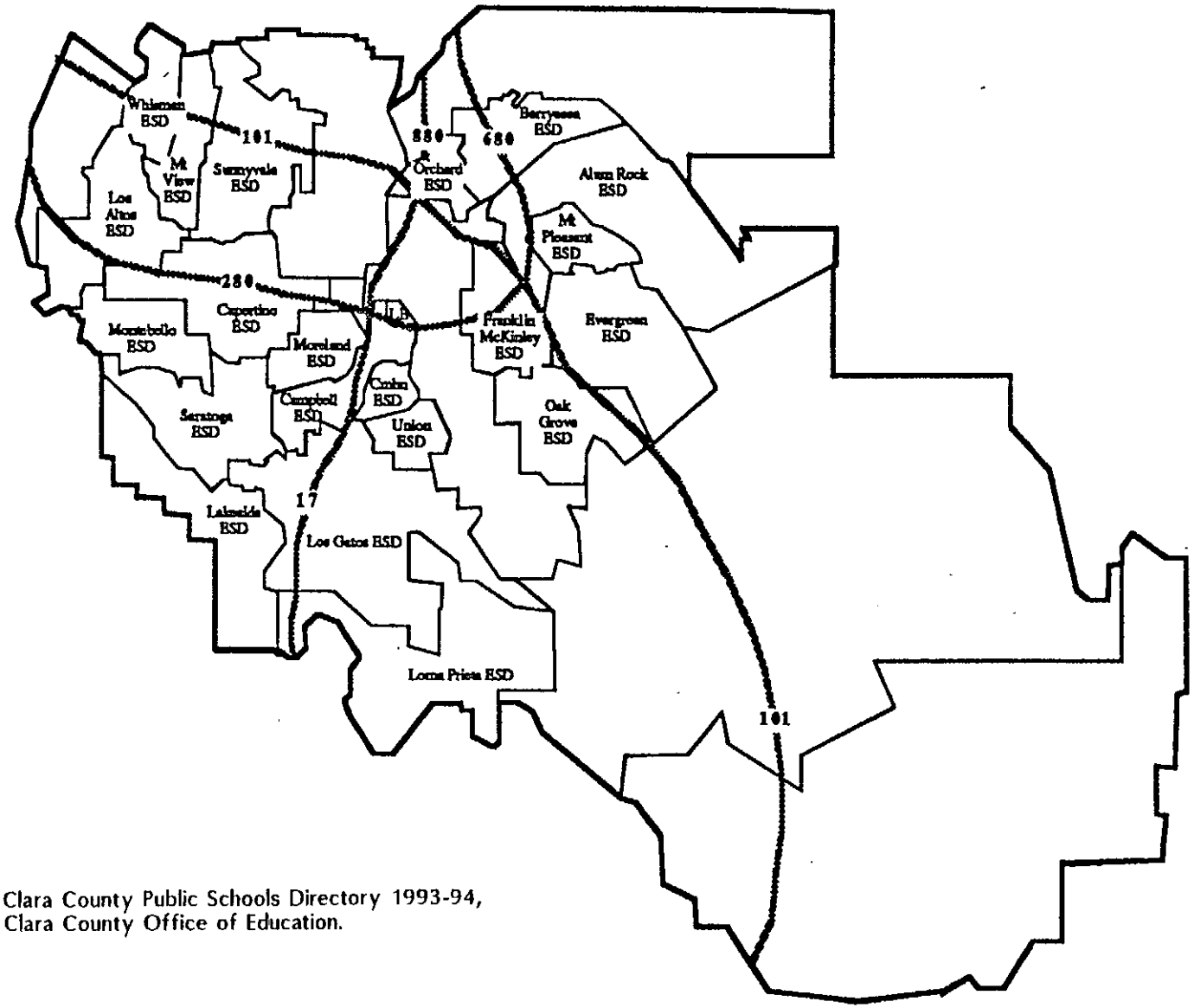
This General Plan update has a planning horizon of over 20 years. Within this timeframe circumstances may greatly vary. Consequently, the level of specificity with which physical impacts can be determined is general. In addition, the secondary construction impacts cannot be determined until actual projects are proposed.

An EIR focuses on the project's significant effects on the environment. A significant effect on the environment is a substantial or potentially substantial, adverse change in any physical condition caused by the project including such elements as land, air, water, noise or natural resources. Economic or social changes are not considered significant impacts on the environment. There is no requirement that an EIR include information on economic or social effects of the project. Effects on facilities and services are not automatically regarded as significant environmental effects of a project unless the effects (changes) are related to or caused by physical changes.

The physical impacts associated with this General Plan update regarding schools include the traffic, air quality, and construction impacts associated with increased students and the need to physically accommodate them. This EIR does not deal with the social and economic effects, such as the financing of improvements which school districts believe will become necessary should the General Plan be built out.

The EIR compares the number of students anticipated under buildout of the General Plan to the current school district capacity. The difference between the increased number of students and capacity demonstrates whether additional school facilities would be necessary to accommodate the projected students. The impacts associated with any increases in physical plans are what this EIR is required to address.

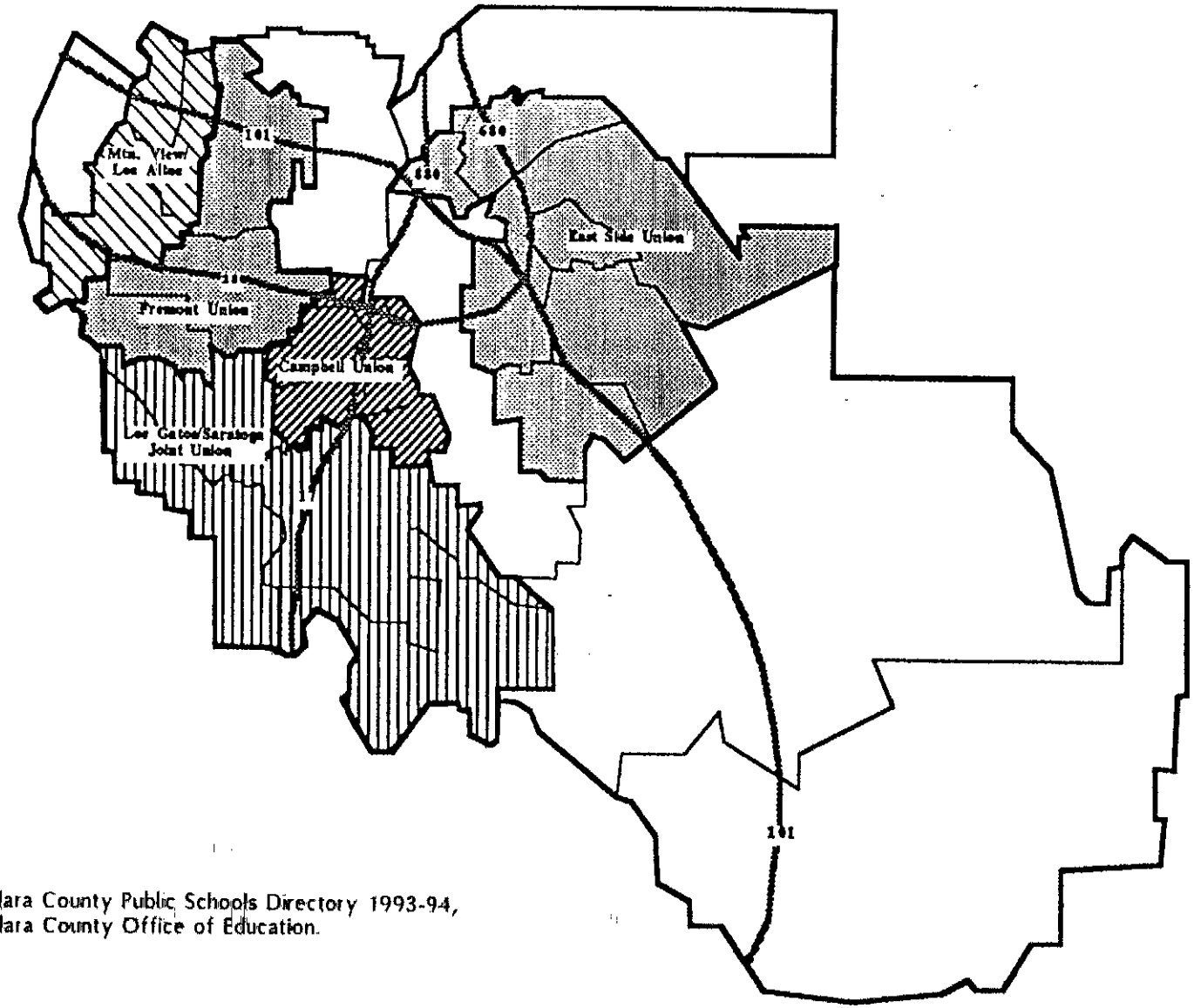
Based on these calculations, the student-aged populace is included in the population assumptions used to determine impacts of increases in traffic and associated air pollution emissions and other service demands addressed in this EIR. The projected traffic volumes used in the traffic, noise, and air quality analyses included home-school vehicle trips.



SOURCE: Santa Clara County Public Schools Directory 1993-94, Santa Clara County Office of Education.

North

MAP OF SANTA CLARA COUNTY ELEMENTARY SCHOOL DISTRICTS FIGURE 44

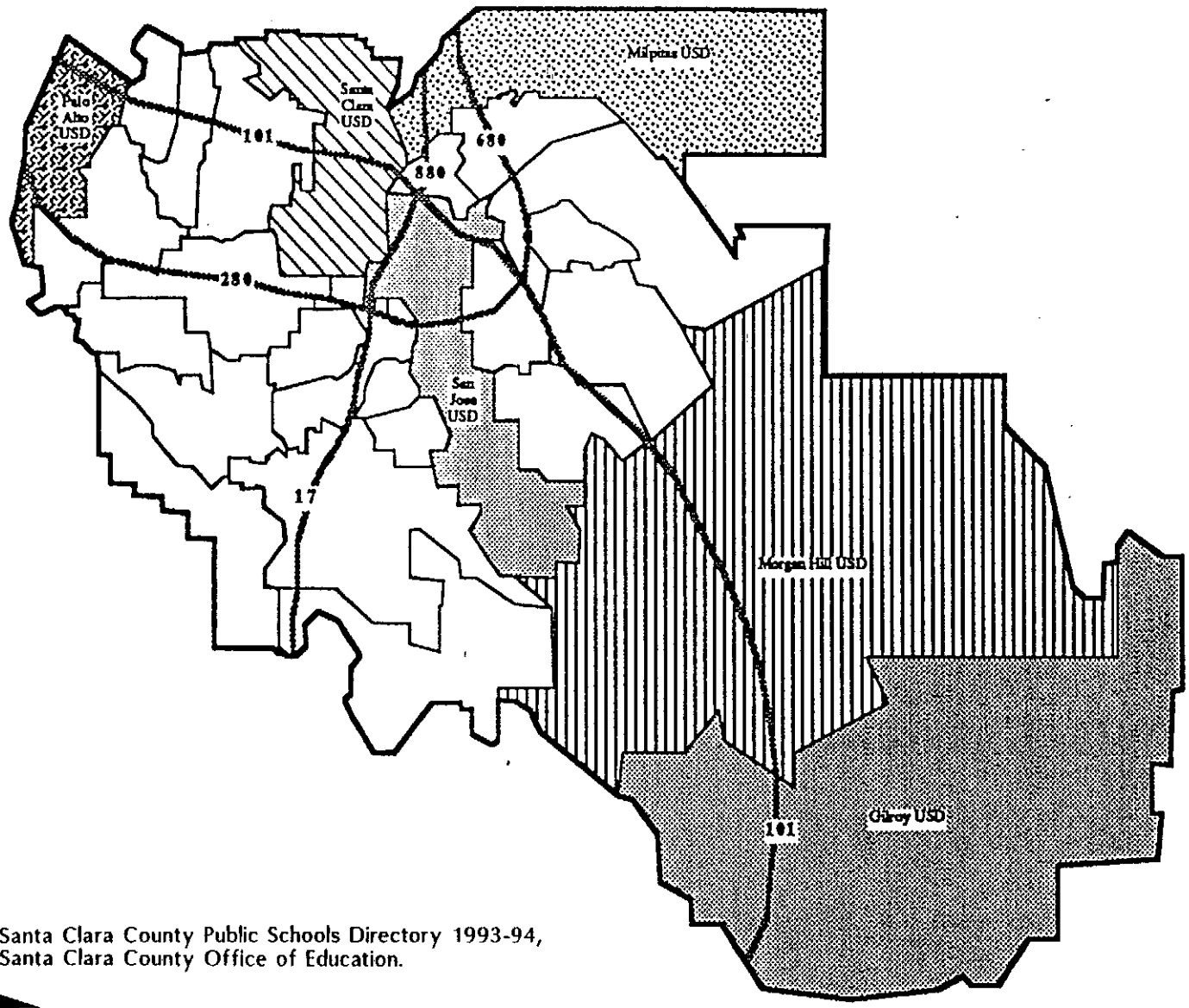


SOURCE: Santa Clara County Public Schools Directory 1993-94,
Santa Clara County Office of Education.

North

MAP OF SANTA CLARA COUNTY HIGH SCHOOL DISTRICTS

FIGURE 45



SOURCE: Santa Clara County Public Schools Directory 1993-94, Santa Clara County Office of Education.

North

MAP OF SANTA CLARA COUNTY UNIFIED SCHOOL DISTRICTS FIGURE 46

School District	Existing Conditions			Student Generation Rate[3] SF/MF	Existing General Plan			General Plan Update			Net Change - Existing vs. Update	
	Enrollment[1]	Capacity[2]	+/- Capacity		Units[4]	Student Yield[5]	+/- Capacity	Units	Student Yield	+/- Capacity	Units	Student Yield
ELEMENTARY SCHOOLS												
Alum Rock	15,972	16,995	+1,023	0.62/0.28	1,104	507	+516	1,863	719	+304	+759	+212
Berryessa	8,643	7,915	-728	0.4/0.21	2,820	873	-1,601	2,820	873	-1,601	No Change	No Change
Cambrian	2,657	3,248	+591	0.55/0.21	605	290	+301	605	290	+301	No Change	No Change
Campbell	7,165	8,269	+1,104	0.55/0.21	680	153	+951	1,537	333	+771	+857	+180
Cupertino	13,731	14,380	+649	0.226	234	53	+596	2,711	613	+36	+2,477	+560
Evergreen	10,585	11,176	+591	0.52	7,249	3,769	-3,178	7,249	3,769	-3,178	No Change	No Change
Franklin-McKinley	10,633	10,400	-233	0.56	5,294	2,965	-3,198	5,294	2,965	-3,198	No Change	No Change
Luther Burbank	357	350	-7	---	2	1	-8	2	1	-8	No Change	No Change
Moreland	4,151	4,248	+97	0.55/0.21	20	11	+86	20	11	+86	No Change	No Change
Mt. Pleasant	2,562	3,115	+553	0.55/0.21	206	113	+440	206	113	+440	No Change	No Change
Oak Grove	12,014	12,140 [7]	+126	0.50/0.25	4,985	2,009	-1,883	7,247	2,839	-2,713	+2,262	+830
Orchard	384	400	+16	0.50	831	416	-16	1,284	643	-627	+453	+227
Union	4,679	5,317	+638	0.40/0.25	369	182	+456	369	203	+435	No Change[6]	+21
HIGH SCHOOLS												
Campbell	6,304	8,309	+2,005	0.20	1,674	335	+1,670	2,561	513	+1,492	+887	+178
Eastside	22,031	22,295	+264	0.20	22,491	4,499	-4,235	25,875	5,175	-4,911	+3,384	+676
Fremont	7,769	8,304	+535	0.20	234	47	+488	2,711	542	-7	+2,477	+495
UNIFIED SCHOOLS												
Morgan Hill	8,866	9,168	+302	K-8 0.55/0.19 High 0.22/0.07	9,175	5,535	-5,233	175	135	+167	-9,000	-5,400
San Jose	29,685	33,652	+3,967	K-8 0.42/0.42 High 0.25/0.30	13,441	9,549	-5,582	16,639	11,818	-7,851	+3,198	+2,269
Santa Clara	13,792	16,023	+2,231	K-12 0.70/0.10	4,860	610	+1,621	4,860	610	+1,621	No Change	No Change
TOTALS	181,980	195,704	+131,724	n.a.	*	31,917		*	32,165			+248

[1] Enrollment figures are based on October 1993 CBEDS.
[2] Capacity figures are for October 1993. For districts that did not return survey, previous data supplied by the district was used.
[3] Student generation rates provided by school districts, as described in text.
[4] General Plan Methodology was used to determine the anticipated dwelling unit yield.
[5] Student yield = student generation rate x number of units.
[6] No change in total units. The greater yield results from a greater percentage of single family units for the existing General Plan.
[7] Capacity does not include existing portable classrooms.
* The total number of dwelling units allowed under both the existing and updated General Plans add up to more than 52,000 and 52,900 units, respectively. This is because some units would be located within the boundaries of more than one school district (e.g. units may be located with both an elementary and high school district).

STUDENT GENERATION

REVISED TABLE 23

SAN JOSE 2020 GENERAL PLAN

FINAL ENVIRONMENTAL IMPACT REPORT

Record of the Meeting of the City Council, August 16, 1994

Action of the City Council

The City Council voted (11-0-0) to certify the Final EIR, as amended with the inclusion of an Addendum comprised of the following text revision to page 222 of the Final EIR:

> There is a range of methods which ~~can~~ may be used to accommodate increased numbers of students which include the following:
>
> - Construction of new schools.
> - Provision of portable or relocatable classrooms.
> - Expansion of existing schools.
> - Opening of closed schools.
> - Dividing lunches and recesses into double shifts.
> - Adjustment of school district boundaries.
> - Transfer of grade levels to schools with surplus capacity or to adjacent districts with surplus capacity.
> - Busing of students to schools with surplus capacity.
> - Conversion to year-round schools with a 4-track schedule (could increase capacity by up to 33%).
>
> ~~This EIR assumes that the above methods would be implemented by the affected school districts to accommodate the increased number of students.~~ The specific physical impacts which could result~~ing~~ from the implementation of any of these or any other measures cannot be determined at a General Plan level of specificity. These impacts would need to be analyzed more specifically as future individual development projects ~~is~~ are considered ~~proposed~~ and actual measures are ~~implemented~~ identified. The City has formed a School Impacts Task Force which is developing recommendations for a policy which would be utilized at the Planned Development Zoning stage.

Measures to Increase School Capacity

There is a range of methods which can be used to accommodate increased numbers of students, which include the following:

- Construction of new schools.
- Provision of portable or relocatable classrooms.
- Expansion of existing schools.
- Opening of closed schools.
- Dividing lunches and recesses into double shifts.
- Adjustment of school district boundaries.
- Transfer of grade levels to schools with surplus capacity or to adjacent districts with surplus capacity.
- Busing of students to schools with surplus capacity.
- Conversion to year-round schools with a 4-track schedule (could increase capacity by up to 33%).

This EIR assumes that the above methods would be implemented by the affected school districts to accomodate the increased number of students. The specific physical impacts resulting from the implementation of these measures cannot be determined at a General Plan level of specificity. These impacts would be analyzed more specifically as future development is proposed and actual measures are implemented.

Data Compilation

The data used in this discussion (student generation rates, enrollment, and capacity figures) were supplied by the school districts in response to a survey distributed by the City in February, 1994. The completed surveys are included in Appendix D of this EIR. Sixteen of the 19 school districts responded to the survey. For districts that were unable to return the survey, the best available data was used based on previous information and personal communications with the districts.

In an effort to obtain consistent data, the survey requested that the capacity figures be supplied for October, 1993 and that enrollment figures be based on October, 1993 California Basic Educational Data System (CBEDS). However, there may still be variability from district to district as to how capacity and student generation are determined.

A student generation rate (SGR) is an estimate of the average number of students living in each dwelling unit. Student generation rates are employed to calculate anticipated student yields. These rates can be derived using a variety of methods and various information sources, including census and demographic data, economic and market projections, and specific schools studies.

The number of students generated within each school district was determined by applying a student generation rate to the estimated number of dwelling units projected for each district. The dwelling unit yields were broken down into single family and multiple family units within each district. Student generation was determined using the student generation rates provided by the school districts (as shown in Table 23). If a student generation rate for a school district was not provided, the following averaged rates were used:

Grade	Student/SFD	Student/MFD
K-8	0.55	0.21
9-12	0.20	0.20
K-12	0.75	0.41

The student generation rates provided by the school districts are based on various criteria. Without specific information regarding the data source(s) and methodology used to calculate the SGR, it is not possible to determine whether a SGR accurately estimates student yields.

For example, student generation rates based on census data that includes children of all ages, rather than school aged students, could result in a student generation rate that overestimates student yields. Student generation rates based on demographic data derived from housing units of all ages, rather than recently constructed housing, may overestimate student yields from new development.

Capacity is calculated by multiplying the number of classrooms in a school by classroom loading factors (number of students per classroom). The classroom loading factors used to determine capacity vary between districts. These factors may be based on various state guidelines, criteria established by the school districts, or criteria specified in contractual agreements with teachers. The number of classrooms used to calculate capacities may also vary between school districts. Portable classrooms currently in use and classrooms used for special purposes (for example, music rooms, computer rooms, laboratories) may or may not be used to determine capacity. In addition, one district may use different methods at different times to determining capacity, since the method employed may depend on the purpose of the information.

Projected Student Generation in School Districts

Implementation of the General Plan update would allow for the development of additional residential development, beyond the existing General Plan, which would generate additional students in the 19 school districts serving San Jose. The number of proposed dwelling units and students generated in each school district for the General Plan update, compared with the existing General Plan, is provided in Table 23. As shown in Table 23, the General Plan update would result in a net increase of 248 students on a City-wide basis as compared with the existing

General Plan. Table 23 also compares existing conditions of each school district with both the existing General Plan and the General Plan update.

A discussion of the increase in new students generated by the General Plan update and the associated impacts upon the school districts is provided below.

Alum Rock Elementary School District

The Alum Rock Union Elementary School District is located in the northwestern portion of San Jose. The District is comprised of 25 schools, including 18 elementary schools (K-5), six middle schools (6-8), and a one-room school (K-8). Six of the District's schools operate on a single-track, year-round schedule. One future school site has been identified northwest of McKee Road and Jackson Avenue. Up to ten additional portable classrooms could be accommodated on the three middle schools sites.

Based on information provided by the District, in October of 1993 the District had a total enrollment of 15,972 students and a capacity for 16,995 students. Based on this information, the District currently has surplus capacity for 1,023 students.

New residential development allowed by the General Plan update would generate an additional 719 students in the Alum Rock School District. This represents an increase of 212 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 1,023 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update and there is no need to implement those measures identified above (refer to page ~~221~~ 222).

Berryessa Union School District

The Berryessa Union School District is located in the northeastern portion of San Jose. The District is comprised of 13 schools, including 10 elementary schools (K-5), and three middle schools (6-8). The District also owns one elementary school that is closed. Two future school sites for the Berryessa District have been identified in the San Jose School Site Reuse Plan. These sites are located on Flickinger Avenue and on Jackson/Commodore. Additional portable classrooms could be accommodated on most of the existing school sites.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 8,643 students and a capacity for 7,915 students. Based on this information, the District is currently over capacity (by 728 students). The capacity of the two closed schools is 672.

New residential development allowed by the General Plan update would generate an additional 873 students in the Berryessa Union School District. Implementation of the existing General Plan would generate the same number of students. The District is operating at capacity and could not currently accommodate the additional students generated by the General Plan update without implementation of those measures identified above. Implementation of those measures

identified above would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Cambrian Elementary School District

The Cambrian Elementary School District is located in the south, central portion of San Jose. The District is comprised of five schools, including four elementary schools (K-5), and one middle school (6-8). The District also owns two schools that are closed. No future school sites have been identified for the District. Additional portable classrooms could be accommodated on all of the existing school sites.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 2,657 students and a capacity for 3,248 students. The capacity of the two closed schools is 952.

New residential development allowed by the General Plan update would generate an additional 290 students in the Cambrian Elementary School District. Implementation of the existing General Plan would generate the same number of students. Using the District's capacity figures for October 1993, the District currently has additional capacity for 591 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Campbell Union Elementary School District

The Campbell Union Elementary School District is located in the southwestern portion of San Jose. The District serves students from portions of San Jose, as well as other nearby jurisdictions including Campbell, Santa Clara, Saratoga, Monte Sereno, and Los Gatos. The District is comprised of 11 schools, including eight elementary schools (K-4), and two middle schools (5-8). The District also owns two schools that are currently closed. A third school is currently for sale. Portable classrooms could be accommodated on eight of the school sites.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 7,165 students and a capacity for 8,269 students. Approximately 58 percent of the District's students reside in San Jose. The middle schools are currently closer to capacity than the elementary schools. Based on this information, the District currently has surplus capacity for 1,104 students. The capacity of the two closed schools is 1,015.

New residential development allowed by the General Plan update would generate an additional 333 students in the Campbell Union Elementary School District. This represents an increase of 180 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 1,104 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Campbell Union High School District

The Campbell Union High School District is located in southwestern San Jose and portions of Santa Clara, Los Gatos, Saratoga, and Monte Sereno. The District is comprised of four high schools. The District also owns two schools that are currently closed. A portion of one of the closed schools is used by the District for a continuation high school.

Based on information provided by the District and enrollment (CBEDS) numbers provided by the County, the enrollment of the District is 6,304 students, with a capacity for 8,309 students. Based on this information, the District has surplus capacity for 2,005 students. The capacity of the two closed schools is 3,800.

New residential development allowed by the General Plan update would generate an additional 513 students in the Campbell Union High School District. This represents an increase of 178 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 2,005 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Cupertino Union School District

The Cupertino Union School District is located in Cupertino, near the west San Jose border. The District serves students in the western portion of San Jose, as well as students from Cupertino, Saratoga, and Santa Clara. The District is comprised of 22 schools, including 18 elementary schools (K-6), and four middle schools (7-8). The District also owns eight schools that are currently closed. A new elementary school is currently under construction, which will replace an existing school in September 1994. Additional portable classrooms could be accommodated on 18 of the existing school sites. The District currently has two school sites for sale.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 13,731 students, of which 23 percent live in San Jose, and a capacity for 14,380 students.

New residential development allowed by the General Plan update would generate an additional 613 students in the Cupertino School District. This represents an increase of 560 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 649 students. Closed schools within the District could provide capacity for up to 4,200 students. Therefore, it appears that sufficient capacity will be available to serve the additional students generated by the General Plan update by implementing those measures identified above (refer to page ~~221~~ 222).

East Side Union High School District

The East Side Union High School District (ESUHSD) is located in the eastern portion of San Jose. The District is comprised of 10 high schools, in addition to one continuation high school

and three small satellite high schools. The District is planning to build a (state-approved) new high school at Quimby/Ruby Avenues, expected to be completed in 2002. Portable classrooms could be accommodated on seven of the school sites.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 22,031 students and a capacity for 22,295 students. Based on this information, the District has a surplus capacity for 264 students.

New residential development allowed by the General Plan update would generate an additional 5,175 students in the East Side Union School District. This represents an increase of 676 students compared with the existing General Plan. The District is currently operating near capacity. However, additional capacity would be provided by the completion of a planned high school (cap. 1,800) to be completed in 2,002. In addition, implementation of the measures identified above would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Evergreen School District

The Evergreen School District is located in the southeast portion of San Jose. The District is comprised of 14 schools, including 11 elementary schools (K-5, K-6), and three middle schools (6-8, 7-8). One elementary school is currently under construction and will be completed in September of 1994. Two future school sites have been identified for the District in the Evergreen Specific Plan. One site is located on Fowler Road and the other is located within the boundary of Quimby, Ruby, Aborn, and Tully Roads. Additional portable classrooms could be accommodated on most of the existing school sites.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 10,585 students and a capacity for 11,176 students. Based on this information, the District currently has surplus capacity for 591 students.

New residential development allowed by the General Plan update would generate an additional 3,769 students in the Evergreen School District. Implementation of the existing General Plan would generate the same number of students. The District is currently operating near capacity. However, additional capacity will be made available by the opening of one school under construction (cap. 600), and two planned schools (cap. 1,200-1,320). The Evergreen School District has also indicated that it regularly uses portable classrooms if enrollment within the attendance area exceeds school capacity. Portables could be used to increase capacity to a maximum of 900 at each elementary school. Implementation of the measures identified would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Franklin-McKinley School District

The Franklin-McKinley School District is located in the central portion of San Jose. The District is comprised of 13 schools, consisting of 11 elementary (K-5, K-6, K-7, K-8) and two middle schools (6-8). A new middle school is planned for the District, and is expected to be completed by July of 1997. One future elementary school site has been identified for the District in the Communications Hill Specific Plan. Additional portable classrooms could be

accommodated on six of the existing school sites. Portions of four existing school sites are currently for sale by the District. Eight elementary schools and one middle school are currently on a year-round schedule; one elementary school is on single-track and the remaining year-round schools are on 4-track schedules. The District is planning to convert all the remaining schools to 4-track, year-round schedules by July of 1996.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 10,633 students and a capacity for 10,400 students. Based on this information, the District is currently over capacity (by 233 students).

New residential development allowed by the General Plan update would generate an additional 2,965 students in the Franklin-McKinley School District. Implementation of the existing General Plan would generate the same number of students. The District is currently operating at capacity. However, additional capacity can be made available as follows:

- Completion of Wool Creek Middle School planned for July 1997 (cap. 1,200)
- Planned conversion of all schools to 4-track year-round schedules (approx. cap. 1,280)
- Addition of portable classrooms (cap. 680)

The above measures would increase the capacity of the District by 3,160. In addition, implementation of those measures identified above would provide adequate capacity to accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Fremont Union High School District

The Fremont Union High School District is located mostly in Sunnyvale, and serves a small part of the southwest portion of San Jose, as well as portions of Santa Clara, Los Gatos, Saratoga, and Monte Sereno. The District is comprised of five high schools and one continuation high school.

Based on information provided by the District and enrollment (CBEDS) numbers provided by the County, the enrollment of the District is 7,769 students, with a capacity for 8,304 students. Based on this information, the District has surplus capacity for 535 students.

New residential development allowed by the General Plan update would generate an additional 542 students in the Fremont Union High School District. This represents an increase of 495 students compared with the existing General Plan. The District is currently operating near capacity. However, implementation of those measures identified above would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Luther Burbank School District

The Luther Burbank School District is located in an unincorporated portion of the County near central San Jose. The District consists of one elementary school. Based on information provided by the District and enrollment (CBEDS) numbers provided by the County, enrollment at the elementary school is 357 students, with a capacity of 350 students (Riddles, 1994).

New residential development allowed by the General Plan update would generate one additional student in the Luther Burbank School District. Implementation of the existing General Plan would generate the same number of students. Therefore, it appears that sufficient capacity is available to serve the additional student generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Moreland School District

The Moreland School District is located in the southwestern portion of San Jose, and serves students from San Jose, Campbell and Saratoga. The District is comprised of eight schools, consisting of six elementary (K-5) and two middle schools (6-8). The District also owns six closed schools.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 4,151 students and a capacity for 4,248 students. San Jose students comprise 75 percent of the District's enrollment. Based on this information, the District currently has surplus capacity for 97 students. The capacity of the six closed schools is 2,720.

New residential development allowed by the General Plan update would generate an additional 11 students in the Moreland School District. Implementation of the existing General Plan would generate the same number of students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Morgan Hill Unified School District

The Morgan Hill Unified School District is located in Morgan Hill, and serves primarily Morgan Hill and San Martin, with some students from the southern tip of San Jose. The District is comprised of 13 schools, consisting of nine elementary schools[5], two middle schools (7-9), one high school (10-12), and one continuation high school (9-12). The District also owns one closed elementary school. Three of the elementary schools and one high school can accommodate additional portable classrooms.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 8,866 students and a capacity for 9,168 students. Based on this information, the District has a surplus capacity for 302 students.

New residential development allowed by the General Plan update would generate an additional 135 students in the Morgan Hill Unified School District. This represents an *decrease* of 5,400 students compared with the existing General Plan. The District is currently operating near capacity. However, implementation of the measures identified above would accommodate the students generated by the General Plan update.

[5] Elementary schools consist of eight K-6, one K-3, and one 4-6.

Mt. Pleasant Elementary School District

The Mt. Pleasant Elementary School District is located in the eastern portion of San Jose. The District is comprised of four elementary schools (K-4, 5-6) and one middle school (7-8). The District also owns one closed school.

Based on information provided by the District and enrollment (CBEDS) numbers provided by the County, the enrollment of the District is 2,562 students, with a capacity for 3,115 students. Based on this information, the District has surplus capacity for 553 students. The capacity of the closed school is 704.

New residential development allowed by the General Plan update would generate an additional 113 students in the Mt. Pleasant School District. Implementation of the existing General Plan would generate the same number of students. Using the District's capacity figures for October 1993, the District currently has additional capacity for 553 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of the measures identified above (refer to page ~~221~~ 222).

Oak Grove School District

The Oak Grove School District is located in the southeastern portion of San Jose. The District is comprised of 20 schools, including 17 elementary schools (K-6), and three middle schools (7-8). The District also owns two closed schools. Additional portable classrooms could be accommodated on 19 of the existing school sites. A new elementary school is planned for the proposed Levin residential project located in the District, and is expected to be completed by 1997.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 12,014 students and a capacity for 12,140 students. Based on this information, the District currently has surplus capacity for 126 students. The capacity of the two closed schools is 1,129.

New residential development allowed by the General Plan update would generate an additional 2,839 students in the Oak Grove School District. This represents an increase of 830 students compared with the existing General Plan. The District is currently operating near capacity. However, development of a potential planned school on the Levin site would provide additional capacity (cap. 600). Implementation of those measures identified would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Orchard School District

The Orchard School District is located in the northwestern portion of San Jose. The District is comprised of one elementary school (K-8). The District is planning for a new elementary school in the future, but no site has yet been identified. Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 384 students and a capacity of 400 students (Riddles, 1994).

New residential development allowed by the General Plan update would generate an additional 643 students in the Orchard School District. This represents an increase of 227 students compared with the existing General Plan. The one-school Orchard School District is currently at capacity. The District is planning for a new elementary school in the future, which could provide additional capacity. Implementation of those measures identified would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

San Jose Unified School District

The San Jose Unified School District (SJUSD) is located in central San Jose. The District is comprised of 42 schools, including 28 elementary schools[6], seven middle schools (6-8), and seven high schools (9-12). The District also owns four leased schools. The District currently has plans for four new elementary schools and one new middle school in downtown San Jose, anticipated to be constructed in 1995-2000. These schools were identified by the District Facilities Advisory Committee based upon studies of the District's future needs. Specific sites have not been identified for three of these identified schools.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 29,685 students and a capacity for 33,652 students. Based on this information, the District currently has surplus capacity for 3,967 students. The capacity of the four leased schools is 1,560.

New residential development allowed by the General Plan update would generate an additional 11,818 students in the San Jose Unified School District. This represents an increase of 2,269 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 3,967 students. Additional capacity will be made available by the opening of four planned elementary schools (approx. cap. 2,400) and one middle school (cap. 1,000). Reopening the four closed schools (cap. 1,560) would also provide additional capacity. Implementation of those measures identified would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Santa Clara Unified School District

The Santa Clara Unified School District is located in Santa Clara and serves students from northwest San Jose, as well as parts of Sunnyvale and Santa Clara. The District is comprised of 22 schools, including 15 elementary schools (K-5), three middle schools (6-8), two high schools (9-12), and two "other" schools. The District also owns five closed schools that are leased. All of the existing schools could accommodate additional portable classrooms.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 13,792 students (of which 450 reside in San Jose), and a capacity for 16,023 students. Based on this information, the District currently has surplus capacity for 2,231 students. The capacity of the five leased schools is 3,570.

[6] Elementary schools consist of 25 K-5, one K-2, one 3-5, and one K-6.

New residential development allowed by the General Plan update would generate an additional 610 students in the Santa Clara Unified School District. Implementation of the existing General Plan would generate the same number of students. Elementary and middle schools in the District currently have surplus capacity to serve the project. The high schools are close to capacity and could not currently accommodate additional high schools students. However, implementation of those measures identified above would accommodate the students generated by the General Plan update (refer to page ~~221~~ 222).

Union School District

The Union School District is located in southwestern San Jose and northeastern Los Gatos. The District serves students from San Jose, as well as Los Gatos and Campbell. The District is comprised of 10 schools, including eight elementary schools (K-6), and two middle schools (7-8). The District also owns five closed schools. None of the existing schools could accommodate additional portable classrooms.

Based on the figures provided by the District, in October of 1993 the District had a total enrollment of 4,679 students and a capacity for 5,317 students. Based on this information, the District currently has surplus capacity for 638 students. The capacity of the five closed schools is 1,560.

New residential development allowed by the General Plan update would generate an additional 203 students in the Union School District. This represents an increase of 21 students compared with the existing General Plan. Using the District's capacity figures for October 1993, the District currently has additional capacity for 638 students. Therefore, it appears that sufficient capacity is available to serve the additional students generated by the General Plan update without implementation of those measures identified above (refer to page ~~221~~ 222).

Impacts Conclusion

The General Plan update would generate a total of 32,165 additional students in the San Jose area, compared with the existing General Plan which would generate a total of 31,917 additional students (refer to Table 23). Implementation of the General Plan would, therefore, result in an increase of 248 students over the existing General Plan. Although the distribution of these students would change under the two scenarios, the total number of students would not be significantly different. This increase of 248 students represents less than a one percent increase as compared with the existing General Plan. The change in distribution is due primarily to the elimination of development within the Coyote Valley Urban Reserve and the increase of residential development along the intensification corridors proposed by the General Plan update.

The increase in student population from implementation of the General Plan update would result in potential environmental impacts associated with the physical effects of developing or expanding school facilities, increases in traffic and associated air pollution emissions, and intensification of land use. As discussed above, the environmental impacts associated with this growth are addressed at the program level within this EIR (refer to discussion on page ~~221~~ 222).

In addition, there will be environmental impacts associated with the implementation of those measures identified above (refer to discussion on page ~~221~~ 222). Construction of schools would have the greatest physical impacts of the measures listed. The actual impacts of individual school construction cannot be determined in a program-level EIR, since the specific impacts cannot be assessed until actual sites are identified and plans developed. The other impacts associated with an increase in students, traffic, air quality and noise remain consistent whether new schools are constructed or other methods are implemented.

The availability of funding is a fiscal impact and is not addressed in this EIR. This EIR does not address the social and educational issues raised by each of the identified measures. The measures to increase capacity identified to accommodate the increase in students can provide for sufficient school facilities even if funds are not available to build new schools. Therefore, adoption of the General Plan update with not have an adverse *environmental* impact as that term is used for the purposes of CEQA.

Implementation of the General Plan update would not result in a significant environmental impact from the addition of school facilities.

Comparison of Existing General Plan and General Plan Update

Implementation of both the existing and updated General Plans would substantially increase the overall number of students in the 19 school districts serving the San Jose area. The number of students generated by the update as compared with the existing General Plan is presented in Table 23. As shown in this table, the General Plan update would generate approximately 248 more students than the existing General Plan.

There are no significant physical impacts resulting from the adoption of the San Jose 2020 General Plan which are subject to mitigation.

GENERAL PLAN POLICIES

SERVICES AND FACILITIES
Schools

Policy 20. The City supports a system of open communications between the City, the public school districts and the development community in order to coordinate the activities of each to achieve the highest quality of education for all public school students.

Policy 21. The City encourages school districts and developers to engage in early discussions regarding the nature and scope of proposed projects and possible *fiscal* impacts and mitigation measures. These discussions should occur as early as possible in the project planning stage preferably immediately preceding or following land acquisition.

Policy 22. The City should cooperate with school districts in identifying and evaluating the impacts of population and demographic changes which may affect the need for

new schools, may lead to school closures, may require the re-opening of closed schools or may lead to the decision that existing school sites should be preserved for meeting future needs.

Policy 23. The City should support legislative efforts to create suitable and adequate means of financing the construction of school facilities for a growing population.

Implementation of the General Plan update would not result in a significant environmental impact from the addition of school facilities.

O. SERVICES

Police Protection Services

EXISTING SETTING

Police protection for the project area is provided by the City of San Jose Police Department (SJPD). The SJPD presently consists of about 1,250 sworn officers and 425 civilian employees. The SJPD divides the City into 60 beats, assigned to one of 12 districts.

The City of San Jose establishes level of service measures for police protection services. The level of service measures for police protection recommend a response time of six minutes or less for 60 percent of all Priority 1 calls, and a response time of eleven minutes or less for 60 percent of all Priority 2 calls.

IMPACTS

The methodology for estimating future impacts on police services was determined by the San Jose Police Department. This methodology was based on variations in emergency calls for service as a function of the type of land usage plus the area of the City. The proposed land usage and its location and density were "weighted" by the number of emergency calls for police service expected to be generated by the project.

The present ratio of emergency calls for service per field patrol officer, plus sworn and nonsworn support personnel, were used to calculate the number of additional personnel needed to maintain existing service levels. Supervisory sergeant positions for field patrol were also included based on the existing ratio of field patrol officers to supervisory sergeants. Not included were the number of supervisory sergeant positions necessary for the support units, since these staffing ratios are frequently a function of factors other than land use (e.g. budgetary constraints, internal policies, availability of manpower, equipment).

The estimated increases in police workload are based on the assumption that existing police service levels will neither increase nor decrease. The assumption is also made that police operations will not change substantially nor will there be any significant additions to current police responsibilities.

Community Systems Associates, Inc.

March 3, 1994

VIA CERTIFIED MAIL

RECEIVED
MAR 07 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994

Scope and Content Comments from
Alum Rock Union School District,
Berryessa Union School District,
East Side Union High School District,
Franklin-McKinley School District,
Morgan Hill Unified School District,
Oak Grove School District,
Orchard School District, and
San Jose Unified School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by **Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District** (jointly referred to as the "Consortium") to represent them jointly in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project")and to respond.

The Consortium includes eight of the nineteen school districts serving the City of San José with enrollments totaling over 106,000 students, or 72.16% of the total enrollment of all nineteen districts serving the City of San José.

Each of the member school districts of the Consortium are individually "Responsible Agencies" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the

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NOTE: Identical letters were recieved for each of the individual school districts listed above.

California Code of Regulations, Title 14, in that the school districts are public agencies, other than the Lead Agency, which have responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The Consortium emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the Consortium in the EIR.

The Consortium is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the Consortium may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by Consortium members commencing on February 7, 1994. On behalf of the Consortium, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The Districts' existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The Districts' past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the Districts', including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the Districts' as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school districts;

13) The fiscal impact on the Districts', including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the Districts' and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

    a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

    b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

    c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

    d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

    e) Section 53080 of the Government Code.

    f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

    g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the Districts should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the Districts' enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format. Separate cost figures shall be made by District to reflect the individual characteristics of the Districts.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by Districts.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the school districts' in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The Consortium is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the respective Districts', with an additional copy to CSA, Inc's office at the addresses listed below:

Ms. Linda Latasa
Director of Facilities Planning
ALUM ROCK UNION SCHOOL DISTRICT
2930 Gay Avenue
San Jose, California 95127

Mr. Patrick Allen
Assistant Superintendent of Business Services
BERRYESSA UNION SCHOOL DISTRICT
1376 Piedmont Road
San Jose, California 95132

Mr. Paul Fettig
Assistant Superintendent of Business Services
EAST SIDE UNION HIGH SCHOOL DISTRICT
830 North Capitol Avenue
San Jose, California 95133

Mr. William Glynn
Assistant Superintendent of Business Services
FRANKLIN-McKINLEY SCHOOL DISTRICT
645 Wool Creek Drive
San Jose, California 95112

Dr. J. James Crow
Superintendent
MORGAN HILL UNIFIED SCHOOL DISTRICT
15600 Concord Circle
Morgan Hill, California 95037

Mr. Hardy Childers
Assistant Superintendent of Business Services
OAK GROVE SCHOOL DISTRICT
6578 Santa Teresa Boulevard
San Jose, California 95119

Dr. Donna Elder
Superintendent
ORCHARD SCHOOL DISTRICT
711 East Gish Road
San Jose, California 95112

Ms. Cathie Masters
Community Services Administrator
SAN JOSE UNIFIED SCHOOL DISTRICT
250 Stockton Avenune
San Jose, California 95126

Mr. Marshal B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or any member of the Consortium.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182nop2gp.222

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Ms. Linda Latasa
ALUM ROCK UNION SCHOOL DISTRICT

Mr. Patrick Allen
BERRYESSA UNION SCHOOL DISTRICT

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EAST SIDE UNION HIGH SCHOOL DISTRICT

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ORCHARD SCHOOL DISTRICT

Ms. Cathie Masters
SAN JOSE UNIFIED SCHOOL DISTRICT

SECTION XIII

FINAL AMENDMENT

SAN JOSE 2020 GENERAL PLAN

ENVIRONMENTAL IMPACT REPORT

Record of the Meeting of the Planning Commission, June 22, 1994

1. Staff Report

Staff reported that the item under consideration by the Planning Commission was the certification of the Environmental Impact Report for the San Jose 2020 General Plan. Staff stated that a copy of the First Amendment to the EIR was delivered to the Commission and included comments, responses to comments and text revisions to the EIR. The Draft EIR and First Amendment comprise the Final EIR for the San Jose 2020 General Plan. Staff also indicated that any testimony provided during the public hearing would be summarized in an addendum to the Final EIR.

Staff stated that the majority of the comments on the Draft EIR were received from eight school districts within San Jose. As stated in staff's responses to the school districts' comments, the EIR addressed all of the significant environmental impacts associated with the provision of school facilities at a level of detail that is appropriate for a program-level environmental impact report. Staff reminded the Commission that CEQA requires that an EIR address physical impacts on the environment, and that EIRs are not required to include a discussion of fiscal impacts. The City's discussion of school impacts in the San Jose 2020 General Plan EIR, therefore, conforms to CEQA.

Staff concluded the Staff Report by reiterating that the issue before the Planning Commission was the adequacy of the EIR for the San Jose 2020 General Plan. The EIR represents the City's independent judgment regarding the environmental impacts, mitigation measures, and alternatives to the proposed project. Staff recommended that the Planning Commission certify the Final EIR as complete and to find the document in conformance with CEQA.

Chair Caruso opened the public hearing and noted that each speaker would have a two-minute time limit to provide their testimony.

2. Public Testimony

Testimony was received on the EIR from *Harold Freiman* of the law firm Lozano Smith Smith Woliver & Behrens. Mr. Freiman stated that he represented eight school districts. Mr. Freiman identified the eight school districts as Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley Union School District,

Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District. Mr. Freiman stated that he would like the Planning Commission to postpone their decision on the certification of the EIR and adoption of the General Plan until the school districts and the City of San Jose had agreed to the treatment of school impacts in the San Jose 2020 General Plan and EIR for three reasons. First, Mr. Freiman remarked that within the last 48 hours, the school districts were closer to an understanding with the City that would remove most of the school districts' objections to the General Plan and EIR. Secondly, Mr. Freiman stated that the Mayor-appointed school impacts task force had not presented their recommendations, and that adoption of the General Plan should wait until these recommendations are available. Finally, Mr. Freiman stated that the school districts were submitting additional testimony in written form that would be described by Mr. Krupp from Community Systems Associates.

Commissioner Madrid responded that she was concerned that the school districts waited until this evening to submit volumes of additional comments. All comments should have been submitted during the 45-day review period.

Testimony was received on the EIR from *Marshall Krupp* of Community Systems Associates (CSA) on behalf of the eight school districts. Mr. Krupp stated that on behalf of the school districts, CSA was submitting two volumes of comments in response to the responses prepared by the City that addressed the comments submitted by CSA on the Draft EIR. Volume I consists of comments on the inadequacies of the General Plan and Volume II consists of comments on the inadequacies of the EIR. Mr. Krupp was concerned whether the two volumes of comments submitted by the school districts wuold be incorporated into the public record. Chair Caruso assured him that the information submitted by CSA would become part of the public record and made available to the City Council.

Mr. Krupp indicated that there were major flaws with the EIR. First, Mr. Krupp stated that under the 1993 Al Larson Boat Shop case, a program EIR is not authorized for a General Plan; a Master EIR was required for a General Plan. In addition, Mr. Krupp believed that the EIR did not properly evaluate the schools' impacts. Mr. Krupp stated that the conclusion does not compare the 2020 General Plan with existing conditions; it only compares the 2020 General Plan with the Horizon 2000 General Plan. Mr. Krupp also added that each school district and each school is its own political body. He said that the EIR, therefore, should have considered the impacts on each individual school.

Commissioner LeZotte asked for clarification regarding Mr. Freiman's statement that the school task force recommendations would remove the school districts' objections to the EIR, since the recommendations could not correct any inadequacies of an EIR. Mr. Krupp responded that the task force is addressing the issue of impacts to schools and mitigation, not the adequacies of the EIR. Regardless of the task force decision, CSA considers the EIR inadequate. In addition, the task force is addressing the school districts' concerns about the school survey proposed by the Planning Department. Mr. Krupp contended that due to the nature of the survey, many of the school districts did not know what was required of them in providing information.

Testimony was also received from *Carol Anne Mastropiejo* who wanted to know what the impact on roads would be as a result of the growth projected under the General Plan. Since Route 85 took 20 years to build and is still not finished, she wanted to know what provisions are being made to provide roadways for the growth. In addition, she wanted to know what possible way there was of addressing jobs/housing growth. Chair Caruso responded that the General Plan is a long-range planning document that plans for growth, jobs, and housing, together with the roadways needed to accommodate that growth.

Testimony was received from *Kathy Nellis* who stated that she and her husband were property owners whose General Plan amendment was revoked after the City rescinded the certification of the EIR and approval of the General Plan last year. She stated that they have suffered hardship over the last few months and requested that the Planning Commission certify the EIR and adopt the General Plan so that they could proceed with their project.

3. Action of the Commission

The Planning Commission voted (4-2-0) to find the EIR complete, as amended, and in conformance with CEQA.

Gary J. Schoennauer
Director of Planning

C. RESPONSES TO COMMENTS FROM COMMUNITY SYSTEMS ASSOCIATES (CSA) RECEIVED MAY 23, 1994.

COVER LETTER

C.1. Comment noted.

C.2. The Draft EIR prepared for the San Jose 2020 General Plan addresses all of the significant environmental impacts associated with the provision of school services at a level of detail that is appropriate for a program-level environmental impact report. Future specific development proposals within a given district will be evaluated for their impacts to schools on a school facility-by-facility basis for that district.

The Land Use/Transportation Diagram for the Horizon 2000 General Plan was provided in the back of Volume I of the Draft EIR. In addition, the Draft EIR contains maps which depict the locations of the proposed General Plan amendments for the Urban Reserves, the Converted Non-Residential Lands, and Intensification Corridors. Appendix D of the Draft EIR also provides maps and/or addresses of the school facility locations for each school district that submitted this information in the school district Surveys. Table 23 on page 220 of the Draft EIR contains the student generation estimates for each school district that would result from the San Jose 2020 General Plan using student generation rates provided by the individual school districts. Pages 223 to 231 of the Draft EIR discuss the increase in new students generated by the General Plan update and the associated impacts upon the school districts. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal at a greater level of detail upon the school facilities within that district.

C.3. The City believes that the EIR adequately addresses the environmental effects of the General Plan update on schools.

The City appreciates CSA's clarification of the organization of its comments, and its identification of the documents incorporated by reference.

C.4. The Draft EIR has been treated as if it were a new EIR in terms of conforming to the procedural requirements of CEQA. "Revised" was added to the title to clarify that this version of the EIR was not the original Draft EIR, but was a modified version. Nothing in CEQA precludes the use of such a term where a revised EIR for a project has been circulated.

A Notice of Preparation (NOP) was circulated for the San Jose 2020 EIR (Revised) to the same public agencies and responsible agencies as was done for the Draft EIR for the San Jose 2020 General Plan, dated September, 1993. The City of San Jose provided an opportunity for such agencies to respond to the NOP; the City cannot require these agencies to respond if they choose not to do so.

C.5. The City of San Jose has prepared one set of responses to the nine packages of the same comments submitted by CSA on behalf of the school districts; each school district will receive a complete copy of the responses to comments. Each of the eight individual school districts are referred to the responses contained in this section (Section C).

COMMENTS

C.6. The City acknowledges that the school districts are public agencies as defined by CEQA Guidelines §15379. However, they are neither considered a Responsible or Trustee Agency for the San Jose 2020 General Plan Draft EIR. According to the CEQA Guidelines definition of a "Responsible Agency" (§15381), *a "Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.* The City of San Jose is the sole public agency which has authority to approve the San Jose 2020 General Plan. The school districts individually, or as a group represented by CSA, do not have discretionary approval power over the San Jose 2020 General Plan.

The school districts have authority over school facilities, which are not included in the category of "natural resources" for the purposes of defining a Trustee Agency (see CEQA Guidelines §15386). CEQA Guidelines §15386 recognizes four Trustee Agencies having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. The school districts are not included in this list.

C.7. The City appreciates CSA's clarification of the organization of its comments. The City has made a good faith effort to respond to CSA's comments. Please refer to the specific responses below.

C.8. The City believes that the Draft EIR has been prepared in conformance with Public Resources Code 21000 et seq., the CEQA Guidelines, and Title 21, Environmental Clearance Ordinance of the City of San Jose. Please refer to the specific responses provided below.

C.9.1. The Notice of Preparation for this EIR included a project description, a location map, and the probable environmental effects of the proposed project in conformance with the requirements of CEQA Guidelines §15082. The Notice of Preparation clearly describes the proposed elimination of 9,000 units in the Coyote Valley Urban Reserve, as well as the increase in residential development due to the conversion of non-residential lands and with intensification of residential uses along major transportation corridors. The NOP Project Description stated that the Plan revisions were not limited to refinements or expansions of existing policies, but that new policies related to housing, environmental conservation and preservation, intensification along transit routes, natural resources, and the 15% slopeline were also included. The revisions that were made to the school policies in the General Plan are considered a clarification of existing policy. The City currently does not directly provide school services and the proposed text revisions were intended to clarify this fact. The urban services text revisions were designed to emphasize urban services that the City is directly responsible for providing. Current City policy under the Horizon 2000 General Plan regarding provision of schools is that the school districts and the state are responsible for all financing of school facilities. The proposed text revisions incorporated in San Jose 2020 reaffirm that fact.

C.9.2. Page 41 of the Draft EIR specifies (to the extent that this information is known to the Lead Agency) the agencies expected to use the EIR in their decision-making and the approvals for which the EIR will be used. The Uses of the EIR section states:

> *The City of San Jose will use this EIR to provide the environmental review for the adoption of the San Jose 2020 General Plan, including related text amendments and changes to the General Plan Land Use/Transportation Diagram. This EIR also provides the environmental review for the adoption of the nine 1993 General Plan Annual Review Amendments.*

The Planning Commission will make a recommendation on the approval of the General Plan update to the City Council, who will then approve or deny the General Plan update. As the Uses of the EIR section indicates, the EIR may be used for additional specified actions consistent with the goals and policies of the General Plan update, once adopted, but also states that additional environmental review may be required for these actions. The specified actions include:

> *...adoption of ordinances and policies which implement the General Plan, minor zoning changes and General Plan amendments that are consistent with the General Plan, and; special studies required by, or related to, implementation of the General Plan policies.*

The City of San Jose is the sole public agency which has authority to approve the San Jose 2020 General Plan. The school districts or other public agencies do not have discretionary approval power over the San Jose 2020 General Plan. Other agencies which could use the EIR as a reference document include: LAFCO; Santa Clara County and the local jurisdictions within Santa Clara County; utilities and services districts which serve San Jose, including the school districts, regional transportation agencies; and other public agencies. In preparing the Draft EIR, the City did not intend that the document provide environmental clearance for discretionary approvals by other public agencies.

C.9.3. The Draft EIR includes all comments received on the NOP in Appendix A. The City considered all of the NOP responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan update were adequately addressed. Although not required by CEQA, the City of San Jose considered all the responses provided by CSA on the NOP and addressed those items which were appropriate for inclusion in a Program EIR on a General Plan update. Many of the items that CSA requested that the City address were either too specific for the level of detail addressed at the General Plan stage or did not pertain to environmental impacts. These comments could be more appropriately addressed in a school district master plan or as part of the environmental or project review for future specific development proposals. Specific responses to CSA's NOP comments are provided below in Comments C.9.4. through C.9.10.

C.9.4. The requests contained in NOP Items 1 and 2, that the average square footage and type of anticipated units be identified, and phasing of development be described, cannot be estimated at this time. The San Jose 2020 General Plan projects growth over a 26 year period. To attempt to project unit square footages, type of construction and phasing of development would be speculative at this time and would be misleading.

C.9.5. The Notice of Preparation Items 3, 4, 5, 6, and 7 were addressed in the Draft EIR for each school district to the extent that the school districts submitted data through the school survey process. The information in the Draft EIR on the location of existing school sites was based on information provided by the school districts. With regard to Item 3, mapping of school bus stops, student pedestrian movement patterns to school sites, etc. is beyond the level of specificity required in a program-level EIR. The Draft EIR on page 68 discusses the transit system planned for a horizon year of 2020 at a level of specificity appropriate for this program-level EIR.

With regard to Items 4 and 5, as part of the school survey, the districts were requested to provide all pertinent information that would enable the City to address school impacts. Although CSA has indicated that various additional information necessary to assess school impacts is readily available from the districts, the districts did not provide that information to the City either in response to the NOP or the school survey. No school district chose to include information regarding historic trends; only Oak Grove and Morgan Hill provided the City with enrollment projections.

Student generation rates, in conjunction with estimated dwelling units, provide a generally accepted method of determining student yields appropriate for the level of specificity required for a program-level EIR. Adequate maps and data are provided in the Draft EIR to enable individual school districts to determine where the students generated by the additional 9,900 additional dwelling units within the City's existing Urban Service Area will be located. Figure 8 shows the location of all the conversion sites. Figures 9-12 show the location of the individual conversion sites. Table 6 indicates the projected number of residential units estimated for the proposed residential densities for these sites.

As discussed on page 18 of the Draft EIR, the proposed Intensification Corridor Special Strategy would not change the land use designation of specific properties but would provide guidance for the future development and intensification in these areas. The Plan assumes that as many as 6,600 residential units may be added under this Strategy but does not identify specific sites where intensification would occur. Appendix B of the Draft EIR presupposes where that intensification will most likely occur. The Draft EIR does not provide environmental clearance for individual development in the intensification corridors; intensification in any corridor will require additional environmental review.

In response to Item 6, the Draft EIR contains maps which depict the locations of the 19 school districts (refer to Figures 44, 45, and 46 in the Draft EIR). In addition, the Draft EIR describes the existing conditions of the school districts, based upon information supplied by the school districts in response to the school surveys. The identification of specific schools for projected student attendance that is based on planned land use in the San Jose 2020 General Plan would require analysis at a level of specificity that is not required for a General Plan EIR in conformance with §15146 of the CEQA Guidelines.

With regard to Item 7, the Draft EIR states that adequate services will be available to serve the estimated growth from the San Jose 2020 General Plan. The Draft EIR addresses the impacts and mitigation of the proposed General Plan alternatives relative to water service on pages 201-205. Impacts and mitigation relative to sanitary sewers are addressed on pages 211-215. Traffic impacts and mitigation are addressed on pages 65-92. Energy is addressed on pages 246 and

247. These impacts are discussed at a level of specificity that is commensurate with the level of specificity of the project addressed in the Draft EIR. It is not possible at the General Plan stage to analyze site specific impacts associated with future decisions to be made by the school districts regarding facility expansions. Individual school districts are the Lead Agencies responsible for environmental review for proposed school facility improvements.

C.9.6. Notice of Preparation Items 8, 9, 10, and 11 were adequately addressed in the Draft EIR. With regard to Items 8 and 9, pages 65 to 92 and Appendix E of the Draft EIR address traffic impacts of the General Plan update at a level of specificity that is appropriate for a General Plan EIR in conformance with §15146 of the CEQA Guidelines. No significant traffic impacts are expected as a result of roadway changes or changes in transit facilities. General Plan Thoroughfares Policy #8 and Pedestrian Facilities Policy #16 address pedestrian safety and the need for pedestrian facilities. These policies will be implemented at the time specific developments or street improvements are proposed to ensure the provisions of safe and convenient pedestrian facilities. No significant environmental impacts relative to pedestrian safety are expected as a result of implementation of the San Jose 2020 General Plan.

With regard to Item 10, the noise analysis prepared for the General Plan update by Illingworth & Rodkin, Inc., contained in Appendix G of the EIR, included noise measurements taken in the last two years throughout San Jose. The noise measurement data were used in conjunction with computer noise modeling to determine existing noise levels in San Jose. The contents of the Noise Element of the General Plan are mandated in California Administrative Code §65302(f). In the most recent revisions to this code, which were completed several years ago, the requirement to monitor noise levels at noise sensitive areas and the requirement for a noise exposure inventory were deleted.

In response to Item 11, the air quality impacts of the proposed General Plan update are addressed at a level appropriate for a General Plan update on pages 93 to 110 of the Draft EIR. To determine air quality impacts associated with mobile sources (i.e., traffic), the air quality analysis is based upon the traffic analysis. As stated on page 82 and described in detail in Appendix E, the traffic analysis trip generation is based on jobs and housing data, in addition to special generators such as schools, hospitals, parks, airports, and other facilities. Therefore, the air quality analysis takes into account the air pollutant emissions associated with school-related traffic on a citywide basis.

C.9.7. Items 12, 13, 15, and 16 were addressed in the Draft EIR for each school district based on the data supplied by the individual school districts in response to the school survey forms. Social, economical, operational, and political advantages or disadvantages associated with the existing status of the City being dissected by the 19 school districts are not considered physical effects on the environment related to the proposed General Plan update. The measures identified in the Draft EIR for adjusting boundaries or transferring students are neither infeasible nor uncommon. Consolidating school districts or adjusting district boundaries could increase school operational efficiency and accommodate additional students. The City of San Jose does not have control over the creation/composition of school districts within its boundaries. The Santa Clara County Board of Education dictates policy regarding the 19 school districts within San Jose.

The "Measures to Increase School Capacity" that were identified in the Draft EIR were included because these measures have been used by school districts and are commonly employed by districts in the City and by districts throughout the state. For example, Franklin-McKinley is currently on a multi-track year-round schedule.

With regard to items 13, 15, and 16, according to CEQA, the economic effects of a project are not to be treated as significant effects on the environment. The Draft EIR concludes that the potential fiscal impacts of providing school facilities to serve the projected increase in student population would not result in any significant environmental impact; consequently, a detailed analysis of the fiscal impact on the school districts for providing services is not an appropriate element of the environmental analysis and is not included in the Draft EIR. There is no provision in CEQA requiring a Lead Agency to include a fiscal impact analysis. Based upon data supplied by the school districts, the City has addressed the adequacy of school facilities on a school district-by-school district basis, and has disclosed the existing capacity and enrollment for each of the school districts, at a level appropriate for inclusion within a program EIR (see Table 23).

Regarding Item 14, by definition, a General Plan plans for the buildout of a given jurisdiction to a specified horizon year. Implicit in this plan for buildout is the need to consider the cumulative impacts associated with the buildout of the project. The Draft EIR has, therefore, evaluated the cumulative effects of the proposed General Plan. Additionally, the Draft EIR evaluates the pending 1994 General Plan Annual Review Amendments which are not included in the General Plan project but are considered reasonably foreseeable projects under CEQA.

C.9.8. In response to Item 17 of CSA's NOP comments, the alternatives that were evaluated in the Draft EIR were selected by the General Plan Update Task Force as the most likely General Plan growth scenarios. As required by CEQA Guidelines §15126, the Draft EIR summarizes these five alternatives and compares them to the proposed project (i.e. San Jose 2020 General Plan). One of these alternatives is a low growth alternative as required by CEQA. Alternative 1 would also allow less development than the project. Alternatives 2-5 would cause one or more significant environmental effects than the project. All five alternatives are discussed in detail in the San Jose 2020 General Plan Draft EIR September, 1993 that is incorporated by reference in the San Jose 2020 General Plan (Revised) Draft EIR and summarized in the document.

C.9.9. Items 18, 19, 20, and 21 contained in CSA's NOP comments address the adequacy of school impact fees in offsetting the costs of providing school facilities and the potential impacts to the school districts. The school districts are in a better position to evaluate the costs of improving their school facilities to accommodate students generated by future development proposals. This type of information would be more appropriately evaluated in a master plan for each of the school districts. At this time, the City cannot predict the type and size of units that will be constructed by private developers throughout San Jose over the next 26 year period. As a result, it is speculative to calculate the potential development fee revenues. Additionally, the City has no authority to condition private development to pay fees beyond the state-mandated school impact fees at this time, since there are no specific development proposals being processed as part of the General Plan update project. The City will not adopt a Statement of Overriding Consideration relative to school impacts since the Draft EIR states that there are no significant unavoidable school impacts.

C.9.10 For Item 22, the City's program for providing parks services to existing and future residents is not expected to result in a significant environmental impact on school districts or school district lands. Page 238 of the Draft EIR identifies that the City's goals for parks have not been achieved in the past. Pages 238 and 239 identify that implementation of the General Plan alternatives would result in increased demands on park services. Pages 239 and 240 identify mitigation for parks impacts. The mitigation includes General Plan policies that call for the use of the parks level of service benchmarks to evaluate major land use policy changes, as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed.

CSA has misinterpreted Level of Service Policy #16. This policy does not require school districts to provide school playgrounds for park and open space use, and is not expected to result in any significant environmental effect on school districts. The school districts are not expected to provide two acres of playfield per 1,000 population, or any amount. This policy establishes a benchmark of 3.5 acres of neighborhood and community serving parkland per 1,000 population and specifies that a minimum of 1.5 acres of the 3.5 acres must be parkland and up to two acres may be school playgrounds. There is no minimum for school playfields. If the school districts choose not to make school playgrounds available to the public, the 3.5 acres will not include school playgrounds.

General Plan Parks and Recreation Policy #18 is not expected to result in a significant environmental impact. This policy states that the City should "...consider negotiating with property owners and local school districts in newly developing residential areas for the dedication of playground/recreation portions of future school sites to the City...". Such a policy does not require school districts to dedicate land to the City of even to negotiate with the City.

C.10. As stated in the response to Comment C.9.3, the Draft EIR includes all comments received on the NOP in Appendix A. The City considered all of the NOP responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan update were adequately addressed. The City of San Jose considered the responses provided by CSA on the NOP. As described above in the response to Comment C.6., the school districts individually, or as a group represented by CSA, do not meet the CEQA Guidelines definition of Responsible Agencies.

C.11. The Draft EIR adequately evaluates the potential impacts associated with the General Plan update. The open space, noise and housing appendices were updated in 1993 and are included in their entirety in the Draft San Jose 2020 General Plan. A copy of the Plan was sent to all recipients of the Draft EIR at the time the Draft EIR was circulated.

C.12. The Draft EIR adequately evaluates the potential impacts associated with the General Plan update. Although not required under CEQA, the City of San Jose considered the responses provided by CSA on the NOP in the preparation of the Draft EIR.

The City believes that the information contained in this First Amendment in response to CSA's comments is not sufficient to warrant recirculation of the EIR, because this information does not constitute significant new information as defined by CEQA, nor was public comment rendered meaningless. The information contained in this First Amendment does not indicate that the

adoption of the General Plan update would result in *a substantial adverse environmental effect of the project*; rather, this information *merely clarifies or amplifies...or makes insignificant modifications in...an adequate EIR*, Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California (Laurel Heights II) (1993) 6 Cal.4th 1129-1130 [---Cal.Rptr.2d---].

Based upon the California Supreme Court's decision in the (Laurel Heights II) (1993) 6 Cal.4th 1129-1130 [---Cal.Rptr.2d---], the following legal test is appropriate for determining when recirculation is required:

> *...the addition of new information to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. * * * [R]ecirculation is not required where the new information added to the EIR "merely clarifies or amplifies...or makes insignificant modifications in...an adequate EIR."*

In addition, Laurel Heights II (1993) 6 Cal.4th 1134-1135 [---Cal.Rptr.2d---] specifies that a *substantial evidence* standard of review applies to an agency's decision on whether or not to recirculate. In Laurel Heights II, the Court determined that the obligation to recirculate is triggered by new information that shows that an EIR was so deficient as to render public comment "in effect meaningless" (6 Cal.4th at 1130 [---Cal.Rptr.2d---]).

Sufficient information was contained in the Draft EIR to evaluate school impacts at a level commensurate with the specificity of the project. The information contained in this First Amendment does not demonstrate that the General Plan update would result in a new substantial adverse environmental effect on schools. The Draft EIR adequately described the physical impacts on the provision of school services on a school district-by-school district basis which the City believes is appropriate at a program level. Furthermore, this impact assessment was based upon the data each of the school districts chose to submit to the City as part of the school survey process.

C.13. CSA is incorrect in the assertion that there is no manner in which the school districts could identify potential residential development within their boundaries and attendance areas. All vacant residential land projected to yield the cited 35,000 dwelling units is identified on two maps that were included in the Draft EIR, namely, the Horizon 2000 Land Use/Transportation Diagram (the Diagram identifies residential areas either developed with or planned for residential uses) and the composite General Plan Amendments map from 1988-1992. The Draft EIR also provides maps of specific conversion sites and intensification corridors where growth is anticipated to occur.

The Alternative V yield shown in the table in Appendix B results in the same yield as the Preferred Alternative. The table will be changed as part of this First Amendment to reflect that information. Appendix B identifies 6,652 units in the intensification corridors. Table 5 indicates approximately 6,600 dwelling units in the intensification corridors. Table 5 clearly indicates that the numbers are approximate and are presented to give the reader a general idea of housing

distribution in the Plan and a reasonably accurate reflection of potential residential growth in the intensification corridors.

The Capitol Avenue/Expressway Corridor shows no intensification or additional dwelling unit yield because none is anticipated within this corridor in the San Jose 2020 General Plan. The Capitol Avenue/Expressway Corridor may experience intensification in the future but not necessarily within the time-frame of San Jose 2020. The General Plan text does not indicate that intensification must occur in any corridor area as part of implementation of the Plan, rather it identifies these corridors as areas where intensification is preferred. Appendix B identifies where that intensification will most likely occur; the Capitol Avenue/Expressway Corridor has limited traffic capacity which could constrain intensification and, therefore, is not identified in Appendix B. This Draft EIR does not provide environmental clearance for individual development in these corridors; any intensification in any corridor will require additional environmental review.

The projected 6,600 dwelling units within the intensification corridors were addressed in the studies prepared to analyze traffic, noise and air quality impacts. Schools are considered part of the residential neighborhoods adjacent to the corridors, and the impacts on these neighborhoods were addressed in their respective sections of the Draft EIR.

The revisions that were made to the school policies in the San Jose 2020 General Plan are considered a clarification of existing policy. The City currently does not directly provide school services and the proposed text revisions were intended to clarify this fact. The urban services text revisions were designed to emphasize urban services that the City is directly responsible for providing. Current City policy under the Horizon 2000 General Plan regarding provision of schools recognizes that the school districts and the state are responsible for all financing of school facilities. The proposed text language incorporated as part of San Jose 2020 reaffirms and clarifies that fact, and in no way indicates a change in policy direction.

C.14. The traffic analysis contained in the Draft EIR evaluates the potential traffic impacts due to the increased vehicular movement and volumes associated with the San Jose 2020 General Plan. This analysis is based on trip generation which accounts for jobs and housing data, in addition to special generators such as high schools, hospitals, parks, airports, and other facilities. The TRANPLAN model evaluates traffic associated with Home-Based-School trips, in addition to five other trip purposes. The purpose of all Home-Based-School trips is transportation between residences and school facilities. The TRANPLAN model does not account for court-ordered desegregation, magnet schools or any other of the myriad and ever-changing factors that could affect traffic patterns associated with individual land uses.

The traffic analysis contained in the Draft EIR also evaluated the availability of bikeways and pedestrian paths citywide. Impacts to these facilities were evaluated at a program level with the degree of specificity commensurate with a General Plan update. At the time future specific development proposals are under consideration, specific impacts to bicycle, pedestrian, and transit facilities can be assessed. The traffic mitigation section (pages 91 and 92) and the air quality mitigation section (pages 108-110) include extensive mitigation dealing with alternative modes of transportation, including pedestrian/bicycle uses and connections to mass transit.

Policy 39 on page 92 specifically addresses development of a bikeway system that links parks with residences, employment centers, schools and transit facilities.

C.15. CSA is referred to the responses contained in Response C.9.6. above. As stated above, the air quality impacts of the proposed General Plan update are addressed at a level appropriate for a General Plan update on pages 93 to 110 of the Draft EIR. The air quality analysis takes into account the air pollutant emissions associated with school-related traffic on a citywide basis.

C.16. CSA is referred to the responses contained in Response C.9.6. above.

C.17. Urban Design Policy #8 pertains to all types of development and would ensure that when individual projects for high density development adjacent to school facilities are proposed, they would be required to address security, aesthetics and public safety as part of General Plan conformity. School uses are allowed uses within residential areas; therefore, policies addressing visual impacts for residential uses would also be applicable for schools.

C.18. The policies identified on pages 199 and 201 of the Draft EIR would control the development of land uses involved in the use, storage, and disposal of hazardous substances at locations which could impact sensitive land uses. The General Plan update proposes to convert industrial sites, which often involve the use of hazardous materials, to residential development, which typically does not involve the use, storage, or disposal of hazardous substances. Therefore, the development of residential uses would not be expected to expose children to additional risks associated with hazardous substances.

Legislation is in effect to control development involving the use, storage, handling, or disposal of hazardous substances within proximity to school sites. For example, Public Resources Code §21151.4 prohibits the approval of an EIR or Negative Declaration for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous emissions unless the Lead Agency has consulted with the school district having jurisdiction over the school affected by the project. The San Jose 2020 General Plan does not propose to construct or alter such a facility within one-fourth of a mile of a given school, nor does it propose to construct new school facilities at locations where there is a risk of exposure to hazardous materials. Therefore, the discussion of impacts contained in Section III, J. adequately evaluates impacts to schools.

C.19. CSA's request that the City determine the adequacy of existing infrastructure serving existing schools is more appropriately addressed in a school district master plan. The Draft EIR contains a program-level evaluation of the provision of water supply citywide, and the potential impacts on the provision of such services as a result of future development. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. The potential need for improvements to the water supply network would be more appropriately assessed at the time the school districts pursue the construction of new schools and/or physical expansion of existing school facilities.

C.20. As stated in the response to C.19., CSA's request that the City determine the adequacy of existing infrastructure serving existing schools is more appropriately addressed in a school

district master plan. The Draft EIR contains a program-level evaluation of the adequacy of the sanitary sewer system citywide, and the potential impacts on the provision of wastewater services as a result of future development. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. The potential need for improvements to the sanitary sewer system would be more appropriately assessed at the time the school districts pursue the construction of new schools and/or physical expansion of existing school facilities.

C.21. CSA is referred to the responses contained in C.3. above, regarding CSA's requests in their NOP comments. Public Resources Code §21080.4 and CEQA Guidelines §15082 mandate a Lead Agency to consider a Responsible Agency's or Trustee Agency's comments on the Notice of Preparation. These sections do not mandate the City of San Jose, as Lead Agency, to address every issue identified by CSA or the school districts in their comments on the NOP, because neither CSA nor the school districts, individually, meet the definition of a Responsible Agency or Trustee Agency as defined by CEQA Guidelines §15381 and §15386, respectively.

As stated in the response to Comment C.9.3., the Draft EIR includes all comments received on the NOP in Appendix A. The City considered all of the NOP responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan update were adequately addressed. The City of San Jose considered the responses provided by CSA on the NOP and addressed those items which were appropriate for inclusion in a Program EIR on a General Plan update, at a level of specificity commensurate with the specificity of a General Plan (see CEQA Guidelines §15146).

The City believes that the Draft EIR has been prepared in conformance with Public Resources Code 21000 et seq., the CEQA Guidelines, and Title 21, Environmental Clearance Ordinance of the City of San Jose. The City believes that the information contained in this First Amendment in response to CSA's comments is not sufficient to warrant recirculation of the EIR because this information does not constitute significant new information as defined by CEQA.

C.22. The information contained in the Draft EIR that pertains to schools is sufficient for the level of specificity required of a Program EIR. As is currently the case, future specific development proposals within a given district will be evaluated for their impacts to schools on a school facility-by-facility basis for that district. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. The potential need for administrative and maintenance facilities improvements, for example, would be more appropriately assessed at the time the school districts pursue the construction of new schools and/or physical expansion of existing school facilities.

C.23. The Draft EIR concludes that although fiscal impacts to school districts may result from implementation of the San Jose 2020 General Plan, these fiscal impacts would not result in an adverse effect on humans or in any significant environmental impact. As Table 23 depicts, the Draft EIR compared existing capacity for each of the individual school districts to the projected student generation under San Jose 2020 and concluded that the Plan would not result in a significant environmental impact from the addition of school facilities. Page 221 of the Draft

EIR identifies a number of measures that school districts have used in the past to increase capacity or to make more efficient use of existing capacity without building new school facilities to accommodate growth. Some or all of these measures could be used to provide for the student growth associated with implementation of the General Plan over the next 26 years. The Draft EIR states that there will be environmental impacts associated with the implementation of the identified measures; however, the actual impacts cannot be determined in a program-level EIR.

C.24. With regard to Criterion 1, the Draft EIR concluded that the incremental increase in student population would not result in a significant environmental impact. In addition, the Draft EIR evaluated the potential physical effects of developing or expanding school facilities, increases in traffic and associated air pollution emissions, and intensification of land use. These impacts were measured by comparing the proposed General Plan update to the existing General Plan and to the existing 1993 conditions. With regard to existing conditions and the environmental setting, Table 23 contains a comparison of the net change in student generation between the existing General Plan and the proposed General Plan update, as well as the existing 1993 conditions for each of the school districts.

C.25. With regard to Criterion 2, Table 23 in the Draft EIR summarizes the potential student generation yield for each of the school districts resulting from the proposed General Plan update. Pages 223 to 231 describe the relationship between the existing capacity within each of the school districts and the corresponding increase in the number of students that would be generated within a given school district. The discussion of school impacts contained in the Draft EIR is based upon an evaluation of the distribution of the housing units to be developed under the San Jose 2020 General Plan, and the corresponding student generation of these units within a given school district.

The EIR provides information regarding the current setting for schools both for individual school districts (see Table 23 and pages 224-231) and on a citywide level (see Table 23). Table 23 and the discussion of the individual school districts in the Draft EIR provide information on existing district enrollment, capacity and excess or deficit capacity. Table 23 also assesses at district and citywide capacity with the buildout of the Horizon 2000 General Plan, district and citywide capacity with the buildout of the San Jose 2020 General Plan, as well as a comparison of the net change in dwelling units and student yields between the two General Plans. The text discussion for each individual school district also follows this pattern. The level of information provided is adequate for a program-level EIR.

The measures listed on pages 52 and 53 of the Consortium's comments were included in the Draft EIR because these measures have been used by school districts in the past to increase capacity or to more efficiently use existing capacity without building new school facilities to accommodate growth.

C.26. CEQA Guidelines §15125 does not state that the environmental setting of the City includes the boundaries of each of the school districts of the City, nor does it suggest that the environmental setting also includes the attendance area boundaries of each of the school facilities. Section 15125 states that *an EIR must include a description of the environment in the vicinity of the project... from both a local and regional perspective.* This section also states that *the description shall be no longer than is necessary to an understanding of the significant effects*

of the proposed project and its alternatives. Pursuant to §15125, the Draft EIR contains a description of the existing local and regional setting of the City (see page 1 and Figures 1, 2, and 3 in the Draft EIR). In addition, Figures 44, 45, and 46 in the Draft EIR depict the existing locations of the elementary school districts, the high school districts, and the unified school districts, based upon maps provided by the Santa Clara County Office of Education. As stated in C.22. above, the information contained in the Draft EIR that pertains to schools is sufficient for the level of specificity required of a Program EIR.

The Draft EIR describes the relevant specifics of the planning area for the San Jose 2020 General Plan and the resources that would be affected by the implementation of the General Plan update. The Draft EIR also evaluates the physical effects on the environment that would occur with future development under the San Jose 2020 General Plan. Changes induced in population distribution and concentration, the human use of the land, health and safety problems due to physical changes, and impacts to other resources are also assessed in Section III of the Draft EIR. §15126(a) does not state that individual school facilities need to be evaluated in the Draft EIR. The Draft EIR evaluates the provision of school services on a district-wide basis and at a program level, which is at a level commensurate with the degree of specificity of the General Plan update. The Draft EIR also describes the physical changes within each school district that would occur as a result of increased housing development. These physical changes are measured in terms of the increase in student population distribution and concentration as indicated in Table 23, and in terms of the physical effects on the environment associated with the increase in student population growth.

The Draft EIR analyzes the significant environmental effects associated with the implementation of the General Plan update, including those resulting from the development of the intensification corridors, urban reserves, converted non-residential lands, and vacant parcels. The projected changes in student population for each of the school districts, as shown in Table 23, reflect future residential development under the San Jose 2020 General Plan. Table 23 in the Draft EIR contains the data requested by CSA on page 55 of their comments on the Draft EIR, for each school district. As indicated in the above responses, at the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district.

C.27. CSA is referred to the responses pertaining to the evaluation of economic and social effects, contained in Response C.9.7. above. According to CEQA, the economic effects of a project are not to be treated as significant effects on the environment. The Draft EIR concludes that the potential fiscal impacts of providing school facilities to serve the projected increase in student population would not result in any significant environmental impacts.

CSA is referred to the response C.6. above which address the school districts' lack of standing as Responsible Agencies.

C.28. The Draft EIR states that the adoption of the General Plan update will not have an adverse *environmental* impact as that term is used for the purposes of CEQA. Consistent with CSA's *Criterion 1* (page 48 of CSA's comments), Table 23 in the Draft EIR compares the effects of the projected student population on each school district that would occur with the General Plan update, with the adopted General Plan, and with the existing school conditions. As stated in

CSA's *Criterion 2* (page 51 of CSA's comments), the Draft EIR assessed the environmental impacts on schools and the existing capacity on a school district-by-school district basis. As indicated in the above responses, at the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. With regard to CSA's *Criterion 3* (page 55 of CSA's comments), CEQA §15131(b) states that, "Economic or social effects of a project **may** be used to determine the significance of physical changes caused by a project." Where these factors are used, a Lead Agency is obligated to add the information to the record, if such factors are not already included in the EIR. The City of San Jose, however, has relied on factors associated with physical changes to the environment in order to determine whether or not the General Plan would result in significant environmental impacts to schools.

The City does not provide school services, whereas it does provide police, fire, parks and recreation services. Therefore, establishing a level of services benchmark for police, fire, parks and recreation services is within the City's purview. The City does not establish, however, a level of service standard that must be met for General Plan conformity for these services.

C.29. CSA is referred to the responses contained in C.26., C.27., and C.28. above.

C.30. CSA appears to misunderstand the approval process for specific development proposals. CSA incorrectly states that once the San Jose 2020 General Plan is adopted, the school districts will no longer be able to obtain mitigation of the impacts of the residential development, unless future legislative acts are sought. It is important to note that the proposed changes in land use designations included in the General Plan update do not guarantee that future specific development proposals will occur at the locations identified for redesignation; future development at these locations would require zoning changes, development permits, and other subsequent approvals. Because there is no guarantee that future specific development proposals will occur, it is not certain that the impacts will occur. If the impacts don't occur, then there is no need for mitigation. Therefore, it is premature to require developers, as part of the General Plan update, to mitigate impacts that may not occur, because they may not propose to develop future projects. Furthermore, there must be a nexus between the impact and the mitigation measure (see Nollan v. California Coastal Commission (1987) 483 U.S. 825.

The TRANPLAN traffic analysis projects trips based on buildout of the General Plan Land Use/ Transportation Diagram. The TRANPLAN model forecasts p.m. peak hour traffic circulation on the year 2010 roadway network with traffic generated by land uses designated on the diagram. The student generation figures submitted by the districts were not incorporated into the model because the model already assumes a certain percentage of trips to be generated by students from planned residential land uses.

C.31. As discussed on pages 231 and 232 of the Draft EIR, the increase in student population from the implementation of the General Plan update would result in potential environmental impacts associated with the physical effects of developing or expanding existing school facilities, increases in traffic and associated air pollution emissions, and intensification of land use. The environmental impacts associated with this growth are addressed at a program-level within the applicable sections of the Draft EIR. The Draft EIR also states on page 232 that there will be

environmental impacts associated with the implementation of the measures to increase school capacity; however, the actual impacts cannot be determined in a program-level EIR.

The "Measures to Increase School Capacity" are not considered "mitigation measures" because the proposed General Plan update would not result in significant environmental impacts to school facilities, as defined by CEQA, and, therefore, the General Plan update does not require mitigation.

C.32. The "Measures to Increase School Capacity" that were identified in the Draft EIR are neither infeasible nor uncommon. They are methods that have been used in the past in Santa Clara County and throughout California to deal with fluctuations in student enrollment. Year-round multi-track school scheduling, a method that increases student capacity by as much as 33% was used by the Berryessa Elementary school district in the 1970's to accommodate increased student enrollments. Over 180 school districts within California have schools operating on some form of year-round schedule.

The use of portable classrooms has long been an accepted means of increasing capacity without building schools. Opening closed schools is another means that has been widely used for dealing with increased enrollments. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the physical impacts of that proposal, at a greater level of detail, upon the school facilities within that district. Conditions within each school district and each school facility change from year to year, and at this time it would be inappropriate for the City to specify those measures that each school district should implement, particularly when future residential development at a given location has not been proposed.

C.33. CSA would be in a better position to estimate the fixed costs and operational implications associated with changes to the school districts' facilities. This information is not typically considered within the scope of an EIR for a General Plan update; rather, it is more appropriately addressed in school facilities master plans.

C.34. The Draft EIR states on page 221 that the specific physical impacts resulting from the implementation of these measures would be analyzed more specifically as future development is proposed and actual measures are implemented.

C.35. The "Measures to Increase School Capacity" are not considered "mitigation measures" because the proposed General Plan update would not result in significant environmental impacts, and therefore, does not require mitigation. A basic premise stated in the definition of "mitigation measure" is that there is an impact on the environment. The City of San Jose believes that the effects on schools do not constitute an environmental impact as defined by CEQA.

Because CEQA Guidelines §15370 does not list "measures to increase school capacity" within the list of mitigation does not mean that a section on "measures to increase school capacity" cannot be included in the EIR.

C.36. CSA is referred to the responses C.9.7., C.23., C.32., and C.35. regarding the "measures to increase school capacity," the criteria for determining significance of impacts, the extent to

which the measures mitigate school impacts, and the feasibility of the "measures to increase school capacity."

C.37. The data used in the EIR were supplied by the individual school districts in response to a survey distributed by the City in February, 1994. Sixteen of the 19 school districts responded to the survey. For the districts that were unable to return the survey, the best available data was used based on previous information supplied by the districts. In an effort to obtain consistent data, the survey requested that the capacity figures be supplied for October, 1993 and that enrollment figures be based on October, 1993 California Basic Educational Data System (CBEDS). The survey requested the districts to supply all pertinent information that would enable the City to address school impacts. Although CSA indicates this information is available from the districts, the districts elected not to supply the information to the City.

C.38 CSA is referred to responses C.23. and C.40.

C.39. The Draft EIR, under separate sections for individual school districts, identifies the student generation and associated impacts for each school district. Table 23 of the Draft EIR compares existing student enrollment, student generation projected under the existing Horizon 2000 General Plan and student generation projected under the proposed San Jose 2020 General Plan.

C.40. The identification of existing capacity, current enrollment and projected increase in enrollment from buildout of the San Jose 2020 General Plan would require analysis at a level of specificity that is not required for a General Plan EIR in conformance with §15146 of the CEQA Guidelines. The Draft EIR described the impacts on the provision of school services on a school district-by-school district basis which the City believes is appropriate for a program-level EIR. The impacts assessment was based upon the data each of the school districts chose to submit to the City as part of the school survey process. The school districts had two opportunities to provide relevant data regarding individual schools within each district for the City's EIR analysis regarding potential school impacts. They could have provided this information in response to the NOP or in response to the school survey. The districts were requested in the school survey to provide all pertinent information that would enable the City to address school impacts. Although CSA has indicated this information is readily available from the districts, the districts elected not to supply the information to the City.

C.41. CSA is referred to the response to C.40. above.

C.42. CSA is referred to the response to C.40. above.

C.43. CSA is referred to the response to C.40. above.

C.44. CSA is referred to the response to C.40. above.

C.45. CSA is referred to the response to C.40. above.

C.46. As part of this First Amendment, Table 23 is revised to include the deficit capacity of 627 classroom spaces resulting from the buildout of the San Jose 2020 General Plan. CSA is referred to the response to C.40. above.

C.47. CSA is referred to the response to C.40. above.

C.48. CSA is referred to the response to C.40. above.

The Draft EIR analyzes the significant environmental effects associated with the implementation of the General Plan update, including those resulting from the development of the intensification corridors, urban reserves, converted non-residential lands, and vacant parcels. The projected changes in student population for each of the school districts, as shown in Table 23, reflect future residential development under the San Jose 2020 General Plan. Pages 223 to 231 describe the relationship between the existing capacity within each of the school districts and the corresponding increase in the number of students that would be generated within a given school district. The discussion of school impacts contained in the Draft EIR is based upon an evaluation of the distribution of the housing units to be developed under the San Jose 2020 General Plan, and the corresponding student generation of these units within a given school district.

Table 23 in the Draft EIR contains the data requested by CSA on page 55 of their comments on the Draft EIR, for each school district. As indicated in the above responses, at the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district.

As previously noted, the "Measures to Increase School Capacity" that were identified in the Draft EIR were included in this EIR because these measures have been used by school districts in the City in the past and are commonly employed by school districts throughout the state. These measures were considered to be viable and feasible. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. Once specific impacts are identified for school facilities within a given school district, it will be possible to determine which of these measures, or other measures, would be feasible or viable, and appropriate for that facility. Conditions within each school district and each school facility change from year to year, and at this time it would be inappropriate for the City to specify those measures that each school district should implement, particularly when future residential development at a given location has not been proposed.

In the event that future specific development proposals impact a given school facility within a school district, the payment of school impact fees under California Government Code §65996 would partially or completely offset school facilities improvements that are deemed necessary to accommodate the increase in student population. Private developers that propose residential projects that significantly increase the student population at locations where the existing school facilities are at capacity could provide additional funds for school facilities.

As previously noted, the "Measures to Increase School Capacity" are not listed as mitigation measures because the proposed project would not result in a significant environmental impact to schools. The City of San Jose believes that the social and educational effects associated with the provision of school services have fiscal implications, not environmental consequences.

C.49. As stated in the response to C.19., CSA's request that the City determine the adequacy of existing infrastructure serving existing schools is more appropriately addressed in a school district master plan. The Draft EIR contains a program-level evaluation of the adequacy of the infrastructure for various utilities citywide, and the potential impacts on the provision of utilities and services as a result of future residential development. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. The potential need for improvements to the infrastructure serving school facilities would be more appropriately assessed at the time the school districts pursue the construction of new schools and/or physical expansion of existing school facilities.

C.50. The City of San Jose believes that the social and educational effects associated with the provision of school services have fiscal implications, not environmental consequences.

The Draft EIR analyzes the significant environmental effects associated with the implementation of the General Plan update, including those resulting from the development of the intensification corridors, urban reserves, converted non-residential lands, and vacant parcels. The projected changes in student population for each of the school districts, as shown in Table 23, reflect future residential development under the San Jose 2020 General Plan. As noted above, pages 223 to 231 describe the relationship between the existing capacity within each of the school districts and the corresponding increase in the number of students that would be generated within a given school district. The discussion of school impacts contained in the Draft EIR is based upon an evaluation of the distribution of the housing units to be developed under the San Jose 2020 General Plan, and the corresponding student generation of these units within a given school district.

C.51. The City of San Jose considered the three thresholds of significance identified by CSA (Appendix G of the CEQA Guidelines, thresholds (k), (u), and (w)) and found that the proposed San Jose 2020 General Plan would not result in a significant environmental impact to schools. The Draft EIR indicates that the 248 student increase associated with the adoption of the proposed General Plan update would not represent substantial growth in the student population, nor result in a concentration of student population citywide. The 248 students generated by development under the proposed General Plan update represents less than a one percent increase as compared with the existing General Plan.

The implementation of the San Jose 2020 General Plan would not result in the disruption or division of the physical arrangement of an established community, because the General Plan update includes many policies in the *City Concept* and *Community Development* chapters of the San Jose 2020 General Plan that address a concern with the quality of life and the livability in San Jose. In particular, the schools policies contained in the *Services and Facilities* section of the San Jose 2020 General Plan encourage coordination and joint planning between the City and school districts, because the City recognizes that public schools are an important part of the urban living environment.

The City of San Jose believes that the adoption of the San Jose 2020 General Plan would not conflict with established recreational, education, religious or scientific uses of the area, because the General Plan, as the "official policy regarding the future character and quality of

development of the City," addresses recreational, education, religious, and scientific issues in the San Jose Sphere of Influence.[2] Specifically, as the official policy for development, the General Plan recognizes that public schools are an important part of the urban living environment, and therefore, contains policies that encourage the City, private developers, and school districts to cooperate in the joint planning, development, use, and funding of public schools.

C.52. The City of San Jose believes that the social and educational effects associated with the provision of school services, such as providing bussing services, administration, teachers, books, supplies, equipment, advertising, etc. have fiscal implications, not environmental consequences. The City of San Jose has relied on factors associated with physical changes to the environment in order to determine whether or not the General Plan would result in significant environmental impacts to schools.

Redesigning school attendance area boundaries, altering existing pedestrian and bussing patterns, changing existing Board policies and goals, etc. are actions that are not proposed as part of the project. Conditions within each school district and each school facility change from year to year, and at this time it would be inappropriate for the City to predict the social effects that would occur in each school district, particularly when future residential development at a given location has not been proposed.

The Draft EIR describes the physical changes within each school district that would occur as a result of increased housing development. As stated above, these physical changes are measured in terms of the increase in student population distribution and concentration as indicated in Table 23, and in terms of the physical effects on the environment associated with the increase in student population growth.

C.53. CEQA Guidelines §15064(h) contains factors to guide a Lead Agency in its decision to prepare an EIR. In marginal cases where it is not clear whether there is substantial evidence that a project may have a substantial effect on the environment, if there is public controversy over the environmental effects of a project, the Lead Agency shall consider the effect(s) subject to the controversy to be significant and shall prepare an EIR. Once an EIR is prepared, this section does not require the City to find that because the potential effects on schools are locally controversial (and of state-wide controversy) that these effects are to be considered significant environmental impacts.

C.54. Comment noted.

C.55. The City of San Jose believes that the social and educational effects associated with the provision of school services have fiscal implications, not environmental consequences.

While the discussion portion of CEQA Guidelines §15142 specifies that an EIR must consider qualitative factors as well as quantitative, economic, and technical factors, Public Resources Code §21002.1 states that "the purpose of an environmental impact report is to *identify the significant effects of a project on the environment*, to identify alternatives to the project, and to

[2] Draft San Jose 2020 General Plan, page 1.

indicate the manner in which those significant effects can be mitigated or avoided." CEQA Guidelines §15358(a) states that these include:

(1) "Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems."

Furthermore, CEQA Guidelines §15360 states, "Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance."

As evidenced by these CEQA statutory and guidelines sections, the thoughts and feelings of Boards of Trustees and Boards of Educations, and school district staffs are not included in the definition of a physical effect on the environment. Therefore, an EIR is not required to consider such factors in determining whether or not a project would result in a significant environmental impact.

The City believes that the Draft EIR has been prepared in conformance with Public Resources Code 21000 et seq., the CEQA Guidelines, and Title 21, Environmental Clearance Ordinance of the City of San Jose, and contains sufficient technical detail that is relevant to understanding the consequences of adopting the proposed San Jose 2020 General Plan in conformance with §15147. The City has adequately addressed the environmental impacts associated with the proposed General Plan update. For those areas where there is disagreement among experts, as in the case of school impacts, the Draft EIR notes the controversy. Because experts disagree about the significance of a particular impact does not mean that the impact must be deemed a significant environmental impact.

C.56. The purpose of this Draft EIR is to provide the City of San Jose with the environmental review for the adoption of the San Jose 2020 General Plan, including related text amendments and changes to the General Plan Land Use/Transportation Diagram. This EIR also provides the environmental review for the adoption of the nine 1993 General Plan Annual Review Amendments. It is was not intended that this EIR be used by the school districts to make decisions for increasing the quantity and quality of school services and facilities. The school districts are responsible for conducting environmental review for the discretionary decisions they make with regard to their facilities, at the time they propose such actions. As noted in the Draft EIR, other agencies, such as the school districts, could use this EIR as a *reference document*.

C.57. As stated in the response to Comment C.9.3, the Draft EIR includes all comments received on the NOP in Appendix A. The City considered all of the NOP responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan update were adequately addressed. The City of San Jose considered the responses provided by CSA

on the NOP and addressed those items which were appropriate for inclusion in a Program EIR on a General Plan update. As described above in the response to Comment C.6., the school districts, individually and as a group represented by CSA, do not meet the CEQA Guidelines definition of Responsible Agencies.

C.58. CSA correctly identifies an minor error in the Draft EIR. The statement regarding the increase in police calls should read as follows: implementation of the General Plan update would generate up to 7,750 additional calls for police service to accommodate increased growth. As part of this First Amendment, the EIR text is revised to reflect that information.

CSA indicates that the Draft EIR treats the determination of environmental impacts for schools differently than it does for police protection. As the school section indicates, there is less than a 1% increase in projected student generation citywide between implementation of the San Jose 2020 General Plan and implementation of the existing Horizon 2000 General Plan; however, there is a 7% increase in police service calls under the San Jose 2020 General Plan. Therefore, the Draft EIR identifies that implementation of the Plan would result in potentially significant impacts upon police services, and not upon the school districts. Furthermore, in the case of the impacts to polices services, one agency is responsible for accommodating the 7% increase in police calls citywide. In the case of the effects on school services, the less than 1% increase in student generation is spread over 19 school districts, and each district is responsible for the incremental increase in student generation within that district.

C.59. CSA is referred to the responses to comments contained above in C.10.

C.60. As stated in the response to C.19., CSA's request that the City determine the adequacy of existing infrastructure serving existing schools is more appropriately addressed in a school district master plan. The Draft EIR contains a program-level evaluation of the adequacy of the infrastructure for various utilities citywide, and the potential impacts on the provision of utilities and services, such as electricity and natural gas, as a result of future residential development. At the time a specific development project is proposed within a given school district, it will be possible to evaluate the impacts of that proposal, at a greater level of detail, upon the school facilities within that district. The potential need for improvements to the infrastructure serving school facilities would be more appropriately assessed at the time the school districts pursue the construction of new schools and/or physical expansion of existing school facilities.

C.61. Please refer to response C.9.3., above. As stated above in response to Item 17 of CSA's NOP comments, the alternatives that were evaluated in the Draft EIR were selected by the General Plan Update Task Force as the most likely development scenarios for buildout of the General Plan.

In response to CSA's proposed alternative for phasing development with adequate public services, CSA misunderstands the process and timing for General Plan implementation and buildout. At the time individual projects are proposed to implement the General Plan, provision of adequate services and facilities to serve the proposed development will be addressed in the context of the environmental clearance for the project as well as in the review of the project. The General Plan, by its very nature, is a phased development over a twenty-six year period.

C.62. The Draft EIR contains an evaluation of the cumulative impacts associated with the General Plan update in accordance with CEQA Guidelines §15130 and Public Resources Code §21083. All of the proposed changes to the General Plan were considered both individually and cumulatively in terms of their effects on the environment. Additionally, the Draft EIR evaluated these effects within the context of the existing conditions in the San Jose Sphere of Influence, and in terms of their relationship to other approved and pending General Plan amendments within the City of San Jose.

C.63. CEQA Guidelines §15065 is used to guide a Lead Agency in determining whether or not an EIR is required. The City of San Jose determined that the proposed General Plan update would result in cumulative impacts and, therefore, prepared an EIR pursuant to CEQA Guidelines §15065. As stated above in C.62., the Draft EIR contains an evaluation of the cumulative impacts associated with the General Plan update in accordance with CEQA Guidelines §15130 and Public Resources Code §21083. All of the proposed changes to the General Plan were considered both individually and cumulatively in terms of their effects on the environment. Additionally, the Draft EIR evaluated these effects within the context of the existing conditions within the San Jose Sphere of Influence, and in terms of their relationship to other approved and pending General Plan amendments within the City of San Jose. CSA is also referred to the responses contained in response C.9.3.

C.64. The City of San Jose believes that the social and educational effects associated with the provision of school services have fiscal implications, not environmental consequences. The City of San Jose believes that improving or constructing school facilities or implementing the other "Measures to Increase School Capacity" are considered feasible and adequate to accommodate increased student populations at affected schools. Therefore, the adoption of the General Plan update would not result in significant impacts to schools.

C.65. The physical effects on the environment resulting from the adoption of the General Plan update are evaluated in the Draft EIR. The Draft EIR states that the General Plan will result in direct growth inducing impacts associated with the development included in the General Plan; however, these impacts are considered beneficial and integral to the implementation of the General Plan. Economic development is a major strategy of the San Jose 2020 General Plan and the location of the growth is intended to sustain and catalyze economic development in the City. The 126,000 jobs that could be developed under the San Jose 2020 General Plan represent planned growth. The Plan controls the timing of development and creates an equitable distribution of employment centers and residential areas. These policies are consistent with the growth planned in the Horizon 2000 General Plan. The fact that this development is included in the ABAG's projections for job growth in Santa Clara County provides further evidence that these jobs represent planned growth.

C.66. One of the purposes of the proposed San Jose 2020 General Plan is to improve conditions within the City of San Jose in a manner that reduces the degree of impacts upon the environment. Many of the policies contained in the EIR are intended to create beneficial uses of the environment and to reduce risks to health and safety. By definition, the San Jose 2020 General Plan is a long-range planning document, and this EIR has addressed the long-term and cumulative effects associated with buildout under the General Plan.

C.67. The Draft EIR evaluated buildout of the San Jose 2020 General Plan at a level of detail commensurate with the level of detail in the General Plan. The City of San Jose does not propose to acquire property, develop land, or alter other agency's operations as part of the adoption of the General Plan update. The primary and secondary effects associated with implementation of the General Plan have been addressed in the EIR for each category of environmental issue. The growth inducing impacts associated with the expansion of the South Almaden Valley Urban Reserve were addressed on page 273 of the Draft EIR.

C.68. CSA questions the consistency between the existing Horizon 2000 General Plan and the proposed San Jose 2020 General Plan. §15125 of the CEQA Guidelines does not pertain when the project is the General Plan; otherwise General Plans for jurisdictions throughout the State of California could never be changed which would conflict with the Government Code's requirement that General Plans be periodically updated. The San Jose 2020 General Plan is internally consistent as required by state law.

C.69. The Draft EIR is an information document which addresses significant environmental effects of a project, identifies ways to mitigate those effects, and describes reasonable alternatives to the project. The purpose of the EIR is to address the environmental impacts resulting from the General Plan update. If CSA wishes to amend the City's General Plan to include their proposed policies, a General Plan amendment request should be submitted to the City for consideration during the Annual Review.

D. RESPONSES TO COMMENTS FROM THE ALUM ROCK UNION SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Alum Rock Union School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

E. RESPONSES TO COMMENTS FROM THE BERRYESSA UNION SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Berryessa Union School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

F. RESPONSES TO COMMENTS FROM THE EAST SIDE UNION HIGH SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the East Side Union High School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

G. RESPONSES TO COMMENTS FROM THE FRANKLIN-MCKINLEY UNION SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Franklin-McKinley Union School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

H. RESPONSES TO COMMENTS FROM THE MORGAN HILL UNIFIED SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Morgan Hill Unified School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

I. RESPONSES TO COMMENTS FROM THE OAK GROVE SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Oak Grove School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

J. RESPONSES TO COMMENTS FROM THE ORCHARD SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the Orchard School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

K. RESPONSES TO COMMENTS FROM THE SAN JOSE UNIFIED SCHOOL DISTRICT RECEIVED MAY 23, 1994.

Since the San Jose Unified School District submitted the same comments as those submitted by CSA, the school district is referred to the responses to the comments received from CSA, above.

L. RESPONSES TO COMMENTS FROM THE SANTA CLARA VALLEY WATER DISTRICT RECEIVED MAY 25, 1994

L.1. The Water District's comments are noted. Figure 39 and page 146 are revised accordingly.

L.2. The Water District's comments are noted. The Hazardous Materials section contains information on documented and reported fuel leak sites that was obtained prior to April, 1993. Figure 39 and the last bulleted item on page 146 are accordingly revised by this First Amendment.

APPENDIX D

SCHOOL DISTRICT INFORMATION

School Survey Responses

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

RECEIVED
FEB 09 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

ALUM ROCK ELEMENTARY SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	18	11,169	11,629
Middle	6	4,803	5,366
High			
Other *			
Closed Schools			

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.62	.14	.28
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
Arbuckle Elementary School	X		
Hubbard " "	X		
Meyer " "	X		
Ryan " "	X		
Shields " "	X		
Slonaker " "	X		

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
None			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Ludlow Way	K-5

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
None	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Fischer Middle School 1720 Hopkins Dr., San Jose, CA 95122	4 Relocatable Buildings
George Middle School 277 Mahoney Dr., San Jose, CA 95127	2 Relocatable Buildings
Ocala Middle School 2800 Ocala Ave., San Jose, CA 95148	4 Relocatable Buildings

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

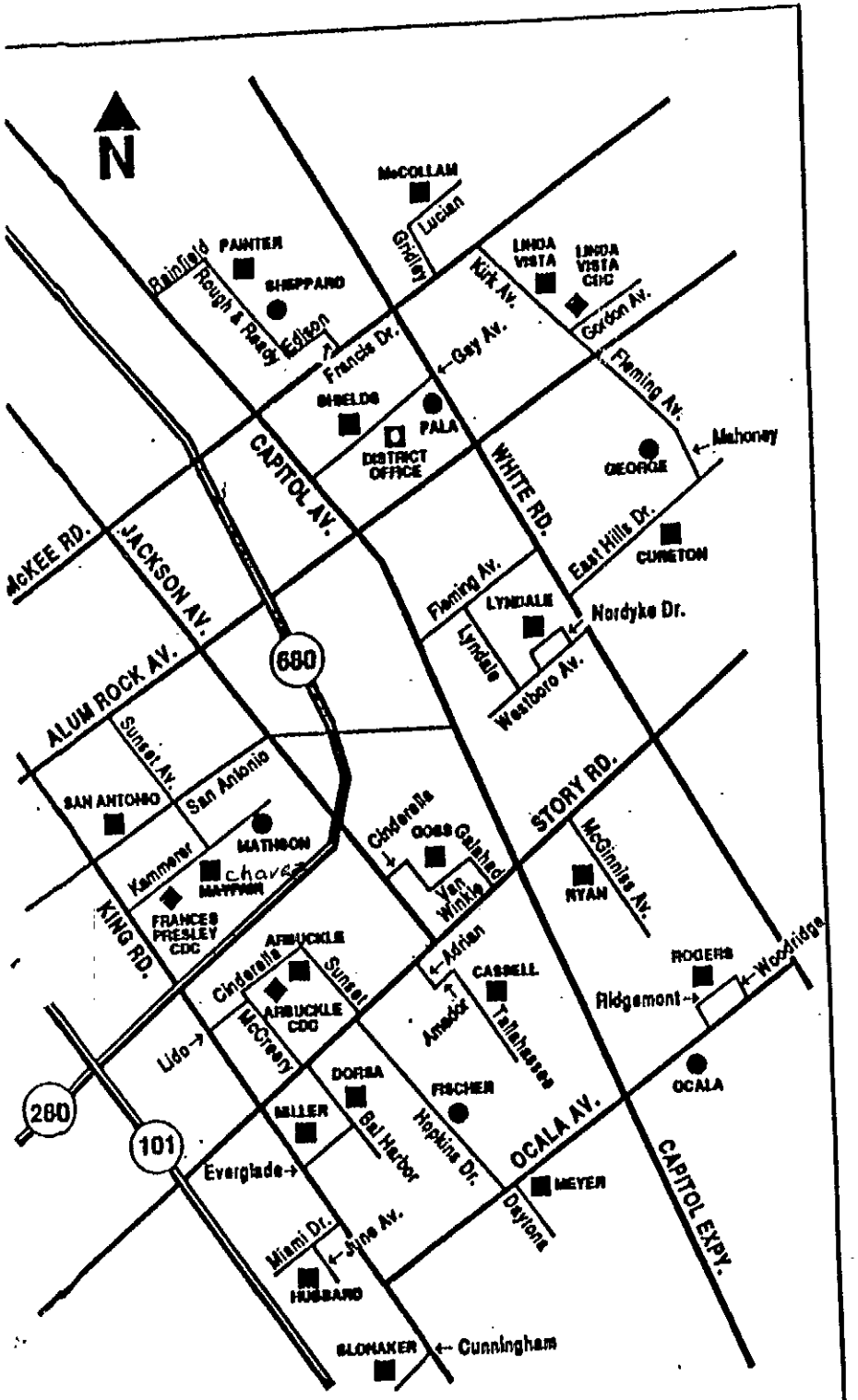
5. **ADDITIONAL COMMENTS and Background Material of District:**

To add relocatable buildings to the middle school sites listed on page 2 would drive the student population up at those sites to an unmanageable number. We already have one of the largest class and total campus population sizes of the Santa Clara County school districts.

Prepared by: Linda Latasa

Date: 2-8-94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*



NOT TO SCALE

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, California 95127
(408) 258-4923

ELEMENTARY SCHOOLS ■

ARBUCKLE
1970 Cinderella Ln.
(408) 259-2910

CASSELL
1300 Tallahassee Dr.
(408) 259-2653

CURETON
3720 East Hills Dr.
(408) 258-5066

DORSA
1290 Bal Harbor Dr.
(408) 259-2460

GOSS
2475 Van Winkle Ln.
(408) 258-8172

HUBBARD*
1745 June Ave.
(408) 251-1296

LINDA VISTA
100 Kirk Ave.
(408) 258-4938

LYNDALE
13901 Nordyke Dr.
(408) 251-4010

~~**MAYFAIR**~~ Cesar Chavez
2000 Kammerer Ave.
(408) 258-5078

McCOLLAM
3311 Lucian Ave.
(408) 258-1006

MEYER
1824 Daytona Dr.
(408) 258-8208

MILLER*
1250 S. King Rd.
(408) 258-2214

PAINTER
500 Rough & Ready Rd.
(408) 258-1458

ROGERS
2999 Ridgemont Ave.
(408) 258-3686

RYAN
1241 McGinness Dr.
(408) 258-4936

SAN ANTONIO*
1855 E. San Antonio St.
(408) 258-8582

SHIELDS*
2851 Gay Ave.
(408) 258-4916

BLOHAKER
1601 Cunningham Ave.
(408) 259-1941

* State Preschool Program Site
Preschool Office: (408) 258-4923 ext. 299

MIDDLE SCHOOLS ●

FISCHER
1720 Hopkins Dr.
(408) 258-6244

GEORGE
277 Mahoney Dr.
(408) 259-2402

PALA
149 N. White Rd.
(408) 258-4996

MATHSON
2050 Kammerer Ave.
(408) 251-3232

OCALA
2800 Ocala Ave.
(408) 923-2800

SHEPPARD
480 Rough & Ready Rd.
(408) 258-4323

CHILD DEVELOPMENT CENTERS ◆

ARBUCKLE
1910 Cinderella Ln.
(408) 259-8340

LINDA VISTA
81 Gordon Ave.
(408) 272-3666

FRANCES PRESLEY
1990 Kammerer Ave.
(408) 258-1695

BLUM ROCK 10/93 CBEDS ENROLLMENT VS. CAPACITY

SCHOOL	CBEDS 10/93 REG.ED. BY GRADE LEVEL K	1	2	3	4	5	6	7	8	CBEDS SPECIAL ED.	TOTAL	MAXIMUM CAPACITY	% UTILIZED
ARBUCKLE	105	108	101	95	95	79				5	588	555	103.99%
CASSELL	130	123	112	117	128	95				6	711	703	101.14%
CHAVEZ	129	101	104	86	93	87				39	639	586	109.04%
[illegible]TON	99	103	105	90	112	92				21	622	606	102.64%
[illegible]	108	91	104	98	82	81				14	578	701	82.45%
GOSS	100	107	92	65	78	79				23	564	622	90.68%
HUBBARD	92	94	94	66	78	71				13	508	641	79.25%
LINDA VISTA	132	116	110	109	124	99				16	706	666	106.01%
LYNDALE	100	100	106	102	104	95				38	645	731	88.24%
MCCOLLAM	113	131	99	127	132	122				12	736	709	103.81%
MEYER	130	98	90	118	104	95				44	579	775	87.61%
MILLER	79	80	72	85	70	82				29	497	583	85.25%
MT.HAMILTON			3	2		2	1	2	1	0	11	18	61.11%
PAINTER	82	86	73	88	81	88				0	498	544	91.54%
ROGERS	104	96	102	96	88	100				20	606	659	91.96%
RYAN	100	102	117	84	110	107				29	649	668	97.16%
SAN ANTONIO	135	116	116	102	109	102				13	693	577	120.10%
SHIELDS	120	130	113	108	85	101				11	668	632	105.70%
SI ONAKER	86	101	97	104	78	88				17	571	642	88.94%
FISCHER							353	321	267	49	1010	1047	96.47%
GEORGE							266	240	235	34	775	869	89.18%
MATHSON							238	227	198	46	709	1061	66.82%
OCALA							313	307	260	42	922	832	110.82%
PALA							195	176	180	25	576	542	106.27%
SHEPPARD							266	260	225	60	811	1015	79.90%
TOTAL	1944	1883	1810	1762	1751	1665	1632	1533	1386	606	15972	16995	93.98%

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

BERRYESSA UNION SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	10	5,871	5,575
Middle	3	2,772	2,340
High			
Other *			
Closed Schools			

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.4	.4	?
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
	None		

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
N/A			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Flickinger Avenue	Undecided
Jackson & Commodore	Undecided

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Birchwood Elementary	24 Classroom Spaces
3435 Birchwood Lane	(Leased for 12 Years)
San Jose, CA 95132	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Most of the schools could accommodate additional portables. The question is relative to the strain on the school's support facilities and personnel caused by increased enrollment.	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

5. **ADDITIONAL COMMENTS and Background Material of District:**

Determining instructional capacity is difficult. Due to a changing curriculum and increased student diversity, each school must use space which was originally intended as classrooms for other uses, i.e. computer labs, individualized instruction, specialized State and Federal programs, etc.

Prepared by: Patrick Allen, Assist. Supt., Bus.

Date: 2/04/94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: ***Lee Quintana.***

Bielke Vos Saulino, Superintendent

1376 Piedmont Road
San Jose, CA 95132-2498

BERRYESSA UNION SCHOOL DISTRICT
Pathway to the Future

Phone: (408) 923-1800
Fax: (408) 259-3869

Directory

BROOKTREE SCHOOL (K-5)
1781 Olivetree Lane
San Jose, CA 95132
923-1910
Principal: Art Villarruz

CHERRYWOOD SCHOOL (K-5)
2550 Greengate Drive
San Jose, CA 95132
923-1915
Principal: Carolyn Keagle

LANEVIEW SCHOOL (K-5)
2095 Warmwood Lane
San Jose, CA 95132
923-1920
Principal: Lali Morales

MAJESTIC WAY SCHOOL (K-5)
1855 Majestic Way
San Jose, CA 95132
923-1925
Principal: Alvin Moe

MORRILL MIDDLE SCHOOL (6-8)
1970 Morrill Avenue
San Jose, CA 95132
923-1930
Principal: Estella Quintanilla

NOBLE SCHOOL (K-5)
3466 Grossmont Avenue
San Jose, CA 95132
923-1935
Principal: Randy Gallegos

NORTHWOOD SCHOOL (K-5)
2760 Trimble Road
San Jose, CA 95132
923-1940
Principal: William Mulford

PIEDMONT MIDDLE SCHOOL (6-8)
955 Piedmont Road
San Jose, CA 95132
923-1945
Principal: Frank Tom

RUSKIN SCHOOL (K-5)
1401 Turlock Lane
San Jose, CA 95132
923-1950
Principal: Earline Franklin

SIERRAMONT MIDDLE SCHOOL (6-8)
3155 Kimlee Drive
San Jose, CA 95132
923-1955
Principal: Ron Fairchild

SUMMERDALE SCHOOL (K-5)
1100 Summerdale Lane
San Jose, CA 95132
923-1960
Principal: Elizabeth Warren

TOYON SCHOOL (K-5)
995 Bard Street
San Jose, CA 95127
923-1965
Principal: Roy Takeuchi

VINCI PARK SCHOOL (K-5)
1311 Vinci Park Way
San Jose, CA 95132
923-1970
Principal: Lani Brunmeier

SPECIAL CENTERS:
Northwood School
- PRESCHOOL 923-1944
- CHILD DEVELOPMENT 923-1943

BOARD OF TRUSTEES
Susan Brooks • Tonia Izu • Susan Mitchell • Larry Tom • Charity Webb

CBEDS

SCHOOL TOTALS
October, 1993

		CAPACITY
BROOKTREE	591	590
CHERRYWOOD	497	472
LANEVIEW	583	560
MAJESTIC WAY	558	531
MORRILL	938	807
NOBLE	575	560
NORTHWOOD	528	472
PIEDMONT	1003	834
RUSKIN	625	590
SIERRAMONT	831	699
SUMMERDALE	538	501
TOYON	607	560
VINCI PARK	769	737

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

CAMBRIAN SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	4	1,886	2,212
Middle	1	771	1,036
High	-0-		
Other *			
Closed Schools	2	N/A	952

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	UNK.		
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
None			

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
None			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
None	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Steindorf	See p. 1
Metzler	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
All schools	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

5. ADDITIONAL COMMENTS and Background Material of District:

Prepared by: _____

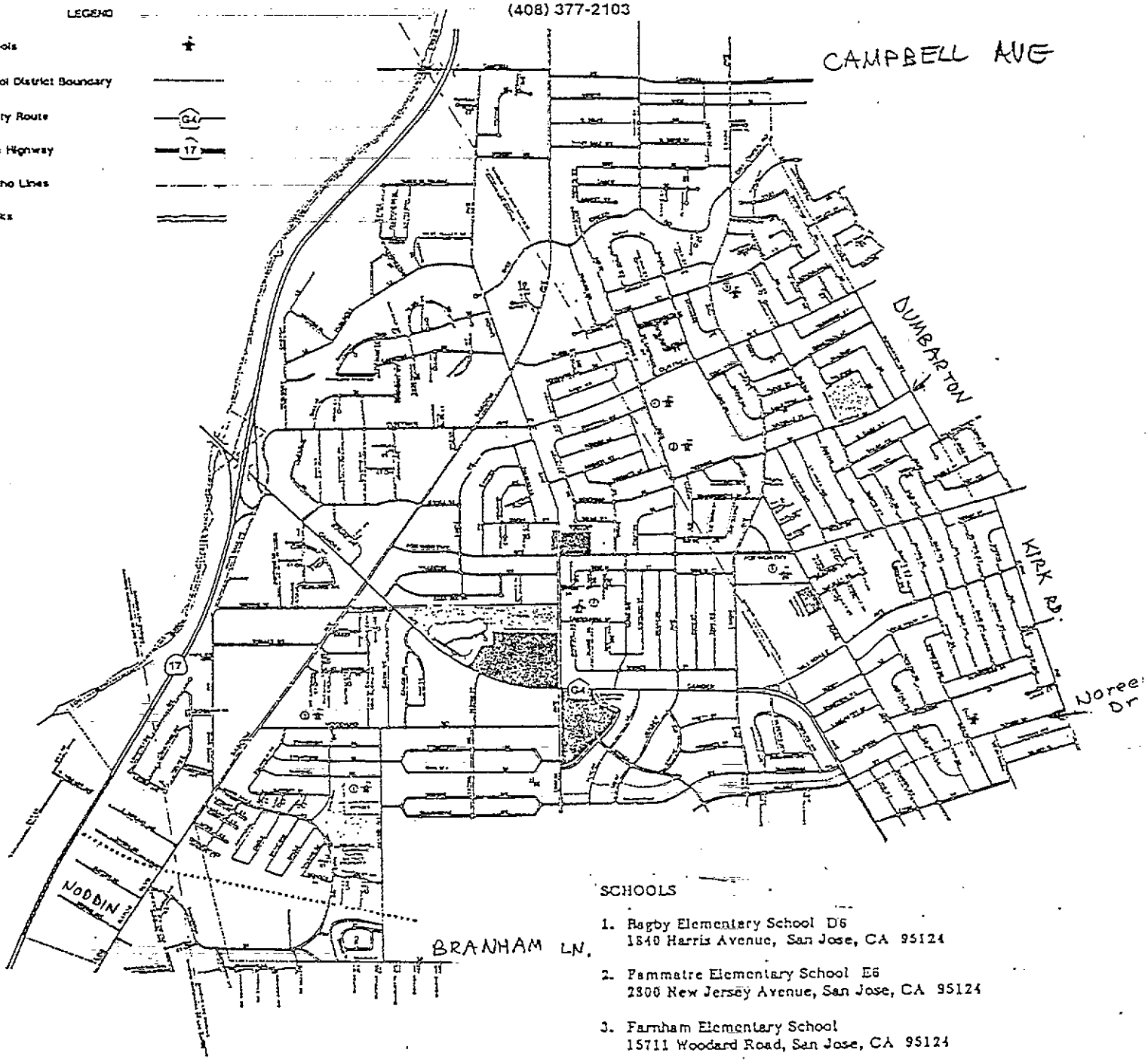
Date: 2-10-94

STEPHEN L. PHILLIPS
DIRECTOR OF BUSINESS SERVICES
CAMBRIAN SCHOOL DISTRICT

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

CAMBRIAN ELEMENTARY SCHOOL DISTRICT

4115 JACKSOL DRIVE, SAN JOSE, CA 95124
(408) 377-2103



SCHOOLS

1. Bagby Elementary School D6
   1840 Harris Avenue, San Jose, CA 95124
2. Pammatre Elementary School E6
   2800 New Jersey Avenue, San Jose, CA 95124
3. Farnham Elementary School
   15711 Woodard Road, San Jose, CA 95124
4. Ida Price Middle School E6
   2550 New Jersey Avenue, San Jose, CA 95124
5. Sartorette Elementary School G8
   3850 Woodford Drive, San Jose, CA 95124
6. Administrative Offices G3
   4115 Jacksol Drive, San Jose, CA 95124

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

RECEIVED
FEB 18 1994
CITY OF SAN JOSE

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. Please also identify schools serving students living in San Jose.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)
   Number of San Jose students attending the school.

3. Complete the following tables (use additional sheets if needed):

CAMPBELL UNION SCHOOL DISTRICT

DISTRICT SCHOOLS				
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Number of San Jose Students	Instructional Capacity, Oct. 1993
Elementary	8	4346	2584	5075
Middle	3	2819	1572	3194
High	–			
Other *	–			
Closed Schools	–			

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	NOT AVAILABLE		
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
NONE			

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
WE ARE ATTEMPTING A $42 MILLION BOND ELECTION ON APRIL 12, 1994			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
NONE	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Sherman Oaks	435 (not including county school)
Dover	580

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Capri 4-6	Lynhaven 2
Castlemont 8	Marshall Lane 4
Forest Hill 8	Rosemary 4
Hazelwood 6	Rolling Hills 8

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
San Tomas	Surplus - Revenues needed to repair other facilities

5. **ADDITIONAL COMMENTS and Background Material of District:**

Prepared by Richard A. McCann

Date: February 16, 1994

CAMPBELL UNION SCHOOL DISTRICT

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City of San Jose
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San Jose, CA 95110
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FEB 18 1994

CITY OF SAN JOSE

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. Please also identify schools serving students living in San Jose.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)
   Number of San Jose students attending the school.

3. Complete the following tables (use additional sheets if needed):

CUPERTINO UNION SCHOOL DISTRICT

DISTRICT SCHOOLS				
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Number of San Jose Students	Instructional Capacity, Oct. 1993
Elementary	18	10,681	2,432	10,850
Middle	4	3,050	699	3,530
High				
Other *				
Closed Schools	6	--	--	--

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	SEE ATTACHED		
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or In Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
Sedgwick Elementary 10500 Tantau, Cupertino CA 95014	Under construction	630	8/31/94

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
SEE ATTACHED	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
SEE ATTACHED	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
Wilson Elementary (18 lots)	Facility Modernization Funding
Grant Elementary (2 lots)	Facility Modernization Funding

5. ADDITIONAL COMMENTS and Background Material of District:

Fremont Older Elementary School has been purchased by the City of Cupertino. The school will close on June 15, 1994. The students will transfer to the new Sedgwick School which will open on September 1, 1994.

The City of Cupertino plans to develop the Fremont Older site for open space and sports fields.

Prepared by: [illegible]

Date: 2/14/94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

CUPERTINO UNION SCHOOL DISTRICT
City of San Jose Surey Report Data

Elementary Schools	Address	Capacity	Potential Additional Portables
Blue Hills	12300 DeSanka Avenue Saratoga, CA 95070	510	2
Collins	10401 Vista Drive Cupertino, CA 95014	750	3
DeVargas	5050 Moorpark Avenue San Jose, CA 95129	630	1
Dilworth	1101 Strayer Drive San Jose, CA 95129	480	2
Eisenhower	277 Rodonovane Drive Santa Clara, CA 95051	540	2
Faria	10155 Barbara Lane Cupertino, CA 95014	570	0
Garden Gate	10500 Ann Arbor Avenue Cupertino, CA 95014	420	2
Lincoln	21710 McClellan Road Cupertino, CA 95014	690	0
McAuliffe	12211 Titus Avenue Saratoga, CA 95070	420	4
Meyerholz	6990 Melvin Drive San Jose, CA 95129	420	2
Montclaire	1160 St. Joseph Ave. Los Altos, CA 95024	570	0
Muir	6560 Hanover Drive San Jose, CA 95129	690	2
Nimitz	545 East Cheyenne Drive Sunnyvale, CA 94087	570	1
Regnart	1170 Yorkshire Drive Cupertino, CA 95015	720	1

Elementary Schools	Address	Capacity	Potential Additional Portables
Sedgwick	10511 South Tantau Cupertino, CA 95014	630	2
Stevens Creek	10300 Ainsworth Drive Cupertino, CA 95014	600	2
Stocklmeir	592 Dunholme Way Sunnyvale, CA 94087	720	0
West Valley	1635 Belleville Way Sunnyvale, CA 94087	630	2

Junior High Schools	Address	Capacity	Potential Additional Portables
Cupertino	1650 Bernardo Avenue Sunnyvale, CA 94087	893	3
Hyde	19325 Bollinger Road Cupertino, CA 95014	949	2
Kennedy	821 Bubb Road Cupertino, CA 95014	893	3
Miller	6151 Rainbow Drive San Jose, CA 95129	809	4

Closed Schools	Address	Capacity	Potential Additional Portables
Center for Children & Familes	572 Dunhome Way Sunnyvale, CA 94087	540	0
Eaton	10110 Suisun Drive Cupertino, CA 95014	600	0
Luther	220 Blake Avenue Santa Clara, CA 95051	600	0
Murdock	1188 Wunderlich Drive San Jose, CA 95129	600	0
Nan Allan	10253 Portal Avenue Cupertino, CA 95014	120	0
Older	19500 Calle de Barcelona Cupertino, CA 95014	600	0

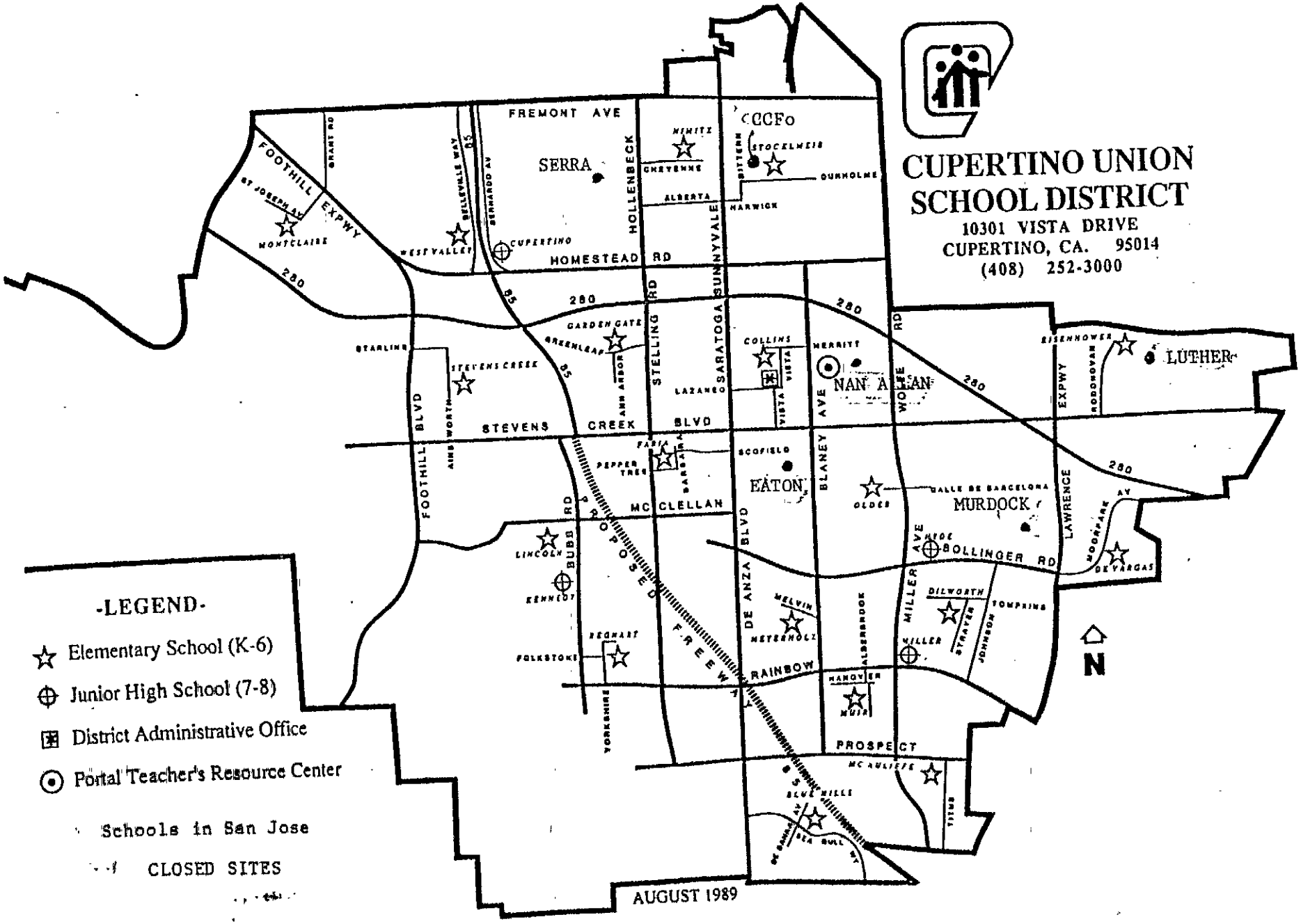
Closed Sites	Address	Capacity	Potential Additional Portables
Portal	10300 Blaney Avenue Cupertinc, CA 95014	600	0
Serra	1510 Leiston Drive Sunnyvale, CA 94087	540	0

Student Generation Rates
Cupertino Union School District

	Occupied Units	Total Units[1]
ELEMENTARY		
Students	453	453
Housing Units	2,602	2,710
Student Generation Rate	0.174	0.167
JUNIOR HIGH		
Students	134	134
Housing Units	2,602	2,710
Student Generation Rate	0.052	0.049
ALL GRADES		
Student Generation Rate	0.226	0.216

[1]Based on a stabilized vacancy rate of 4.0 percent

Source: Morgan Woollett & Associates; Recht Hausrath & Associates


CUPERTINO UNION SCHOOL DISTRICT
10301 VISTA DRIVE
CUPERTINO, CA. 95014
(408) 252-3000
-LEGEND-
Elementary School (K-6)
Junior High School (7-8)
District Administrative Office
Portal Teacher's Resource Center
Schools in San Jose
CLOSED SITES
AUGUST 1989
N
FREMONT AVE
SERRA
CCFo
HOMESTEAD RD
STEVENS CREEK BLVD
MC CLELLAN
BOLLINGER RD
PROSPECT
RAINBOW
EATON
MURDOCK
NAN ALLAN
LUTHER
FOOTHILL EXPWY
PROPOSED FREEWAY
280
85
HOLLENBECK
STELLING RD
SARATOGA
SUNNYVALE
DE ANZA BLVD
BLANEY AVE
WOLFE RD
LAWRENCE EXPWY
FOOTHILL BLVD
BUBB RD
MILLER AVE
CUPERTINO
WEST VALLEY
MONTCLAIRE
GARDEN GATE
COLLINS
MERRITT
STEVENS CREEK
SCOFIELD
PEPPER TREE
OLDER
VALLE DE BARCELONA
LINCOLN
KENNEDY
REGNART
FOLKSTONE
MELVIN
METERHOLZ
HANOVER
MUIR
DILWORTH
TOMPKINS
STRAYER
JOHNSON
MILLER
MC AULIFFE
BLUE HILLS
SEA BULL
DE VARGAS
EISENHOWER
RODONOVAN
MOORPARK AV
YORKSHIRE
TITUS

EVERGREEN SCHOOL DISTRICT

February 16, 1994

RECEIVED
FEB 18 1994
CITY OF SAN JOSE

Mr. Edward Gawf, Principal Planner
Dept. of City Planning and Building
City of San Jose
801 North First Street
San Jose, CA. 95110-1795

Dear Mr. Gawf:

Enclosed is a completed School Survey reflecting enrollment and instructional capacity in October 1993 in the Evergreen School District.

Please call for further clarification.

Sincerely,

CLARKE E. SCHILLER
Director of Planning

District Administration Office
3188 Quimby Road
San Jose, California 95148
Telephone: (408) 270-6800

Superintendent: James F. Smith
Governing Board: Kathy Atwood
Tom Matsumoto
Kathy Bowers
Jeff Fischer
Carolyn Clark

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
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SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS) See below for District
   Instructional Capacity (October 1993) See below for District

3. Complete the following tables (use additional sheets if needed):

EVERGREEN SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	11	K = 1,104 1-6= 6,608	* K = 1,320 1-6 = 6,552
Middle	3	2,873	3,304
High	N/A	---	---
Other *	N/A	---	---
Closed Schools	N/A	---	---

*Explain K with double session (A.M. and P.M.)

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	0.52	0.52	0.52
High	N/A	N/A	N/A

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
N/A	---	---	---

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
Silver Oak Elementary	Under Construction	660	Sept. 1994
(K-6)		(To serve Silver	Creek Valley
		and other subdi	visions on San
		Felipe Rd-south	of the Villages)

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Evergreen Specific Plan:	
1. Fowler Road (site identified)	K-6 (To serve 2,900 ± homes in
2. Within Boundary of Quimby, Ruby,	Evergreen Specific Plan)
Aborn and Tully (site identified)	K-6

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
N/A	---

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Most sites	Unknown

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
N/A	---

5. **ADDITIONAL COMMENTS and Background Material of District:**

A global view of district enrollment is used in conjunction with individual school capacity. Students (K and 6) may be moved depending on elementary school capacity.

The instructional capacity of classrooms are based on thirty (30) students per room (K-6); twenty-six (26) students per room (7-8); and twelve (12) students per room (all-day special education).

Adding portables at sites has been a procedure in the Evergreen School District since the 1970's. Most sites could be subject to additional portables if enrollment within the attendance area exceeds school capacity.

The capacity of a school changes depending on which grade is assigned to a school, e.g., Gr. 6 in a middle school or special education programs.

C Schiller

Prepared by: Clarke E. Schiller
Director of Planning

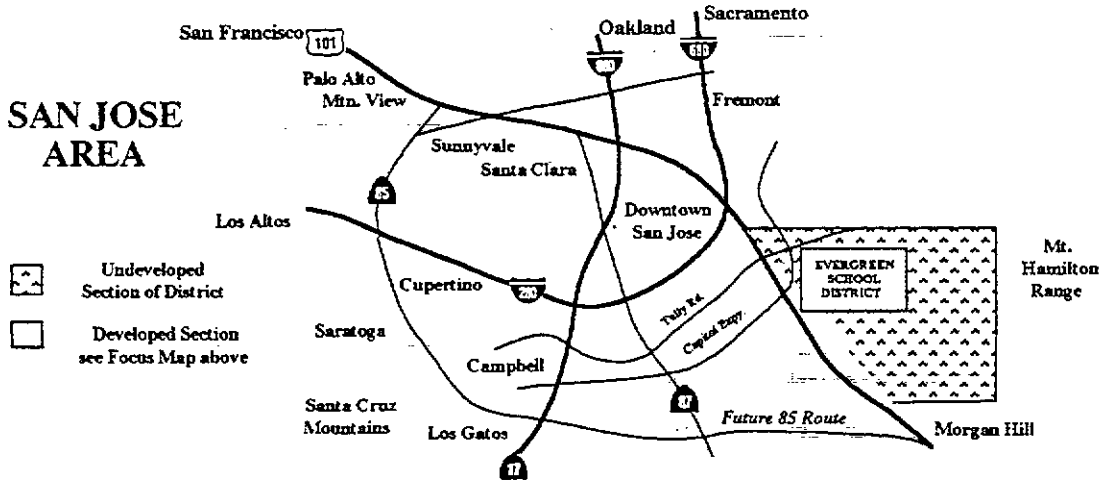
Date: 2-7-94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

Evergreen School District Focus Map 1992-1993

Lake Cunningham Park
Reid-Hillview Airport
Tully Rd.
Clarice Dr.
Quimby Rd.
Eastridge Shopping Center
Rigoletto Dr.
Tierra Buena Dr.
Avila Ave.
King Rd.
Hwy. 101
White Rd.
Suzanium Dr.
Peppermint Dr.
Flint Ave.
Norwood Ave.
Remington Wy.
Ruby Ave.
Castelton Dr.
Westbranch Dr.
Rosemore Wy.
Stevens Ln.
Millbrook Dr.
Oakgate Wy.
Monrovia Dr.
Nieman Blvd.
Aborn Rd.
Daniel Maloney Dr.
Capitol Expressway
Silver Creek High School
Colt Wy.
Silver Creek Rd.
Greenleaf
Fowler Rd.
Yerba Buena Ave.
Calaveras Dr. Rd.
Delta Rd.
Peartree
Partridge Dr.
San Felipe Rd.
Evergreen Valley College
SYVA
Yerba Buena Rd.
Evergreen Community Center
Silver Creek Valley Rd.
Farnsworth Dr.
The Villages
Blossom Hill Rd.
Silver Creek Valley Country Club
N
W
E
S

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17.



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SCHOOL SURVEY

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2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

FRANKLIN-MCKINLEY SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	11	7,784	8,000
Middle	2	2,849	2,400
High			
Other *			
Closed Schools			
*Explain TOTAL:		10,633	10,400

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.43	.43	.56
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
Santee	X		
J.W. Fair, Franklin,			X*
Hillsdale, Kennedy, McKinley,			
Meadows, Seven Trees, Windmill Springs			

* These Schools are all 4-Track

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
Wool Creek Middle School	Planned	1,200	1 July 97
(4 Track - YRE)			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Wool Creek Drive (Acquired)	6-8
Communication Hill (Identified)	K-5
(4 Track - YRE)	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
None	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Jeanne Meadows	Six

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
J.W. Fair, Wool Creek,	Debt Service For District
Sylvandale and Franklin	Service Center

5. **ADDITIONAL COMMENTS and Background Material of District:**

Franklin-McKinley School District is one of the largest K-8 Elementary Year-Round School Districts in Northern California. As of this date, it has 77 portables in place on 12 school sites. The District has been steadily growing at an average annual rate of 2.21% for over a decade. This amounts to a minimum annual increase of 7 classrooms without any impact from large residential development. The District is planning to convert its remaining 10 month and/or single track YRE schools to 4-track schools by July 1, 1996.

Prepared by: William G. Glynn
Assistant Superintendent, Business Services

Date: February 17, 1994

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
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(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. Please also identify schools serving students living in San Jose.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)
   Number of San Jose students attending the school.

3. Complete the following tables (use additional sheets if needed):

MORELAND SCHOOL DISTRICT

DISTRICT SCHOOLS				
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Number of San Jose Students	Instructional Capacity, Oct. 1993
Elementary	6	2,922	2,197	[illegible]
Middle	2	1,229	933	[illegible]
High N/A				
Other *				
Closed Schools	5			

***Explain**

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)			
High N/A			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE N/A			
Name of School	Single Track	Three Track	Four Track

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
	N/A		

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
N/A	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Amber Drive	464
Bucknall	~~551~~
Coventry	551
El Quito	400
Phelan	~~377~~
StrawberryPark	377

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
N/A	

5. ADDITIONAL COMMENTS and Background Material of District:

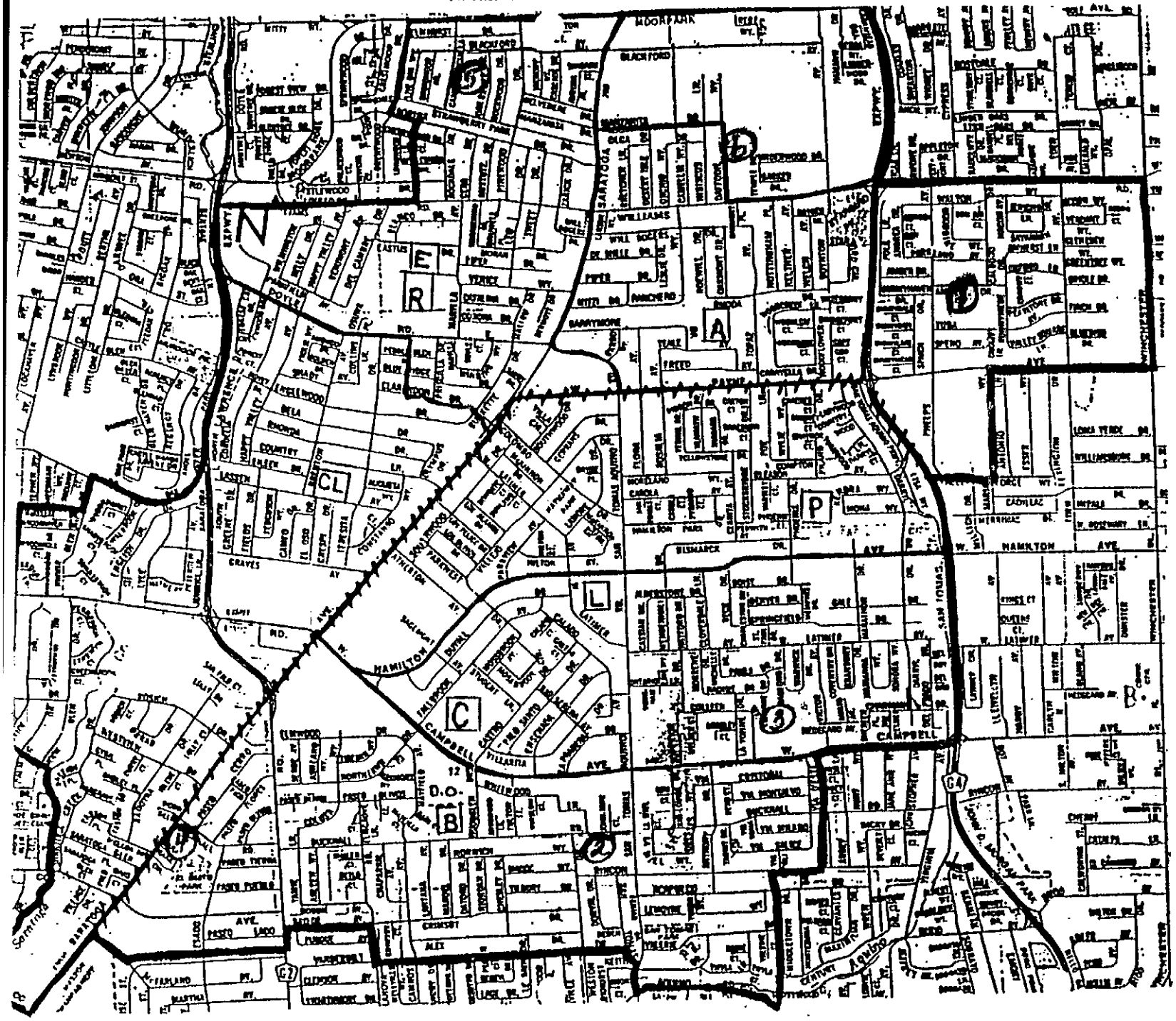
Prepared by: Janice Bate

Date: February 9, 1994

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

SCHOOL	ENROLLMENT	INSTRUCTIONAL CAPACITY	# SAN JOSE STUDENTS
Anderson School 4000 Rhoda Dr. San Jose, CA 95117	500	544	496
Baker School 4845 Bucknall Rd. San Jose, CA 95130	473	452	296
Country Lane School 5140 Country Lane San Jose, CA 95129	599	602	431
Easterbrook School 4660 Eastus Dr. San Jose, CA 95129	385	390	404
Latimer School 4250 Latimer Ave. San Jose, CA 95130	505	525	199
Payne School 3750 Gleason Ave. San Jose, CA 95130	438	455	373
Castro Middle School 4600 Student Lane San Jose, CA 95130	543	560	313
Rogers Middle School 4835 Doyle Rd. San Jose, CA 95129	674	720	619

MORELAND SCHOOL DISTRICT



A = ANDERSON
243-6031

B = BAKER
379-2101

C = CASTRO MS
379-3620

CL = COUNTRY LANE
252-3444

E = EASTERBROOK
253-3424

L = LATIMER
379-2412

P = PAYNE
241-1788

R = ROGERS MS
253-7262

LEASED SCHOOL

1. Amber Drive
   3500 Amber Dr.
   San Jose, CA 95117

2. Bucknall School
   4300 Bucknall Rd.
   San Jose, CA 95130

3. Coventry School
   1125 W. Campbell Ave.
   Campbell, CA 95008

4. El Quito Park School
   18720 Bucknall Rd.
   Saratoga, CA 95070

5. Strawberry Park School
   730 Camina Escuela
   San Jose, CA 95129

6. Phelan School
   801 Hibiscus Ln.
   San Jose, CA 95117

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

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CITY OF SAN JOSE

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

OAKGROVE SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	17	9,421	9,427
Middle	3	2,593	2,713
High	--	--	--
Other *	--	--	--
Closed Schools	2	--	1,129

**Explain*

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.5	.5	.25
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
None			

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
New school in Shea Homes/	Planning in process -	610	1996-97
Levin development	mitigation agreement		
	being developed		

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
None	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Calero	610
Dickinson	519

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
All but Parkview could accommodate up	Not evaluated
to two portables	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

5. **ADDITIONAL COMMENTS and Background Material of District:**

Closed schools "capacity" not meaningful due to location of the schools and current demographics of the area. In addition, the schools are fully leased and provide badly needed revenue to the District!

Prepared by: Hardy Childers
Hardy Childers, Asst. Supt., Business

Date: February 8, 1994

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana*.

SCHOOL	ENROLLMENT OCTOBER 1993 CBEDS	INSTRUCTIONAL CAPACITY OCTOBER 1993
ANDERSON	582	549
BALDWIN	512	549
BLOSSOM VALLEY	644	610
CHRISTOPHER	538	549
DEL ROBLE	517	610
EDENVALE	577	458
FROST	485	519
GLIDER	467	549
HAYES	672	549
MINER	602	549
OAK RIDGE	610	610
PARKVIEW	674	580
SAKAMOTO	516	610
SAN ANSELMO	523	580
SANTA TERESA	582	549
STIPE	540	519
TAYLOR	380	488
BERNAL	922	930
DAVIS	878	827
HERMAN	793	956

Oak Grove School District

SCHOOL FACILITIES MASTER PLAN

AND USE PROJECTIONS FOR PROPOSED DEVELOPMENTS

January 1994

Prepared By:

BSI Consultants, Inc.

and Hardy Childers, Assistant Superintendent for Business Services

OAK GROVE SCHOOL DISTRICT

SCHOOL FACILITIES MASTER PLAN
AND USE PROJECTIONS FOR PROPOSED DEVELOPMENTS

January 1994

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SECTION I

EXECUTIVE SUMMARY

As a condition of development within the Oak Grove School District, developers are required to pay school facility fees for the impact of the new development on existing school facilities. In order to determine the projected impact of the construction of a new development and to ensure proper accommodation of the students, a specific facilities needs report was necessary.

BSI Consultants, Inc. was retained to perform an impact evaluation of future developments on existing school infrastructure. This report identifies key planning criteria and assumptions used to determine the recommended school site for future developments, development impacts, results of the research, and funding alternatives for the District.

Currently, District operations include seventeen (17) elementary and three (3) intermediate schools. The District also has two closed schools, however, they are not located in areas which currently require additional student capacity. Further, the closed schools are leased to third parties providing a badly needed revenue stream in very difficult economic times. The available (open) elementary schools (grades K-6) within the District provide school capacity for 9,427 students with a 1993-94 CBEDS enrollment of 9,421 students. Current intermediate school facilities (grades 7-8) provide capacity for 2,713 intermediate school students with a 1993-94 CBEDS enrollment of 2,593 students. Since enrollment of the elementary schools is at the capacities of the facilities in use, it is evident that new developments within the District will have a significant impact on the existing school system.

The remainder of this report will evaluate the impacts expected due to developments in the District. A summary of each section is presented herein.

Section II of this report discusses the specific planning criteria and assumptions used, for purposes of this report, to determine the placement of students generated by future developments.

Section III reviews the four-step test used to define the reasonable relationship between development and the needs of the community for elementary and intermediate school facilities caused by development as required by Government Code Section 66000 et seq.

Section IV analyzes the proposed/prospective developments, the affected schools, the impact on the affected schools, and the yearly enrollment projections as development progresses.

Section V discusses available funding mechanisms and strategies for the District and makes recommendations for the most feasible alternatives available.

Appendices have been prepared and are found at the end of the report for the following:

- Appendix A - Map of the District and New Developments
- Appendix B - Impact of New Development on School Capacities
- Appendix C - Enrollment Projections Including New Development Impacts

SUMMARY OF SCHOOL ATTENDANCE RECOMMENDATIONS

The analysis from this study resulted in the following tentative school assignments for each of the proposed/prospective developments. All final boundaries decisions are subject to further detailed review and Board of Trustees approval as these and other developments progress.

Proposed/Prospective Development	Elementary School Assignment	Intermediate School Assignment
Oak Ridge Development	Taylor	Herman
Shea Development	New School	Bernal
Palms Apartments	Edenvale	Davis
The Grove	Stipe	Davis
Canoas Creek/Barron Park Drive	Del Roble	Herman
Southcrest Way/Blossom Hill Road	Frost	Herman
Snell Avenue	Del Roble	Davis
Santa Teresa Boulevard	Santa Teresa	Bernal

SECTION II

CRITERIA AND ASSUMPTIONS

SPECIFIC PLANNING CRITERIA

The specific planning criteria used to determine the most feasible school site for the students have been developed and are presented as the following:

- Classroom Loading Criteria
- Distance Criteria
- Barrier Criteria
- School Capacity Criteria

The criteria for this report was based on historic reports and statistics received from the Oak Grove School District.

Classroom Loading. The average number of students accommodated in one classroom or portable structure is defined as "classroom loading" for purposes of this report. Within the Oak Grove School District, this number has been defined as 30.5 students per room for K-6 and 31 for 7-8. These numbers have been used to define the learning space within a classroom and to define the capacity of the schools.

Distance. The travel distance criteria is based on the proximity of the school to the students within the new development. Currently, travel distances within the District vary significantly. However, the preferred travel distance for the students, for the purposes of this report, is one mile or less.

Barrier. Along with the distance to be traveled, the ideal travel route to the school should be "barrier free." "Barrier free" is identified for the report as a travel course with no major obstructions such as a freeway/highway, canal or wash.

School Capacity. The capacity of a school is determined by applying the classroom loading factor to the number of permanent rooms on the school grounds, excluding portable structures and authorized auxiliary use classrooms. The maximum acceptable capacity to be used in this study is 120% of the capacity as originally designed and built. This percentage allows for growth to a point where the educational program at the school is not severely impacted. However, growth beyond this level may impair the quality of education and affect the existing infrastructure and amenities (i.e., play areas, cafeterias, water and sewer capacities, etc.).

A percentage versus a fixed number of additional portable structures was used to define the point at which the infrastructure of a school is considered maximized. Using a percentage is site specific and thus, a better representation of the individual effects on a particular school's infrastructure due to an increase in enrollment. For example, a school with a small capacity may not have adequate playground, water or sewer facilities to support adding two additional portable structures versus a larger school which may be able to accommodate more than two portable structures without adversely impacting the educational program.

ASSUMPTIONS

Basic assumptions were made for purposes of this report. The assumptions are as follows:

- The building period for single family home projects was assumed to be at a fixed level over a four (4) year period.
- The student impact on the appropriate schools was assumed to occur concurrently with the development.
- The building period for multiple family projects was assumed to occur over a two-year period.
- Assumptions regarding cumulative effects are based on current student school assignments.
- The proposed/prospective developments are those areas included in the City General Plan as currently known by the District. Specific development activity has not occurred in some of the areas.

SECTION III

DEVELOPMENT IMPACT

An impact fee to be imposed on future development within the District has been established to mitigate the costs of the facilities needed as a result of the development. Development fees are imposed to generate the required revenue for the construction or expansion of capital facilities that are a benefit to the new development. In establishing a fee, there are four criteria the impact fee must meet to be considered valid. The four criteria are summarized as:

- Identify the purpose of the fee;
- Identify the use of the fee;
- Determine the impact, benefit and cost nexus; and
- Identify the time limits on expenditures.

"Identify the purpose of the fee..." The purpose of the fee must be identified to provide a justification for the fee (i.e., to safeguard the health, safety, and welfare of the community by providing adequate public facilities).

"Identify the use for the fee..." If the intended use for the fee is financing capital facilities, the facilities shall be identified (i.e., construct new school). The fees collected must be directed to the construction or rehabilitation of those facilities identified. Identification of these fees may be done through the use of a capital improvement plan, applicable general or specific plan, or other form of public document.

"Determine the impact, benefit and cost nexus..." The "impact nexus" shows the reasonable relationship between the type of development and the need for the facility (i.e., the need to provide sufficient facilities to meet the demands of continued growth of the District due to new development). The "benefit nexus" test is used to ensure that the type of improvements to be constructed with the imposed fee is related to the impact caused by the development (i.e., benefit of having adequate school facilities encourages new residents). The "cost nexus" test is used to determine if the conditions imposed on new development are reasonable and equitable to the burden caused by the development (i.e., the cost or portion of the cost to construct the necessary public facilities must possess a reasonable relationship to the impact on the facilities by the development).

"Identify the time limit on expenditures..." The District shall make findings each fiscal year with respect to any portion of the collected impact fees remaining unexpended or uncommitted in a separate account for more than five (5) years. If the need for these fees cannot be determined, the agency must refund the remainder of the fees and the accrued interest to the then current property owner by means consistent with the Government Code Section 66001.

SECTION IV

PROPOSED/PROSPECTIVE DEVELOPMENTS

There are eight (8) significant proposed/prospective development areas within the District which have been identified and analyzed in this report. In addition, there are several additional developable areas. The locations of the eight development areas are illustrated in Appendix "A." Additional major development areas could result only if the City General Plan is modified to allow residential housing development to occur in areas currently limited to commercial or industrial development.

The following information summarizes the proposed/prospective development areas, the affected schools, the impact on the affected schools, and the yearly enrollment projections as development progresses. Tables have been used to summarize the findings by developing area, utilizing a (+) sign for a positive finding and a (–) sign for a negative finding for each criteria and school site evaluated.

OAK RIDGE DEVELOPMENT

Project Site

The Oak Ridge development is located on the south side of Freeway 85 and west of Cottle Road. This development, by the Gregory Group, will include approximately 432 single-family/multi-family dwelling units generating approximately 216 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 168 students, and the remaining 48 students were assumed to be intermediate students (grades 7-8). The first student impacts are projected to occur in 1995-1996.

School Choice Analysis

Based on the location of the development, the elementary schools available to the development are Blossom Valley Elementary, Glider Elementary, Oak Ridge Elementary, San Anselmo Elementary, Santa Teresa Elementary and Taylor Elementary.

Taylor Elementary School is located south of the development, approximately 3/4 mile from the Oak Ridge Development with no major obstructions. Travel to the school would be accomplished through surface streets. The addition of the new students would not exceed the allowable capacity of Taylor Elementary.

Blossom Valley Elementary, Oak Ridge Elementary and Santa Teresa Elementary would exceed their 120% capacity limit and overstress existing infrastructure with the addition of the students from the Oak Ridge Development. Canoas Creek obstructs and divides the Oak Ridge Development from Glider Elementary School and Blossom Valley Elementary School and does not meet the obstruction criteria specified in this report. San Anselmo Elementary is located just over a mile from the development, and does not meet the distance criteria set forth in this report. (see Table 1)

Recommendations

The developer has agreed to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Taylor Elementary School**. The impact on the School District is expected to be 168 students on Taylor Elementary for grades K-6 and 48 students on Herman Intermediate for grades 7-8. (see Appendix B)

TABLE 1

Summary of School Choice Analysis
Oak Ridge Development

Possible School	Specific Planning Criteria		
	D	B	SC
Taylor Elementary	+	+	+
Blossom Valley Elementary	+	–	–
Glider Elementary	+		+
Oak Ridge Elementary	+	+	
San Anselmo Elementary		+	
Santa Teresa Elementary	+	+	

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

SHEA DEVELOPMENT

Project Site

The Shea Development is located south of the southern terminus of Piercy Road and east of Highway 101. This development, by Shea Homes, will include approximately 600 single-family homes generating approximately 300 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 233 students and the remaining 67 students were assumed to be intermediate students (grades 7-8). The first student impacts are projected to occur in 1995-1996.

School Choice Analysis

No elementary schools are located in close proximity to the development. The existing schools closest to the development are Baldwin Elementary and San Anselmo Elementary.

A new school constructed on the east side of Highway 101 would accommodate the Shea Development as well as other present and potential subdivisions located on the east side of Highway 101. Students from the current subdivisions on the east side of Highway 101 attend Santa Teresa Elementary and Baldwin Elementary. Without a new school, the students within the Shea development would have to travel a considerable distance and cross Highway 101 to get to either Baldwin Elementary or San Anselmo Elementary Schools. Another factor would be the capacity of the schools. Based on the specific planning criteria, both schools would be overstressed (above 120%) with the addition of the new students. There are currently no existing schools that can meet the planning criteria as presented in this report with the addition of the students from the Shea Development. (see Table 2)

Recommendations

The developer has agreed to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be to construct a **New School** on the east side of Highway 101. The impact on the new school is expected to be 233 students for grades K-6 and 67 students for grades 7-8 on Bernal Intermediate. The developer, Shea Homes, has been working cooperatively with the School District for the past year toward the development of a mutually acceptable mitigation agreement. (see Appendix B)

TABLE 2

Summary of School Choice Analysis
Shea Development

Possible School	Specific Planning Criteria		
	D	B	SC
New School	+	+	+
Baldwin Elementary	–	–	–
San Anselmo Elementary	–	–	–

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

PALMS APARTMENTS

Project Site

The Palms Apartments development is located on the northeast side of Monterey Highway and northwesterly of Blossom Hill Road. This development will include approximately 224 multi-family units generating approximately 100 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 78 students and the remaining 22 students were assumed to be intermediate students (grades 7-8). The projected completion date for this development is 1995.

School Choice Analysis

Based on the location of the development, Edenvale Elementary would be affected by this development.

Edenvale Elementary School is located north of the development, approximately 1/4 mile from the Palms Apartments with no major obstructions. Travel to the school would be accomplished through surface streets. Since the capacity of Edenvale Elementary currently exceeds the allowable capacity of the school, the addition of the new students would cause the school to be at 143% capacity. (see Table 3)

Recommendations

Palms Apartments will need to mitigate its impact on the School District. This development is within the Edenvale Elementary School boundary and Edenvale School is the logical school of attendance. However, based on the analysis performed and the criteria established above, the Edenvale Elementary School is not a feasible alternative for this development without infrastructure expansion. The impact on the school is expected to be 78 students for grades K-6 and 22 students on Davis Intermediate for grades 7-8. (see Appendix B)

TABLE 3

Summary of School Choice Analysis
Palms Apartments Development

Possible School	Specific Planning Criteria		
	D	B	SC
Edenvale Elementary	+	+	—

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

THE GROVE

Project Site

The Grove development is located on Branham Lane and Battle Dance Drive. This development, completed in late 1993, includes approximately 40 multi-family units which, when fully occupied, is estimated to generate approximately 50 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 39 students and the remaining 11 students were assumed to be intermediate students (grades 7-8).

why so high?

School Choice Analysis

Based on the location of the development, the three elementary schools available to the development are Stipe Elementary, Christopher Elementary and Edenvale Elementary.

The Grove is located south of Stipe Elementary School, approximately 1/2 mile from the school with no major obstructions. Travel to the school would be accomplished through surface streets. The additional students from this development would not exceed the allowable capacity of the school.

Edenvale Elementary would exceed the 120% capacity limit and overstress the school's existing infrastructure with the addition of the students from the development. Christopher Elementary is located just over a mile from the development and does not meet the distance criteria set forth in this report. (see Table 4)

Recommendations

This development will need to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Stipe Elementary School**. The impact on the School District is expected to be 39 students on Stipe Elementary for grades K-6 and 11 students on Davis Intermediate for grades 7-8. (see Appendix B)

TABLE 4

Summary of School Choice Analysis
The Grove Development

Possible School	Specific Planning Criteria		
	D	B	SC
Stipe Elementary	+	+	+
Edenvale Elementary	+	+	−
Christopher Elementary	−	+	+

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

CANOAS CREEK/BARRON PARK DRIVE

Project Site

The Canoas Creek/Barron Park Drive development area is located north of Highway 85 bordered by Canoas Creek and Barron Park Drive. This is a high density transit corridor development area and will include approximately 295 housing units generating approximately 74 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 58 students and the remaining 16 students were assumed to be intermediate students (grades 7-8). The earliest projected completion date for this development area is 1995-96.

School Choice Analysis

Based on the location of the development, the two elementary schools available to the development are Frost Elementary and Del Roble Elementary.

This development is located southwest of Del Roble Elementary School, approximately 1/2 mile from the school. Travel to the school would be accomplished through surface streets. The additional students from this development would not exceed the allowable capacity of the school.

Frost Elementary attendance would require the students to cross a major obstruction, Freeway 85. Frost Elementary is located just over a mile from the development, and does not meet the distance criteria set forth in this report. (see Table 5)

Recommendations

This development will need to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Del Roble Elementary School**. The impact on the School District is expected to be 58 students on Del Roble Elementary for grades K-6 and 16 students on Herman Intermediate for grades 7-8. (see Appendix B)

TABLE 5

Summary of School Choice Analysis
Canoas Creek/Barron Park Drive Development

Possible School	Specific Planning Criteria		
	D	B	SC
Del Roble Elementary	+	+	+
Frost Elementary	–	–	–

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

SOUTHCREST WAY/BLOSSOM HILL ROAD

Project Site

The Southcrest Way/Blossom Hill Road development area is a high density transit corridor area, located south of Highway 85 bordered by Southcrest Way and Blossom Hill Road. This development area will include approximately 106 housing units generating approximately 27 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 21 students and the remaining 6 students were assumed to be intermediate students (grades 7-8). The earliest projected completion date for this development area is 1995-96.

School Choice Analysis

Based on the location of the development, the two elementary schools available to the development are Frost Elementary and Del Roble Elementary.

This development is located northwest of Frost Elementary School, approximately 3/4 mile from the school. Travel to the school would be accomplished through surface streets. The additional students from this development would not exceed the allowable capacity of the school.

Del Roble Elementary School is located north of Freeway 85, which would require the students to cross a major obstruction. Del Roble Elementary is located just over a mile from the development, and does not meet the distance criteria set forth in this report. (see Table 6)

Recommendations

This development will need to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Frost Elementary School**. The impact on the School District is expected to be 21 students on Frost Elementary for grades K-6 and 6 students on Herman Intermediate for grades 7-8. (see Appendix B)

TABLE 6

Summary of School Choice Analysis
Southcrest Way/Blossom Hill Road Development

Possible School	Specific Planning Criteria		
	D	B	SC
Frost Elementary	+	+	+
Del Roble Elementary	–	–	+

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

SNELL AVENUE

Project Site

The Snell Avenue development is located on the southwesterly side of Snell Avenue approximately 600 feet north of Branham Lane. This development will include approximately 100 housing units generating approximately 50 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 39 students and the remaining 11 students were assumed to be intermediate students (grades 7-8). The projected completion date for this development is 1994-95, with some impact in 1993-94.

School Choice Analysis

Based on the location of the development, the three elementary schools available to the development are Del Roble Elementary, Parkview Elementary and Hayes Elementary Schools.

This development is located northeast of Del Roble Elementary School, approximately 3/4 mile from the school with no major obstructions. Travel to the school would be accomplished through surface streets. The additional students from this development would not exceed the allowable capacity of the school.

The project is located within the current attendance boundaries of Parkview School and some students from the area have already enrolled at Parkview. However, both Parkview and Hayes Elementary would exceed the 120% capacity limit and overstress the schools' existing infrastructure with the addition of the students from the development. (see Table 7)

Recommendations

This development will need to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Del Roble Elementary School.** The impact on the School District is expected to be 39 students on Del Roble Elementary for grades K-6 and 11 students on Davis Intermediate for grades 7-8. (see Appendix B)

TABLE 7

Summary of School Choice Analysis
Snell Avenue Development

Possible School	Specific Planning Criteria		
	D	B	SC
Del Roble Elementary	+	+	+
Parkview Elementary	+	+	
Hayes Elementary	+	+	–

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

SANTA TERESA BOULEVARD

Project Site

The Santa Teresa Boulevard development is located on the north side of Santa Teresa Boulevard just east of Liska Lane. This development will include approximately 300 housing units, with approximately 100 of the units being senior housing. The development is estimated to generate approximately 100 students. In order to forecast the impact these students would have on the existing schools, the number of elementary level students (grades K-6) was assumed to be 80 students and the remaining 20 students were assumed to be intermediate students (grades 7-8). The projected start date for this development is 1994-95, with initial student enrollment impacts being felt in 1995-96.

School Choice Analysis

Based on the location of the development, the three elementary schools available to the development are Santa Teresa, Taylor and San Anselmo Elementary Schools.

This development is located directly north of Santa Teresa Elementary School and directly adjacent to another Santa Teresa School attendance area (west of Liska Lane). Santa Teresa Boulevard is the only significant barrier. Travel to the school would be accomplished through surface streets. The additional students from this development would not exceed the allowable capacity of the school. (see Table 8)

Recommendations

This development will need to mitigate its impact on the School District. Based on the analysis performed and the criteria established above, the most feasible school for this development would be **Santa Teresa Elementary School**. The impact on the School District is expected to be 80 students on Santa Teresa Elementary for grades K-6 and 20 students on Bernal Intermediate for grades 7-8. (see Appendix B)

TABLE 8

Summary of School Choice Analysis
Santa Teresa Boulevard Development

Possible School	Specific Planning Criteria		
	D	B	SC
Santa Teresa Elementary	+	–	+
Taylor Elementary	–	+	–
San Anselmo Elementary	–	–	+

Legend: Specific Planning Criteria:
D = Distance
B = Barrier
SC = School Capacity

OTHER DEVELOPABLE AREAS:

- "Cottle Ranch," located west of Snell Avenue, north of Chynoweth and south of Branham Lane, has been identified as the largest undeveloped area within the School District. At the present time, there have been no development plan discussions with the District. If the entire area were developed for residential purposes, a school would likely need to be built within the development.

- The northerly 55 acres of the Oak Ridge Golf Course, located on Cottle Road south of Highway 85, are currently in use as a golf driving range. Only very general development plans have been outlined at this time and no definite timetable for development consideration has been discussed with the District. The 55 acres could have a potentially significant impact on the District when/if developed. (The southerly 40 acre portion of the former Oak Ridge Golf Course is scheduled for development and addressed in this report - see page 7).

- Small developable areas adjacent to the Shea Homes development, estimated at approximately 100 homes.

- Other major developable areas could result if the City General Plan is modified to allow residential housing development to occur in areas currently limited to commercial or industrial development.

SECTION V

FINANCING ALTERNATIVES

The mitigation of school costs generated by development can be satisfied by one or more ways. The usual methods for mitigating these costs are through the use of Development Impact Fees, Mello-Roos Community Facilities District formations and internal school district funding. Because the School District does not have the ability to mitigate additional school costs attributed to developments with existing District funding sources, this report will focus on Development Impact Fees (DIF) and Mello-Roos Community Facilities Districts (CFD).

Oak Grove School District has an approved Development Impact Fee of $1.10 for fiscal year 1994, based on its proportion of the current State Allocation Board recognized rate of $1.65. The amount generated will not fully mitigate the school costs to accommodate those students generated by the proposed/prospective developments.

The ability to finance the mitigation of school costs can be obtained through a School District approved Mello-Roos CFD. The School District has the option of forming a CFD to fund either all mitigation costs and fees, or the costs in excess of those covered by Development Impact Fees. If a CFD is used, several conditions must be met. As with a Development Impact Fee, the purpose and use of the fee must be shown. In addition, the CFD must be ratified by two-thirds of the property owners or registered voters if twelve voters or more reside in the proposed boundaries of the CFD. It is assumed that the developing areas have less than twelve registered voters, based upon the nature of the developments that would choose to use the CFD method.

APPENDIX B-1

OAK GROVE SCHOOL DISTRICT

Impact of New Development on School Capacities - Based on PROJECTED 1998-99 CBEDS

Elementary Schools

SCHOOL	K-6 Rooms	LESS: Auxiliary Allocation	NET K-6	Base K-6 Net of Auxiliary	Projected 98-99 CBEDS	Projected New ENR	Projected New Total ENR	Capacity Available	Percent of Capacity Used
Anderson	20	2	18	549	562		562	-13	102.37%
Baldwin	20	2	18	549	458	-187	271	278	49.36%
Blossom Valley	22	2	20	610	541		541	69	88.69%
Christopher	20	2	18	549	541		541	8	98.54%
Del Roble	22	2	20	610	551	97	648	-38	106.23%
Edenvale	17	2	15	458	666	78	744	-286	162.45%
Frost	19	2	17	519	449	21	470	49	90.56%
Glider	20	2	18	549	483		483	66	87.98%
Hayes	20	2	18	549	736		736	-187	134.06%
Miner	20	2	18	549	636		636	-87	115.85%
Oak Ridge	22	2	20	610	691		691	-81	113.28%
Parkview	21	2	19	580	811		811	-231	139.83%
Sakamoto	22	2	20	610	496		496	114	81.31%
San Anselmo	21	2	19	580	468		468	112	80.69%
Santa Teresa	20	2	18	549	617	-91	526	23	95.81%
Stipe	19	2	17	519	501	39	540	-21	104.05%
Taylor	18	2	16	488	420	168	588	-100	120.49%
Subtotals	343	34	309	9427	9627	125	9752	-325	103.45%
NEW SCHOOL	22	2	20	610	0	591	591	19	96.89%
TOTALS w/NEW	365	36	329	10,037	9,627	716	10,343	(306)	103.05%

K-6 CAPACITIES: 30.5 X NUMBER OF AVAILABLE ROOMS (NET OF TWO AUXILIARY)

APPENDIX B-2

OAK GROVE SCHOOL DISTRICT
Impact of New Development on School Capacities - Based on PROJECTED 1998-99 CBEDS
Intermediate Schools

SCHOOL	7-8 Rooms	LESS: Auxiliary Allocation	NET 7-8	Base 7-8 Net of Auxiliary	Projected 98-99 CBEDS	Projected New ENR	Projected New Total ENR	Capacity Available	Percent of Capacity Used
Bernal	40	4	36	930	956	87	1,043	(113)	112.15%
Davis	36	4	32	827	923	44	967	(140)	116.98%
Herman	41	4	37	956	817	70	887	69	92.80%
TOTALS	117	12	105	2,713	2,696	201	2,897	(185)	106.80%

7-8 CAPACITIES: 31 X NUMBER OF ROOMS X 5 DIVIDED BY 6

APPENDIX C-1

OAK GROVE SCHOOL DISTRICT
Enrollment Projections Including New Development Impacts
1993-1994 Thru 1996-97

Students = Number of students projected WITHOUT added impacts of housing developments identified in January 1994 School Facilities Master Plan

Cum Dev = Cumulative new student enrollments due to housing developments identified in January 1994 School Facilities Master Plan

School	Actual 1993-94			Projected 1994-95			Projected 1995-96			Projected 1996-97		
	Students	New Dev	Total	Students	Cum Dev	Total	Students	Cum Dev	Total	Students	Cum Dev	Total
Anderson	582	0	582	576	0	576	571	0	571	574	0	574
Baldwin	512	0	512	495	0	495	481	0	481	478	0	478
Blossom Valley	644	0	644	624	0	624	600	0	600	579	0	579
Christopher	538	0	538	537	0	537	549	0	549	531	0	531
Del Roble	517	0	517	518	39	557	527	68	595	538	97	635
Edenvale	577	0	577	594	0	594	614	39	653	632	78	710
Frost	485	0	485	470	0	470	471	21	492	460	21	481
Glider	467	0	467	465	0	465	460	0	460	466	0	466
Hayes	672	0	672	692	0	692	695	0	695	706	0	706
Miner	602	0	602	612	0	612	612	0	612	619	0	619
Oak Ridge	610	0	610	627	0	627	638	0	638	670	0	670
Parkview	674	0	674	711	0	711	745	0	745	766	0	766
Sakamoto	516	0	516	517	0	517	515	0	515	499	0	499
San Anselmo	523	0	523	497	0	497	497	0	497	490	0	490
Santa Teresa	582	0	582	583	0	583	601	40	641	605	80	685
Stipe	540	20	560	537	39	576	518	39	557	523	39	562
Taylor	380	0	380	387	0	387	397	42	439	406	84	490
New School	0	0	0	0	0	0	0	59	59	0	117	117
K-6 Totals	9,421	20	9,441	9,442	78	9,520	9,491	308	9,799	9,542	516	10,058
Bernal	922	0	922	965	0	965	970	27	997	950	54	1,004
Davis	878	5	883	934	22	956	938	33	971	918	44	962
Herman	793	0	793	826	0	826	830	26	856	812	46	858
Intermediate Totals	2,593	5	2,598	2,725	22	2,747	2,738	86	2,824	2,680	144	2,824
GRAND TOTALS	12,014	25	12,039	12,167	100	12,267	12,229	394	12,623	12,222	660	12,882

OAK GROVE SCHOOL DISTRICT
Enrollment Projections Including New Development Impacts
1997-1998 Thru 1998-99

Students = Number of students projected WITHOUT added impacts of housing developments identified in January 1994 School Facilities Master Plan

Cum Dev = Cumulative new student enrollments due to housing developments identified in January 1994 School Facilities Master Plan

School	Developments Thru 96-97	Projected 1997-98 Students	Projected 1997-98 Cum Dev	Projected 1997-98 Total	Projected 1998-99 Students	Projected 1998-99 Cum Dev	Projected 1998-99 Total
Anderson	0	574	0	574	562	0	562
Baldwin	0	466	0	466	458	(187)	271
Blossom Valley	0	562	0	562	541	0	541
Christopher	0	532	0	532	541	0	541
Del Roble	97	542	97	639	551	97	648
Edenvale	78	657	78	735	666	78	744
Frost	21	451	21	472	449	21	470
Glider	0	469	0	469	483	0	483
Hayes	0	731	0	731	736	0	736
Miner	0	631	0	631	636	0	636
Oak Ridge	0	687	0	687	691	0	691
Parkview	0	785	0	785	811	0	811
Sakamoto	0	501	0	501	496	0	496
San Anselmo	0	464	0	464	468	0	468
Santa Teresa	80	606	80	686	617	(91)	526
Stipe	39	522	39	561	501	39	540
Taylor	84	414	126	540	420	168	588
New School	117	0	175	175	0	591	591
K-6 Totals	516	9,594	616	10,210	9,627	716	10,343
Bernal	54	949	71	1,020	956	87	1,043
Davis	44	917	44	961	923	44	967
Herman	46	811	58	869	817	70	887
Intermediate Totals	144	2,677	173	2,850	2,696	201	2,897
GRAND TOTALS	660	12,271	789	13,060	12,323	917	13,240

Reductions shown ONLY to reflect numbers of students which would be required to "fill" a new school in Shea project. No boundary change decisions made as of this report. The numbers shown reflect the number of bused students in 93-94.

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

Orchard School District.

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary K-8	1	384	400*
Middle			
High			
Other *			
Closed Schools			

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.5	.5	5
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
none			

*Capacity 400 (including portables) per phone conversation with Vickie Kiddles, Orchard School District

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion

* The district is planning to build a new school.

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
none acquired yet	K-8

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
N/A.	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
N/A	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

5. **ADDITIONAL COMMENTS and Background Material of District:**

This is a one school school district which has experienced marked residential growth in the last 3 years. The impact has not been met by developer fees. The district has filed for a general obligation bond and will do so again in June. In addition redevelopment has planned a 277 unit low income project. The district faces no financial support.

Prepared by Donnel Ellis

Date: 2/14/94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: ***Lee Quintana.***

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

UNION SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	8	3,336	3,733
Middle	2	1,343	1,584
High	N/A		
Other *	N/A		
Closed Schools	5	N/A	2,837

*Explain

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.40	.40	~~.57~~ .25*
High	N/A	N/A	N/A

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
N/A			

*Modified per phone conversation with Lou Jenkins, Director of Administrative Services.

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
N/A			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
N/A	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
See List Attached	

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
None - Our instruction capacity includes portables	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
N/A	

SCHOOL SURVEY

5. ADDITIONAL COMMENTS and Background Material of District:

Prepared by: Sean Tivney

Date: 2/16/94

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

USD PROPERTY LIST OF CLOSED SITE'S

	SCHOOL NAME	ADDRESS	USE
1>	DEVOSS	1921 CLARINDA WAY SJ, CA 95124	CLOSED
2>	CINNABAR	5670 CAMDEN AVENUE SJ, CA 95124	CLOSED
3>	HOWES	220 KENSINGTON WAY LG, CA 95032	CLOSED
4>	MIRASSOU	220 BEL GATOS RD LG, CA 95032	CLOSED
5>	ROSS	1718 ANDOVER LANE SJ, CA 95124	CLOSED

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

EAST SIDE UNION HGIH SCHOOL DISTRICT

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. attached

2. Provide a list of all schools in the District and include the following information: attached

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

   To Lee Quintana

3. Complete the following tables (use additional sheets if needed):

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary			
Middle			
High	10	21,662	21,754
Other *	4	369	541
Closed Schools			

*Explain 1 - continuation high school (foothill)
3 - small but necessary high schools (Genesis, Pegasus & Phoenix)

STUDENT GENERATION RATE				
Type of School	combined involves all types	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	-	-	-	-
High	0.2	-	-	-

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
none			

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
Quimby Road - High School	Planned	1,800	2002

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Quimby Road & Ruby Avenue	9 - 12

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
none	not applicable

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
see attached	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
none	not applicable

5. ADDITIONAL COMMENTS and Background Material of District:

Our current student populations on the campuses are too large. When we look at sites, we see many of them dotted with portables and/or temporary housing. While these past solutions gave the students a place to sit, we are not convinced it gave them the best place to learn. When we add portables to a site, we do not increase the size of the library, the gym does not miraculously get larger, the walkways do not automatically expand to allow for the increased traffic, and the co-curricular program does not change dramatically to meet the needs of the ever burgeoning population. In short, when students are added to a facility without modifications to its infrastructure, they are short changed.

2/18/94

Prepared by: F David Sykes

Date: February 17, 1994

EAST SIDE UNION HIGH SCHOOL DISTRICT
830 North Capitol Avenue
San Jose, Ca 95133

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

	ENROLLMENT OCT 93 CBEDS	INSTRUCTIONAL CAPACITY OCT 93 CBEDS
Andrew Hill High School	1,877	1,768
Foothill High School	105	361
Genesis High School	79	80
Independence High School	3,908	4,168
James Lick High School	1,414	1,387
Mt. Pleasant High School	1,991	1,721
Oak Grove High School	2,248	2,634
Pegasus High School +	111	60
Phoenix High School +	74	40
Piedmont Hills High School	1,853	1,764
Santa Teresa High School	2,108	2,195
Silver Creek High School	2,145	2,212
W. C. Overfelt High School	2,018	1,847
Yerba Buena High School	2,100	2,058
TOTALS =>	22,031	22,295

Note: + = schools are on double session

	Additional Classrooms Accessible To Utilities
Andrew Hill High School	8
Foothill High School	0
Genesis High School	0
Independence High School	0
James Lick High School	0
Mt. Pleasant High School	4
Oak Grove High School	4
Pegasus High School	0
Phoenix High School	0
Piedmont Hills High School	2
Santa Teresa High School	8
Silver Creek High School	5
W. C. Overfelt High School	0
Yerba Buena High School	2
TOTALS =>	33

EAST SIDE UNION HIGH SCHOOL DISTRICT
830 NORTH CAPITOL AVENUE
SAN JOSE, CALIFORNIA 95133
408-272-6400

ANDREW HILL
3200 SENTER ROAD
SAN JOSE, CA 95111
227-6800
BILL KUGLER, PRINCIPAL

INDEPENDENCE
1776 EDUCATIONAL PK. DR.
SAN JOSE, CA 95133
729-3911
JOHN SELLAROLE, PRINCIPAL

JAMES LICK
57 NORTH WHITE ROAD
SAN JOSE, CA 95127
729-3580
CATHY GIAMMONA, PRINCIPAL

MT. PLEASANT
1750 SOUTH WHITE ROAD
SAN JOSE, CA 95127
251-7820
MANNY MORALES, PRINCIPAL

OAK GROVE
285 BLOSSOM HILL ROAD
SAN JOSE, CA 95123
225-9332
KARALEE ROLAND, PRINCIPAL

PIEDMONT HILLS
1377 PIEDMONT ROAD
SAN JOSE, CA 95132
729-3950
FRANCISCA MIRANDA, PRIN.

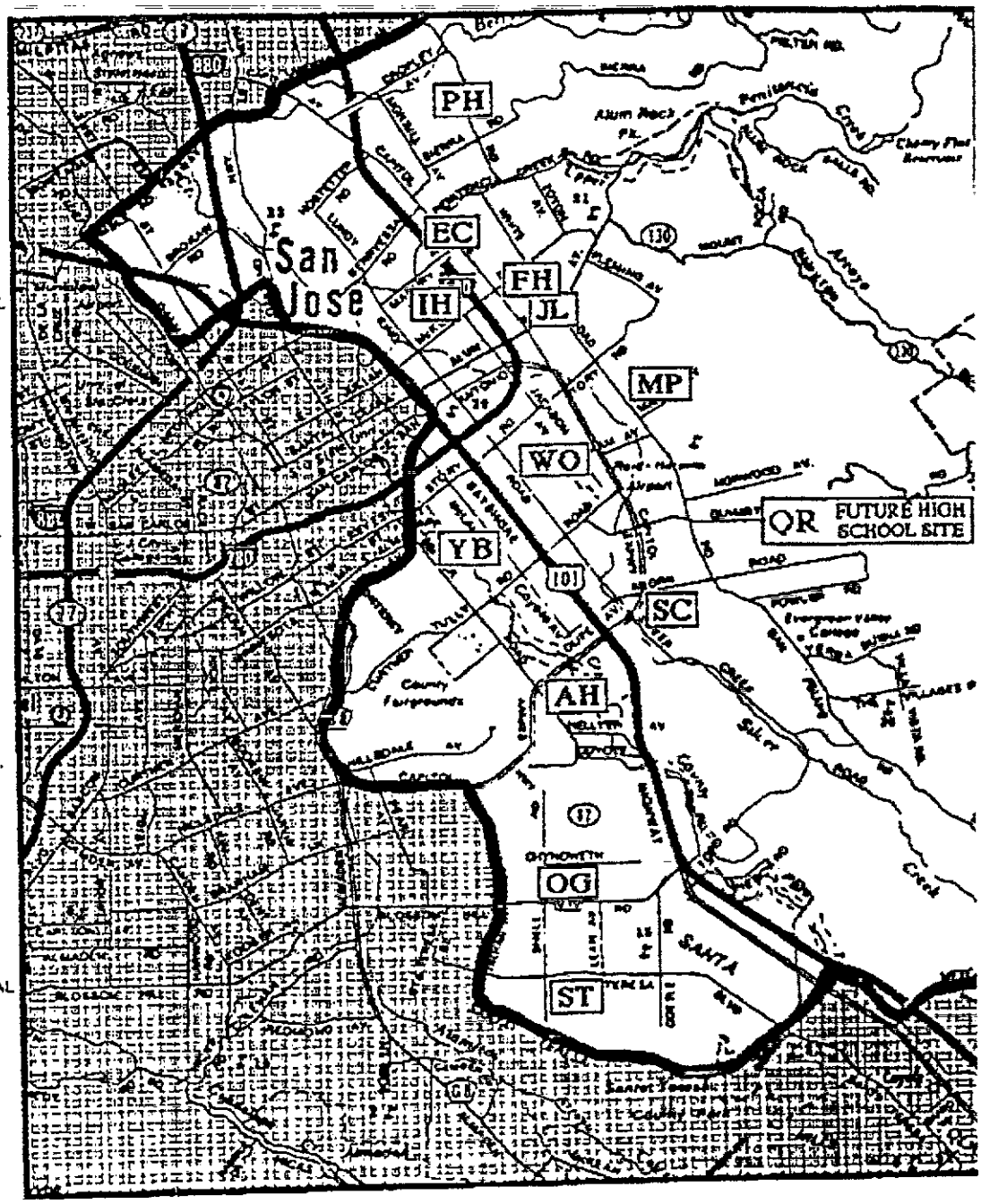
WILLIAM C. OVERFELT
1835 CUNNINGHAM AVENUE
SAN JOSE, CA 95112
259-0540
ELIAS CHAMORRO, PRINCIPAL

SANTA TERESA
6150 SNELL ROAD
SAN JOSE, CA 95123
578-9100
MIKE WELCH, PRINCIPAL

SILVER CREEK
3434 SILVER CREEK ROAD
SAN JOSE, CA 95123
274-1700
RAFAEL RENTERIA, PRINCIPAL

YERBA BUENA
1855 LUCRETIA AVENUE
SAN JOSE, CA 95122
279-1500
GARY ZELLNER, PRINCIPAL

FOOTHILL
230 PALA AVENUE
SAN JOSE, CA 95127
229-4464
ALICIA MENDEKE, PRINCIPAL



TOTAL P.005

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. Please also identify schools serving students living in San Jose.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)
   Number of San Jose students attending the school.

3. Complete the following tables (use additional sheets if needed):

MORGAN HILL UNIFIED SCHOOL DISTRICT

DISTRICT SCHOOLS				
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Number of San Jose Students	Instructional Capacity, Oct. 1993 **
Elementary	9	4,900	1,297	5,115
Middle	2	2,161	572	2,018
High	1	1,686	446	1,900
Other * Cont. H.S.	1	119	31	135
Closed Schools	1	N/A	N/A	0

*Explain
** Includes 1,944 seats in 72 temporary/portable classrooms.

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.55	.19	.19
High	.22	.07	.07

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
N/A			

New Schools or Additions to Existing Schools Currently under Construction or In Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
N/A			

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
N/A	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Morgan Hill Elementary	0 (In disrepair; renovation would be prohibitively expensive)

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Burnett Elementary	2
Los Paseos Elementary	1
Walsh Elementary	4
Live Oak High	3

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
Portion of Avenida Espana and Downs Dr., San Jose	Surplus (4 acres)

5. ADDITIONAL COMMENTS and Background Material of District:

Capacity has already been increased by the addition of 72 portables (1,944 seats) as follows: Burnett (5); El Toro (8); Jackson (2); Paradise Valley (6); Machado (2 classrooms and 1 restroom bldg.); San Martin (2); Gwinn (1); Los Paseos (1); Encinal (6); Nordstrom (6 classrooms and 1 restroom bldg.); Walsh (4); Britton (14); Murphy (9); Live Oak (5 classrooms and 1 restroom bldg.); and Central High (1).

The following schools serve San Jose students:

Elementary Schools:

Burnett	14 students
El Toro	3
Encinal	331
Jackson	2
Los Paseos	427
Nordstrom	2
Paradise Valley	1
Walsh	1

Middle Schools:

Britton	3
Martin Murphy	371

High Schools:

Live Oak	238
Central	12

Prepared by: Mike Morman, Facilities Planning Coord.
Date: February 15, 1994

Please return completed survey by February 18, 1994 to the city of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: Lee Quintana.

Ethnic Distribution by School 93-94

School	American Indian or Alaskan #	%	Asian #	%	Pacific Islander #	%	Filipino #	%	Hispanic #	%	Black #	%	White #	%	Total
Burnett	0	0.0%	27	5.2%	0	0.0%	6	1.1%	183	35.1%	4	0.8%	302	57.9%	522
El Toro	0	0.0%	18	2.9%	0	0.0%	1	0.2%	284	45.7%	14	2.3%	304	49.0%	621
Encinal	1	0.3%	30	9.1%	2	0.6%	11	3.3%	62	18.8%	18	5.5%	206	62.4%	330
Los Paseos	0	0.0%	39	8.8%	1	0.2%	14	3.1%	98	22.0%	17	3.8%	276	62.0%	445
San Martin/Gwinn	2	0.3%	25	3.5%	0	0.0%	5	0.7%	323	45.2%	10	1.4%	350	49.0%	715
Jackson	2	0.4%	33	5.9%	0	0.0%	2	0.4%	185	33.2%	26	4.7%	310	55.6%	558
P.V./Machado	2	0.3%	42	6.1%	0	0.0%	2	0.3%	138	20.0%	4	0.6%	501	72.7%	689
Nordstrom	0	0.0%	20	3.7%	3	0.5%	3	0.5%	131	23.9%	12	2.2%	378	69.1%	547
Walsh	2	0.4%	7	1.5%	1	0.2%	3	0.6%	231	48.8%	1	0.2%	228	48.2%	473
Britton	1	0.1%	47	4.2%	8	0.7%	8	0.7%	337	30.2%	28	2.5%	687	61.6%	1116
Murphy	5	0.5%	72	6.9%	1	0.1%	12	1.1%	289	27.7%	29	2.8%	637	61.0%	1045
Live Oak/I.S.	6	0.4%	93	5.5%	1	0.1%	13	0.8%	434	25.7%	38	2.3%	1101	65.3%	1686
Central	2	1.7%	7	5.9%	0	0.0%	0	0.0%	77	64.7%	0	0.0%	33	27.7%	119
Total	23	0.3%	460	5.2%	17	0.2%	80	0.9%	2772	31.3%	201	2.3%	5313	59.9%	8866

Reference CBEDS October 1993

MORGAN HILL UNIFIED SCHOOL DISTRICT
Classroom Availability/District Loading Standards

oms available:

	KG	1-3	4-6	7-9	10-12	SDC	Total	Additional Classrooms (Not used for regular classroom instruction)
rnett	2	8	8			1	19	3 (RSP/Comp/CHI)
Toro	2	9	10			2	23	1 (RSP)
Encinal	0	0	12				12	3 (RSP/Music/SciLab)
Gwinn	0	0	10				10	4 (RSP/ESL/Music/Comp)
ckson	2	9	9			2	22	3 (RSP/Comp/Music)
s Paseos	2	16	0			1	19	4 (RSP(2)/Comp/PE)
chado	0	2	0			0	2	0
Nordstrom	2	9	10			4	25	3 (RSP/Comp/Music)
Paradise Valley	2	9	12			2	25	2 (RSP/Comp)
n Martin	2	14	0				16	3 (RSP/BiLing/Comp)
lsh	3	7	7				17	6 (RSP/CHI/Title7/PE/Music/Comp)
K-6 Sub-Total	17	83	78			12	190	32
itton				39		1	40	5 (RSP(3)/Opp/ESL)
rphy				35		1	36	5 (RSP(2)/Opp/ASB/PE)
7-9 Sub-Total	0	0	0	74		2	76	10
ve Oak					70	1	71	12 (Lec.Hall/RSP(3)/IS(4)
ntral					5		5	0 /Ch.care/Adult(3))
10-12 Sub-Total	0	0	0	0	75	1	76	12
AND TOTAL	17	83	78	74	75	15	342	54

STRICT LOADING

	@54/27 KG	@27 1-3	@27 4-6	@27 7-9	@27 10-12	@10 SDC	Total
rnett	81	216	216			10	523
Toro	81	243	270			20	614
ackson	81	243	243			20	587
s Paseos/Encinal	81	432	324			10	847
rdstrom	81	243	270			40	634
radise Valley/Machado	81	297	324			20	722
an Martin/Gwinn	81	378	270				729
alsh	81	189	189				459
6 Sub-Total	648	2,241	2,106			120	5,115
ritton				1,053		10	1,063
urphy				945		10	955
9 Sub-Total	0	0	0	1,998		20	2,018
ive Oak					1,890	10	1,900
ntral					135		135
12 Sub-Total	0	0	0		2,025	10	2,035
RAND TOTAL CAPACITY	648	2,241	2,106			150	9,168

/20/94

MORGAN HILL UNIFIED SCHOOL DISTRICT
First Month Enrollmant Projections
for 1994-95

ocation		Actual: 89	90	91	92	93	Projected: 94	95	96	97	98
lementary	KG	715	652	697	625	670	685	719	754	745	741
	1ST	796	744	699	738	627	692	708	743	779	770
istrict	2ND	675	746	742	701	725	622	686	702	737	773
apacity	3RD	718	666	734	717	685	707	606	669	684	718
5115	4TH	672	689	683	702	724	681	703	603	665	680
	5TH	646	672	707	668	691	716	674	695	596	658
	6TH	630	648	673	697	664	686	711	669	690	592
	SDC	68	63	63	58	87	87	87	87	87	87
otal		4920	4880	4998	4906	4873	4876	4894	4922	4983	5019
iddle	7TH	649	694	703	716	714	696	719	745	701	723
	8TH	624	648	664	696	686	692	674	696	722	679
istrict	9TH	600	601	606	622	653	643	649	632	652	677
apacity	OPP	12	12	12	17	37	37	37	37	37	37
2018	SDC	29	34	34	40	31	31	31	31	31	31
otal		1914	1989	2019	2091	2121	2099	2110	2141	2143	2147
econdary	10TH	572	567	618	616	542	618	608	614	598	617
	11TH	569	544	586	556	522	486	554	545	550	536
istrict	12TH	535	508	494	499	469	447	416	475	467	471
apacity	SDC	13	10	10	18	14	14	14	14	14	14
1900	I.S.	54	84	84	81	135	135	135	135	135	135
ent. 135	Cont.	121	118	118	71	134	134	134	134	134	134
otal		1864	1831	1910	1841	1816	1834	1861	1917	1898	1907
RAND TOTAL		8698	8700	8927	8838	8810	8809	8865	8980	9024	9073
ap. 9168											

01/20/94

Location		Actual: 89	90	91	92	93	Projected: 94	95	96	97	98
rnett	KG	83	74	59	64	76	79	83	87	86	85
	1ST	81	82	76	68	55	75	78	82	86	85
	2ND	77	79	79	75	68	54	74	77	81	85
istrict	3RD	67	67	76	75	77	67	53	73	76	80
apacity	4TH	68	77	71	77	78	80	69	55	76	79
523	5TH	67	75	68	76	68	74	76	65	52	72
	6TH	76	76	71	66	81	69	75	77	66	53
	SDC	4	8	8	0	14	14	14	14	14	14
Total		523	538	508	501	517	512	522	530	537	553

cation		89	90	91	92	93	94	95	96	97	98
l Toro	KG	0	70	72	86	108	104	109	114	113	112
	1ST	0	88	81	90	90	112	107	113	118	117
	2ND	0	60	86	65	93	85	105	100	107	112
District	3RD	0	65	67	69	78	98	90	111	105	113
pacity	4TH	0	0	60	62	84	84	105	96	119	112
614	5TH	0	0	0	62	70	89	89	112	102	126
	6TH	0	0	0	0	69	73	94	90	114	101
	SDC	0	0	0	0	25	25	25	25	25	25
Total		0	283	366	434	617	670	724	761	803	818

cation		89	90	91	92	93	94	95	96	97	98
ncinal/	KG	120	88	109	110	99	102	107	112	111	110
s Paseos	1ST	136	124	95	123	107	103	106	112	117	116
	2ND	112	127	127	106	119	110	106	109	115	120
istrict	3RD	119	113	120	121	109	118	109	105	108	114
pacity	4TH	119	119	114	115	107	101	110	101	98	100
.P. 523	5TH	124	121	120	106	112	103	97	106	97	95
n. 324	6TH	110	120	123	131	106	116	106	100	110	100
Total 847	SDC	8	6	6	6	8	8	8	8	8	8
tal		848	818	814	818	767	761	749	753	764	763

cation		89	90	91	92	93	94	95	96	97	98
winn/	KG	104	114	120	102	93	96	101	106	104	104
n Martin	1ST	109	119	125	123	104	96	99	104	110	108
	2ND	95	110	116	120	108	100	93	96	100	106
istrict	3RD	118	101	107	117	106	104	95	88	91	95
apacity	4TH	110	110	98	94	111	98	97	88	82	85
.M. 459	5TH	95	103	121	92	103	109	96	95	86	80
w. 270	6TH	98	95	103	116	92	100	106	93	92	84
Total 729	SDC	0	0	0	0	0	0	0	0	0	0
tal		729	752	790	764	717	703	687	670	665	662

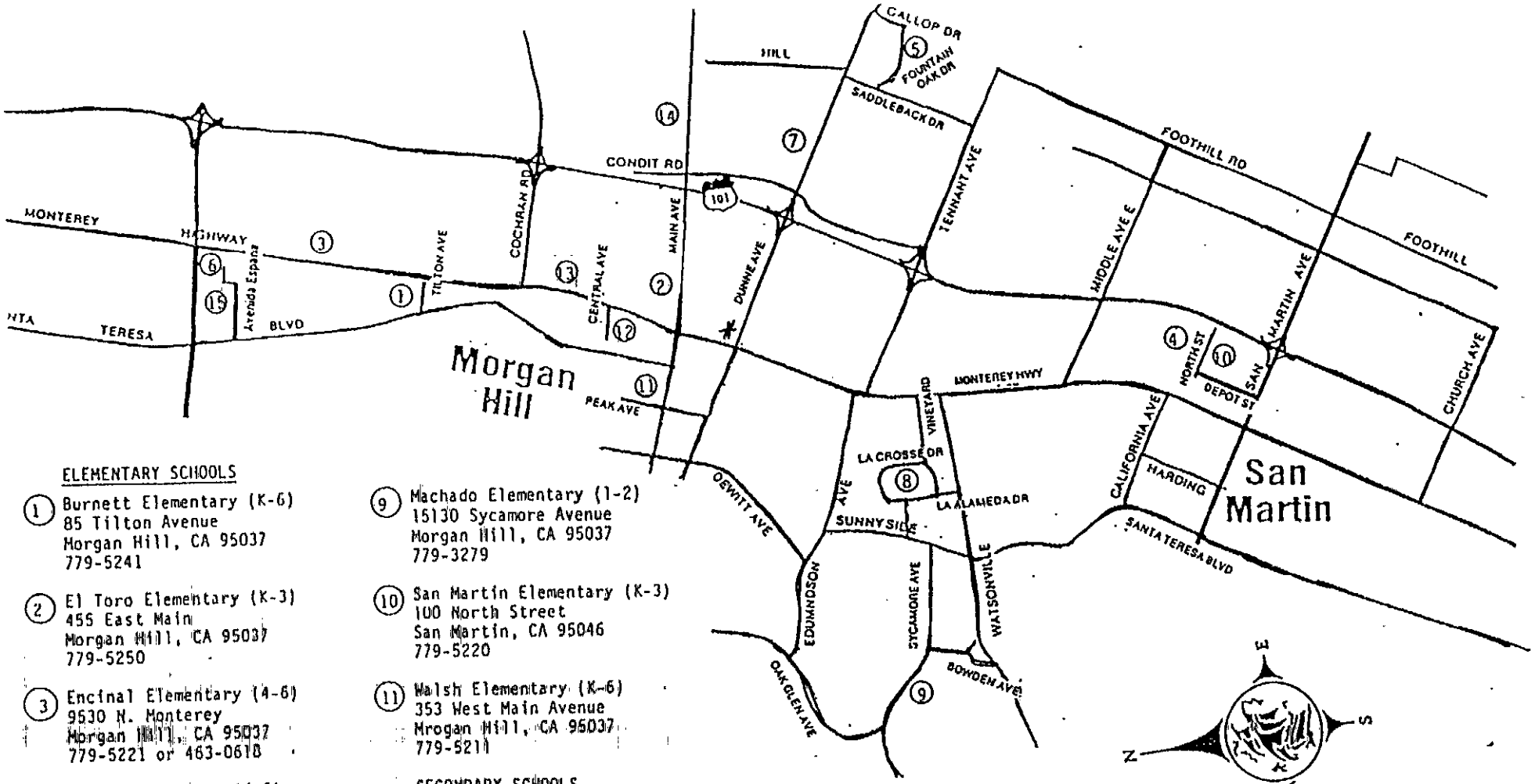
Location		Actual: 89	90	91	92	93	Projected: 94	95	96	97	98
Jackson	KG	77	63	67	48	85	88	92	97	96	95
	1ST	99	60	56	66	59	93	96	100	106	105
	2ND	74	76	60	61	89	63	99	102	106	112
District	3RD	76	67	71	59	79	86	61	96	99	102
Capacity	4TH	85	67	69	66	80	78	85	60	94	97
587	5TH	76	83	78	71	81	83	81	88	62	97
	6TH	71	73	82	70	77	75	77	75	82	58
	SDC	20	21	21	24	4	4	4	4	4	4
Total		578	510	504	465	554	570	595	622	649	670

Location		89	90	91	92	93	94	95	96	97	98
Nordstrom	KG	151	72	81	59	63	65	69	72	71	71
	1ST	166	84	73	72	58	60	62	66	69	68
	2ND	142	96	90	80	75	62	64	66	70	73
District	3RD	151	81	84	95	65	68	56	58	60	63
Capacity	4TH	134	133	90	83	96	66	69	57	59	61
634	5TH	127	124	132	86	87	97	67	70	57	59
	6TH	110	124	119	116	78	79	88	61	63	52
	SDC	8	8	8	9	19	19	19	19	19	19
Total		989	722	677	600	541	516	494	469	468	466

Location		89	90	91	92	93	94	95	96	97	98
Paradise	KG	103	82	105	80	85	88	92	97	96	95
Valley	1ST	135	104	92	113	87	93	96	100	106	105
	2ND	103	129	109	101	99	85	91	94	98	104
District	3RD	119	103	136	105	91	96	83	87	90	94
Capacity	4TH	90	127	107	128	100	88	92	80	84	87
P.V. 668	5TH	99	99	123	105	111	98	86	90	78	82
Mach. 54	6TH	78	104	105	130	101	112	99	87	91	79
Total 722	SDC	17	13	13	19	17	17	17	17	17	17
Total		744	761	790	781	691	677	656	652	660	663

Location		89	90	91	92	93	94	95	96	97	98
Walsh	KG	77	89	84	76	61	63	66	69	68	69
	1ST	70	83	101	83	67	60	64	66	67	66
	2ND	72	69	75	93	74	63	54	58	60	61
District	3RD	68	69	73	76	80	70	59	51	55	57
Capacity	4TH	66	56	74	77	68	86	76	66	53	59
459	5TH	58	67	65	70	59	63	82	69	62	47
	6TH	87	56	70	68	60	62	66	86	72	65
	SDC	11	7	7	0	0	0	0	0	0	0
Total		509	496	549	543	469	467	467	465	437	424

Location		Actual: 89	90	91	92	93	Projected: 94	95	96	97	98
ritton	7TH	325	343	342	351	420	390	410	409	402	397
	8TH	332	329	329	337	340	409	379	399	398	391
District	9TH	322	328	322	328	320	330	397	368	387	386
apacity	OPP	6	5	5	8	13	13	13	13	13	13
1063	SDC	14	21	21	25	7	7	7	7	7	7
Total		999	1026	1019	1049	1100	1149	1206	1196	1207	1194
ocation		89	90	91	92	93	94	95	96	97	98
urphy	7TH	324	351	361	365	294	306	309	336	299	326
	8TH	292	319	335	359	346	283	295	297	324	288
Distrct	9TH	278	273	284	294	333	313	252	264	265	291
apacity	OPP	6	7	7	9	24	24	24	24	24	24
955	SDC	15	13	13	15	24	24	24	24	24	24
Total		915	963	1000	1042	1021	950	904	945	936	953
ocation		89	90	91	92	93	94	95	96	97	98
ive Oak	10TH	572	567	618	616	542	618	608	614	598	617
	11TH	569	544	586	556	522	486	554	545	550	536
istrict	12TH	535	508	494	499	469	447	416	475	467	471
apacity	SDC	13	10	10	18	14	14	14	14	14	14
1900	I.S.	54	84	84	81	135	135	135	135	135	135
Total		1743	1713	1792	1770	1682	1700	1727	1783	1764	1773
ocation		89	90	91	92	93	94	95	96	97	98
entral135Cont.		121	118	118	71	134	134	134	134	134	134
otal		121	118	118	71	134	134	134	134	134	134



ELEMENTARY SCHOOLS

1. Burnett Elementary (K-6)
   85 Tilton Avenue
   Morgan Hill, CA 95037
   779-5241

2. El Toro Elementary (K-3)
   455 East Main
   Morgan Hill, CA 95037
   779-5250

3. Encinal Elementary (4-6)
   9530 N. Monterey
   Morgan Hill, CA 95037
   779-5221 or 463-0618

4. Gwinn Elementary (4-6)
   95 North Street
   San Martin, CA 95046
   779-5219

5. Jackson Elementary (K-6)
   2700 Fountain Oaks Drive
   Morgan Hill, CA 95037
   779-8301

6. Los Paseos Elementary (K-3)
   121 Avenida Grande
   San Jose, CA 95139
   779-5209 or 578-8800

7. Nordstrom Elementary (K-6)
   1425 East Dunne Ave.
   Morgan Hill, CA 95037
   779-5278

8. Paradise Valley Elementary (1-6)
   1400 La Crosse Drive

9. Machado Elementary (1-2)
   15130 Sycamore Avenue
   Morgan Hill, CA 95037
   779-3279

10. San Martin Elementary (K-3)
    100 North Street
    San Martin, CA 95046
    779-5220

11. Walsh Elementary (K-6)
    353 West Main Avenue
    Mrogan Hill, CA 95037
    779-5211

SECONDARY SCHOOLS

12. Britton Middle School (7-9)
    80 West Central Avenue
    Morgan Hill, CA 95037
    779-5200

13. Central High School (10-12)
    (Continuation School)
    17960 Monterey Street
    Morgan Hill, CA 95037
    779-5244

14. Live Oak High School (10-12)
    1505 East Main Avenue
    Morgan Hill, CA 95037
    779-5210

15. Murphy Middle School (7-9)
    141 Avenida Espana
    San Jose, CA 95139
    779-8351 or 281-1500

* Morgan Hill School site
(for sale)

Morgan Hill Unified School District

MORGAN HILL UNIFIED SCHOOL DISTRICT

P.O. BOX 927 · MORGAN HILL, CA 95038-0927 · (408) 779-5272

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)

3. Complete the following tables (use additional sheets if needed):

SAN JOSE UNIFIED SCHOOL DISTRICT

DISTRICT SCHOOLS			
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Instructional Capacity, Oct. 1993
Elementary	28	15,204	16,320
Middle	7	7,054	7,853
High	7	7,427	9,479
Other *			
Closed Schools			

*Explain Instructional capacities include both portable and permanent buildings.

Regular classrooms house 30 students. Special Education classrooms house 15 students.

STUDENT GENERATION RATE			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
* Elementary (K - 8)	.42	.42	.42
* High	.25	.25	.30

Based on demographic study done by Shelly Lapkoff in 1988 and a current demographic study done by Community Systems Associates/Marshall Krupp in 1993.

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE			
Name of School	Single Track	Three Track	Four Track
None			

New Schools or Additions to Existing Schools Currently under Construction or In Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
4 Elem (K-5) Downtown	Planned	600	1995-2000
1 middle (6-8) Downtown	Planned	1000	1995-2000

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
Currently looking to acquire property	K-5 elementary
downtown. One elementary and one middle	6-8 middle school
school required may be built on existing	
property.	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Henderson Elementary	480
Canoas Elementary	360
Hammer Elementary	480
Old Hacienda Elementary	240

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
Elementary and middle schools are	
currently operating at 90-94 percent	
capacity and greater.	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
None	

5. **ADDITIONAL COMMENTS and Background Material of District:**

Please see enclosed letter of explanation dated February 17, 1994 and addressed to Edward Gawf, Principal Planner.

Prepared by: Catherine A. Matthews

Date: February 17, 1994

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

SAN JOSE
UNIFIED
SCHOOL
DISTRICT

GENERAL SERVICES

All Students Can Learn... All Students Can Succeed!

February 17, 1994

Edward Gawf, Principal Planner
Department of City Planning and Building
801 North First Street
San Jose, CA 95110-1795

Dear Mr. Gawf:

The following information is provided in addition to the school survey form I completed.

DESEGREGATION

San Jose Unified School District currently operates under a court ordered desegregation program. The Desegregation Order includes provisions designed to ensure that the District's classrooms and programs are offered to and accessible to all students.

Proposed changes to the Desegregation Order were made in January of 1994 and include the opportunity for more students to be able to attend their neighborhood school. This proposed change would create a great need for elementary and middle school facilities in the downtown area. Parents and students would continue to have choices for schools and programs.

DISTRICT FACILITIES ADVISORY COMMITTEE

In 1992 the Board of Education appointed a Facilities Advisory Committee consisting of representatives of the community and the District in order to formulate a facilities strategic master plan to address the short and long-term needs of the District's capital facilities including all schools and the District's maintenance, operations, food service and transportation facilities.

San Jose Unified will need to implement major improvements District-wide if the District is to address the future needs of its students and employees. Since May of 1993, the Committee has gained a better understanding of the demographics and future projected growth of the District, the deficiencies in the individual school sites, and the importance of providing facility options and improvements for the District to enter the 21st Century.

250 STOCKTON AVENUE · SAN JOSE, CALIFORNIA 95126 · (408) 998 6153 FAX (408) 998 6159

The Committee has identified the need for four elementary schools and one middle school in the downtown area and the need for modernization and reconstruction of schools throughout the District. San Jose Unified has not built a new school since 1976.

DEVELOPMENT

San Jose Unified is the largest district in the City and County, with a geographic area of over 50 square miles. The District is 24 miles long from north to south and 4 miles wide at its widest point. The unique geographic characteristic of the District contributes greatly to the impact of development on our schools. Development is occurring in the downtown area, a large number of in-fill developments are occurring in the central portion of the District and the South Almaden Valley may eventually have as many as 2,000 new homes built within District boundaries.

If I can be of assistance in providing additional information for you on the San Jose Unified School District, please contact me at 998-7851.

Sincerely,

Catherine M. Masters

Catherine M. Masters
Administrator, Community Services

CMM

Enclosures
Survey/Map

City of San Jose
Department of City Planning and Building
801 North First Street, Room 400
San Jose, CA 95110
(408) 277-4576

SCHOOL SURVEY

1. Provide a legible map showing the location of all schools in the District including special school facilities, closed schools and undeveloped future school sites. Please also identify schools serving students living in San Jose.

2. Provide a list of all schools in the District and include the following information:

   Enrollment (October 1993 CBEDS)
   Instructional Capacity (October 1993)
   Number of San Jose students attending the school.

3. Complete the following tables (use additional sheets if needed):

SANTA CLARA UNIFIED SCHOOL DISTRICT

DISTRICT SCHOOLS				
Type of School	Number of Schools	Enrollment CBEDS, Oct. 1993	Number of San Jose Students	Instructional Capacity, Oct. 1993
Elementary	15	6,963	450	7,980
Middle	3	2,947	0	4,110
High	2	3,417	0	3,450
Other *	2	(1) 353 (2) 112	0 0	? 130
Closed Schools	5	-0-	0	3,570

*Explain

Developer Fee Justification STUDENT GENERATION RATE (Yield Factor)			
Type of School	Single Family Detached Dwellings	Single Family Attached Dwellings (Townhouses)	Multi Family Dwellings
Elementary (K - 8)	.70	.15	.10
High			

SCHOOLS OPERATING ON YEAR-ROUND SCHEDULE N/A			
Name of School	Single Track	Three Track	Four Track

SCHOOL SURVEY

New Schools or Additions to Existing Schools Currently under Construction or in Planning Stages			
Name/Location of School & Grade Level	Identify if Existing, under Construction or Planned	Planned Instructional Capacity	Anticipated date of completion
	N/A		

Sites Identified or Acquired for Future Schools	
Location of School	Grade Level
N/A	

Closed Schools or Schools not Currently Used for Instructional Purposes by the District	
Name or Location of School	Instructional Capacity
Curtis Santa Clara	Middle School - Approx. 1,140
Mariposa Santa Clara	Elementary - Approx. 420
Monticello Santa Clara	Elementary - Approx. 630
Patrick Henry Sunnyvale	Middle School - Approx. 1,080
Washington Santa Clara	Elementary - Approx. 300

Schools that Can Accommodate Additional Portables or Classrooms	
Name or Location of School	Number of Portables or Classrooms
"ALL SITES"	

School Sites, Portions of School Sites or Undeveloped Sites Currently for Sale by the District	
Name or Location of School	Reason for Sale
N/A	

5. ADDITIONAL COMMENTS and Background Material of District:

The district plans on leasing all five sites for the next five years.

Prepared by: Patricia L. Kelban, Assist. Bus. Mgr.

Date: February 18, 1994

Please return completed survey by February 18, 1994 to the City of San Jose, Department of City Planning and Building, Room 400, 801 North First Street, San Jose, CA 95110. Attention: *Lee Quintana.*

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 GAY AVENUE SAN JOSE, CALIFORNIA 95127 (408) 258-4923 FAX (408) 251-2806

February 8, 1994

RECEIVED
FEB 09 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

Lee Quintana
City of San José
Department of Planning and Building
801 North First Street, Room 400
San José, CA 95110

Dear Ms. Quintana:

Enclosed is the School Survey information you requested. Please contact me if you require any further information.

Sincerely,

Linda Latasa

Linda Latasa, Director
Facilities & Planning

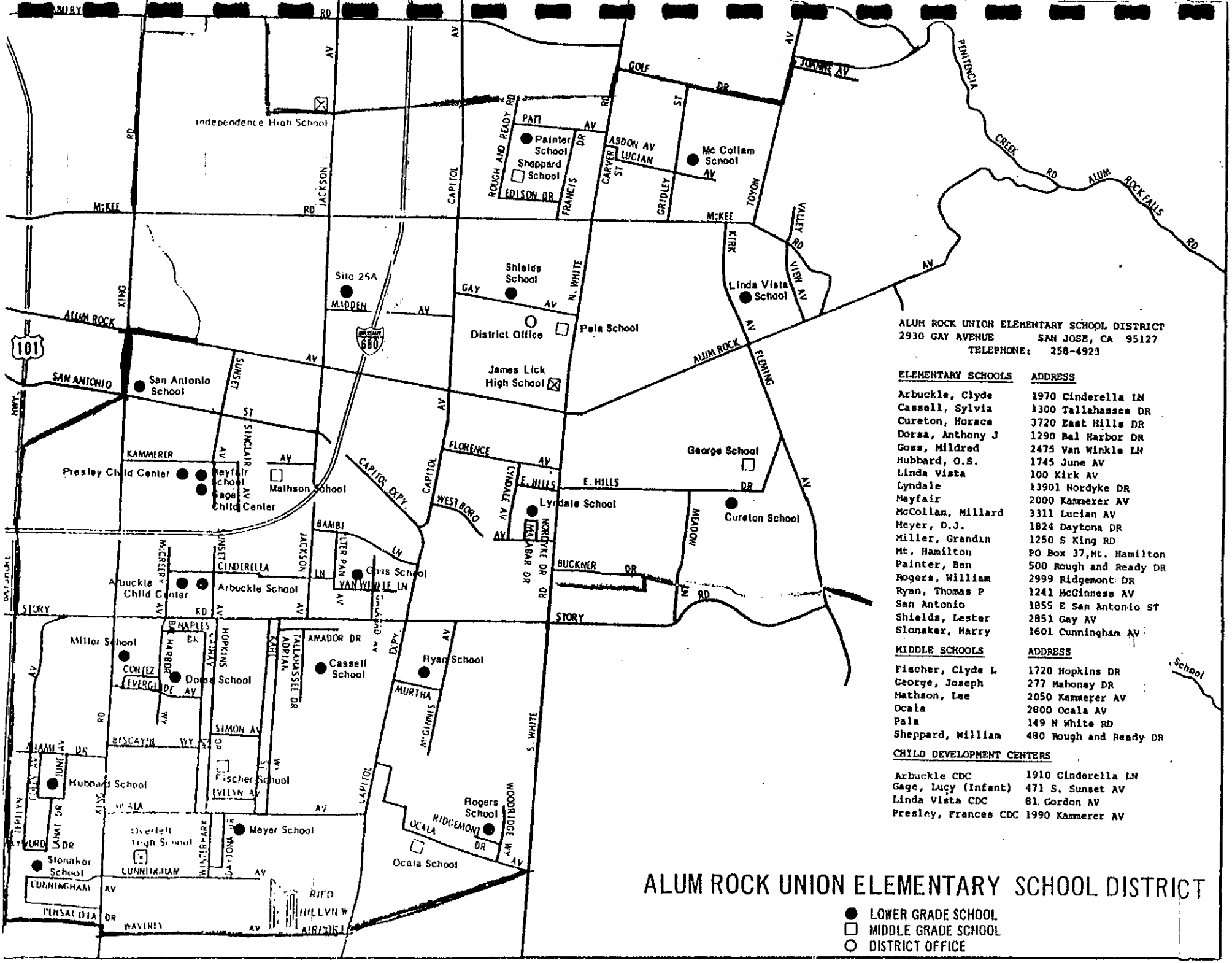
LL/cf

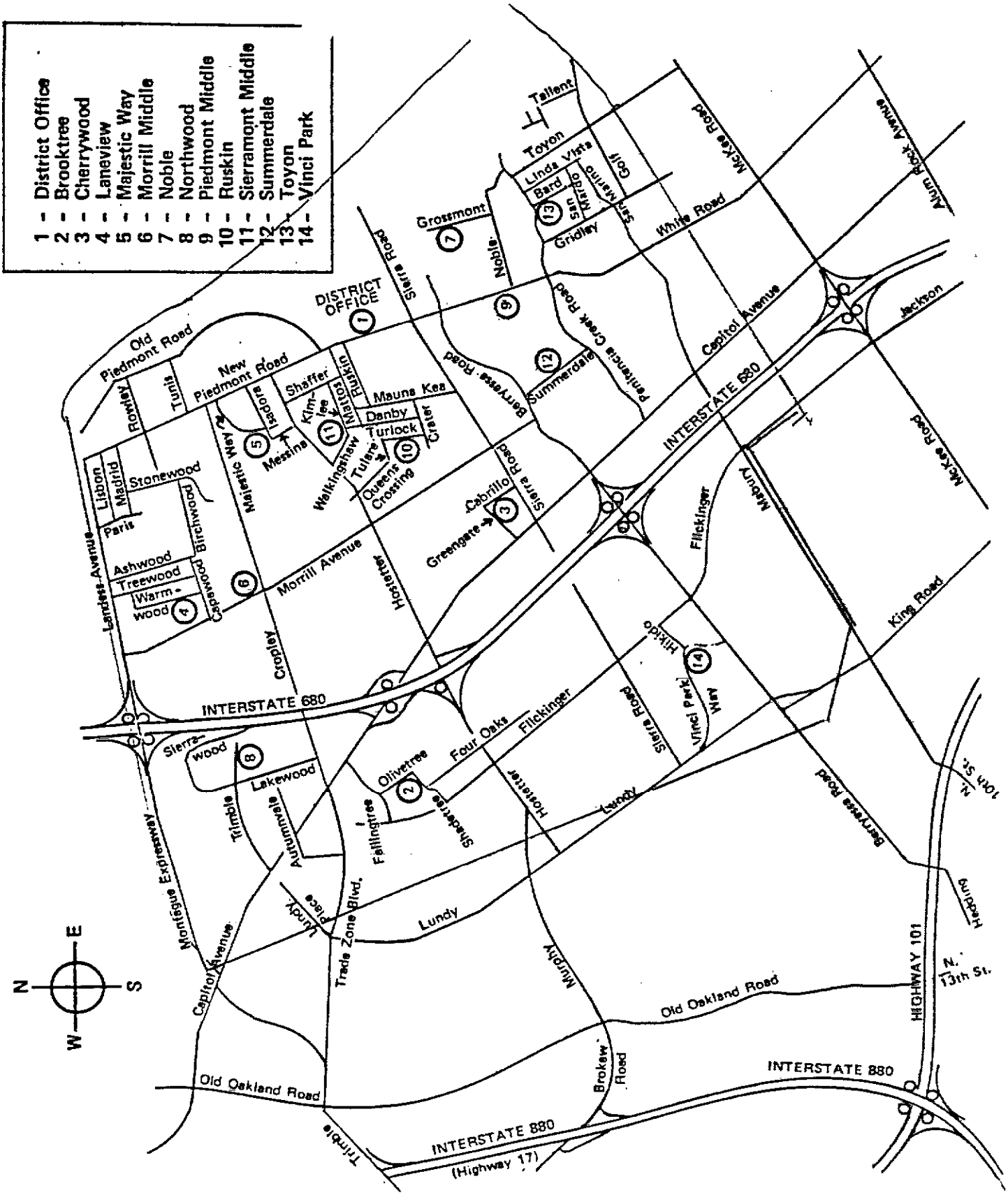
Attachment

School District Maps

A school district map for the **Campbell Union High School District** has not been provided by the District. The Campbell Union High School District includes the areas within the City of San Jose served by the Cambrian, Campbell Union (Elementary and Middle), Moreland, and Union School Districts.

The school district maps for the **Oak Grove Elementary School District**, **San Jose Unified School District**, and **Santa Clara Unified School District** are too large to reproduce in this document and are available for inspection at the San Jose Planning Department, 801 North First Street, Room 400, San Jose, California 95110-1795.


Independence High School
Painter School
Sheppard School
Mc Collam School
Site 25A
Shields School
Linda Vista School
District Office
Pala School
James Lick High School
San Antonio School
Presley Child Center
Mayfair School
Gage Child Center
Mathson School
George School
Lyndale School
Cureton School
Arbuckle Child Center
Arbuckle School
Cox School
Miller School
Dorsa School
Cassell School
Ryan School
Hubbard School
Fischer School
Meyer School
Rogers School
Ocala School
Stonaker School
Overfelt High School
ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
2930 GAY AVENUE SAN JOSE, CA 95127
TELEPHONE: 258-4923
ELEMENTARY SCHOOLS ADDRESS
Arbuckle, Clyde 1970 Cinderella LN
Cassell, Sylvia 1300 Tallahassee DR
Cureton, Horace 3720 East Hills DR
Dorsa, Anthony J 1290 Bal Harbor DR
Goss, Mildred 2475 Van Winkle LN
Hubbard, O.S. 1745 June AV
Linda Vista 100 Kirk AV
Lyndale 13901 Nordyke DR
Mayfair 2000 Kammerer AV
McCollam, Millard 3311 Lucian AV
Meyer, D.J. 1824 Daytona DR
Miller, Grandin 1250 S King RD
Mt. Hamilton PO Box 37,Mt. Hamilton
Painter, Ben 500 Rough and Ready DR
Rogers, William 2999 Ridgemont DR
Ryan, Thomas P 1241 McGinness AV
San Antonio 1855 E San Antonio ST
Shields, Lester 2851 Gay AV
Stonaker, Harry 1601 Cunningham AV
MIDDLE SCHOOLS ADDRESS
Fischer, Clyde L 1720 Hopkins DR
George, Joseph 277 Mahoney DR
Mathson, Lee 2050 Kammerer AV
Ocala 2800 Ocala AV
Pala 149 N White RD
Sheppard, William 480 Rough and Ready DR
CHILD DEVELOPMENT CENTERS
Arbuckle CDC 1910 Cinderella LN
Gage, Lucy (Infant) 471 S. Sunset AV
Linda Vista CDC 81 Gordon AV
Presley, Frances CDC 1990 Kammerer AV
ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
LOWER GRADE SCHOOL
MIDDLE GRADE SCHOOL
DISTRICT OFFICE

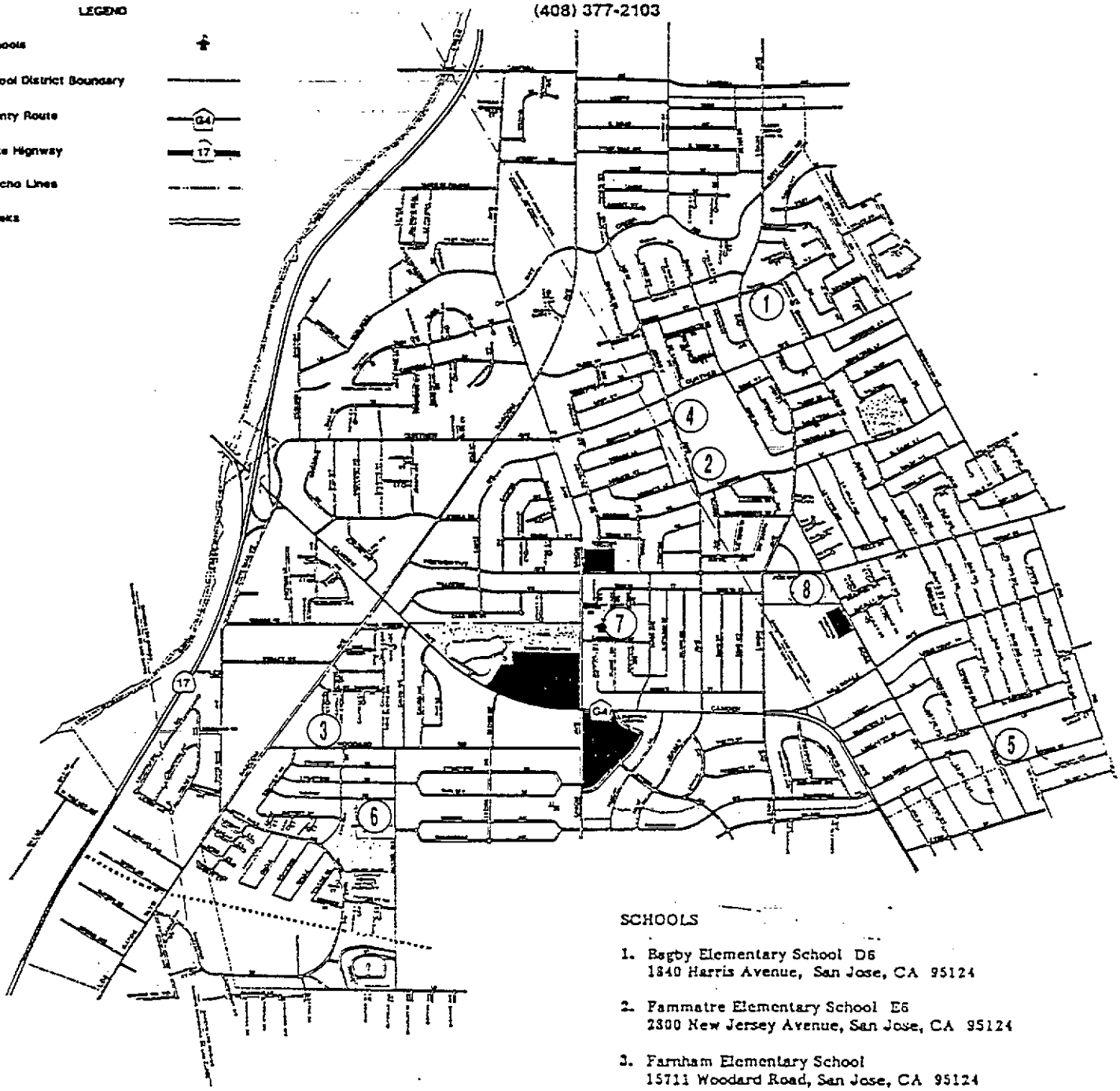


BERRYESSA UNION SCHOOL DISTRICT

1376 PIEDMONT ROAD
SAN JOSE, CALIFORNIA 95132
(408) 923-1800

CAMBRIAN ELEMENTARY SCHOOL DISTRICT

4115 JACKSOL DRIVE, SAN JOSE, CA 95124
(408) 377-2103



SCHOOLS

1. Bagby Elementary School D6
   1840 Harris Avenue, San Jose, CA 95124
2. Farmatre Elementary School E6
   2300 New Jersey Avenue, San Jose, CA 95124
3. Farnham Elementary School
   15711 Woodard Road, San Jose, CA 95124
4. Ida Price Middle School E6
   2550 New Jersey Avenue, San Jose, CA 95124
5. Sartorette Elementary School G8
   3850 Woodford Drive, San Jose, CA 95124
6. Administrative Offices G3
   4115 Jacksol Drive, San Jose, CA 95124

Closed Schools:

7. Metzler School
   1975 [illegible]
8. [illegible] School [illegible] Ave.

CAMPBELL UNION ELEMENTARY SCHOOL DISTRICT

••••••••• ELEMENTARY SCHOOL ATTENDANCE AREAS •••••••••

ELEMENTARY SCHOOLS (K-4)

MAP COORDINATES

BLACKFORD SCHOOL (408) 266-8771 35-62
1970 Willow Street
San Jose, CA 95125

CAPRI SCHOOL (408) 379-5750 30-57
850 Chapman Drive
Campbell, CA 95008

CASTLEMONT SCHOOL (408) 379-8775 32-62
3040 East Payne Avenue
Campbell, CA 95008

FOREST HILL SCHOOL (408) 378-9533 28-59
4450 McCoy Avenue
San Jose, CA 95130

HAZELWOOD SCHOOL (408) 378-1410 30-59
775 Waldo Road
Campbell, CA 95008

LYNHAVEN SCHOOL (408) 248-6385 31-64
881 South Cypress Avenue
San Jose, CA 95117

MARSHALL LANE SCHOOL (408) 379-4311 26-57
14114 Marilyn Lane
Saratoga, CA 95070

ROSEMARY SCHOOL (408) 378-2261 31-62
401 West Hamilton Avenue
Campbell, CA 95008

MIDDLE SCHOOLS (5-8)

MAP COORDINATES

CAMPBELL MIDDLE SCHOOL (408) 378-4955 31-60
295 West Cherry Lane
Campbell, CA 95008

MONROE MIDDLE SCHOOL (408) 296-8808 33-63
1055 South Monroe Street
San Jose, CA 95126

ROLLING HILLS MIDDLE SCHOOL (408) 378-1561 28-57
1585 More Avenue
Los Gatos, CA 95030

MAP COORDINATES

DISTRICT OFFICE (408) 378-3405 32-61
155 North Third Street
Campbell, CA 95008

CORPORATION YARD (408) 378-6132 33-61
240 North Harrison Avenue
Campbell, CA 95008

LEASED OR CLOSED SITES

MAP COORDINATES

DOVER SCHOOL ..... 35-6[illegible]
1300 Sheffield Way
Campbell, CA 95008

HAMILTON SCHOOL 33-61
460 East Hamilton Avenue
Campbell, CA 95008

SAN TOMAS SCHOOL 29-58
1510 Hacienda Avenue
Campbell, CA 95008

SHERMAN OAKS SCHOOL 35-64
1800 Fruitdale Avenue
San Jose, CA 95126

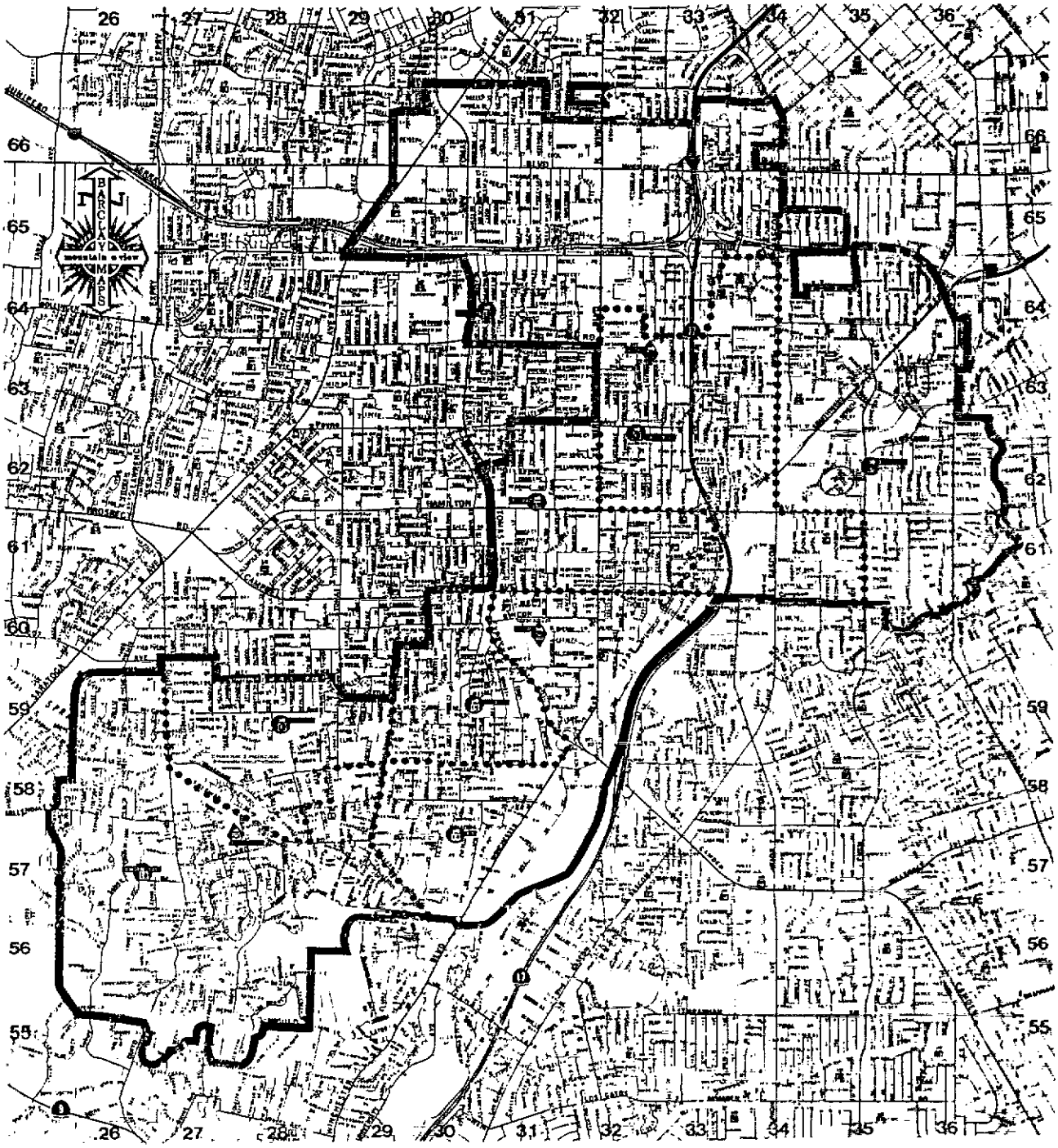
NOTES:

The Campbell Union Elementary School District boundry follows the inside edge of the solid black line.

The elementary school attendance area boundries follow along the center of the dotted line. ••••••••••••

SCALE

0 1/10 1 mile



CAMPBELL UNION ELEMENTARY SCHOOL DISTRICT

MIDDLE SCHOOL ATTENDANCE AREAS

ELEMENTARY SCHOOLS (K-4)

MAP COORDINATES

BLACKFORD SCHOOL (408) 266-8771 35-62
1970 Willow Street
San Jose, CA 95125

CAPRI SCHOOL (408) 379-5750 30-57
850 Chapman Drive
Campbell, CA 95008

CASTLEMONT SCHOOL (408) 379-8775 32-62
3040 East Payne Avenue
Campbell, CA 95008

FOREST HILL SCHOOL (408) 378-9533 28-59
4450 McCoy Avenue
San Jose, CA 95130

HAZELWOOD SCHOOL (408) 378-1410 30-59
775 Waldo Road
Campbell, CA 95008

LYNHAVEN SCHOOL (408) 248 6386 31-64
881 South Cypress Avenue
San Jose, CA 95117

MARSHALL LANE SCHOOL (408) 379-4311 26-57
14114 Marilyn Lane
Saratoga, CA 95070

ROSEMARY SCHOOL (408) 378-2261 31-62
401 West Hamilton Avenue
Campbell, CA 95008

MIDDLE SCHOOLS (5-8)

MAP COORDINATES

CAMPBELL MIDDLE SCHOOL (408) 378-4955 31-60
295 West Cherry Lane
Campbell, CA 95008

MONROE MIDDLE SCHOOL (408) 296-8808 33-63
1055 South Monroe Street
San Jose, CA 95128

ROLLING HILLS MIDDLE SCHOOL (408) 378-1561 ... 28-57
1585 Mora Avenue
Los Gatos, CA 95030

MAP COORDINATES

DISTRICT OFFICE (408) 378-3405 32-61
155 North Third Street
Campbell, CA 95008

CORPORATION YARD (408) 378-6132 33-61
240 North Harrison Avenue
Campbell, CA 95008

LEASED OR CLOSED SITES

MAP COORD.

DOVER SCHOOL 35-61
1300 Sheffield Way
Campbell, CA 95008

HAMILTON SCHOOL 33-61
480 East Hamilton Avenue
Campbell, CA 95008

SAN TOMAS SCHOOL 29-58
1510 Hacienda Avenue
Campbell, CA 95008

SHERMAN OAKS SCHOOL 35-64
1800 Fruitdale Avenue
San Jose, CA 95128

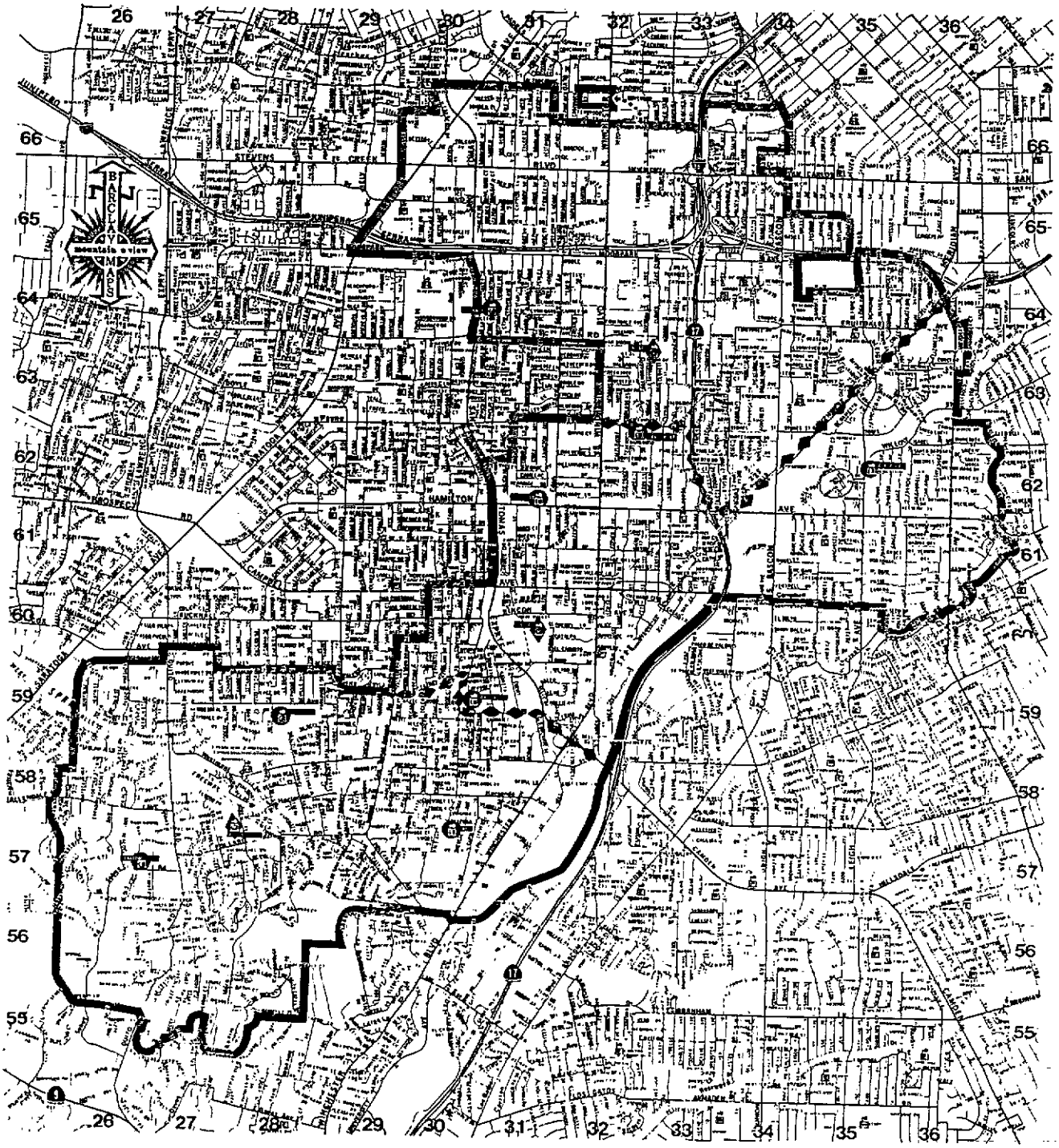
NOTES:

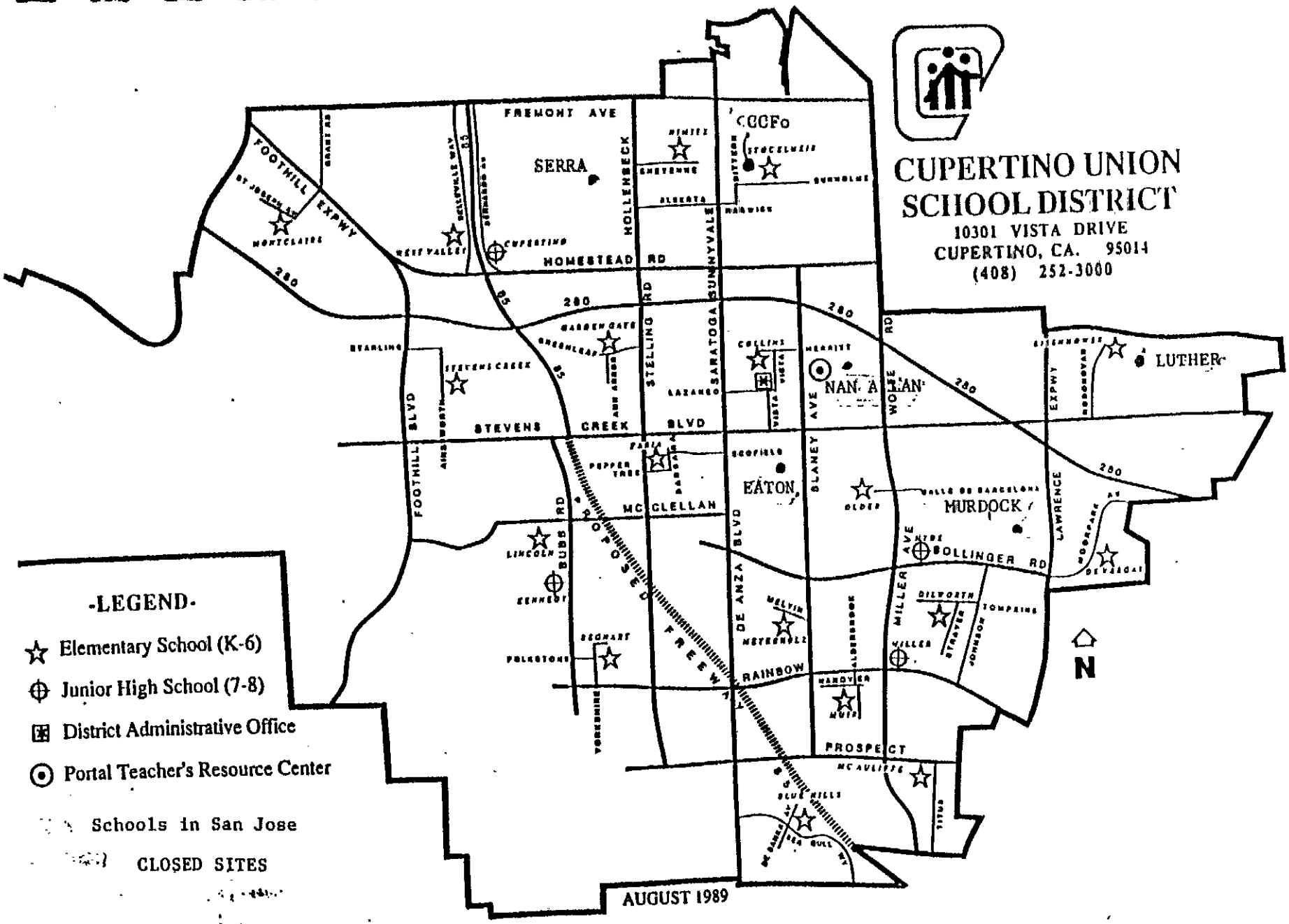
The Campbell Union Elementary School District boundry follows the inside edge of the solid black line.

The middle school attendance area boundries follow along the center of the dimond line.

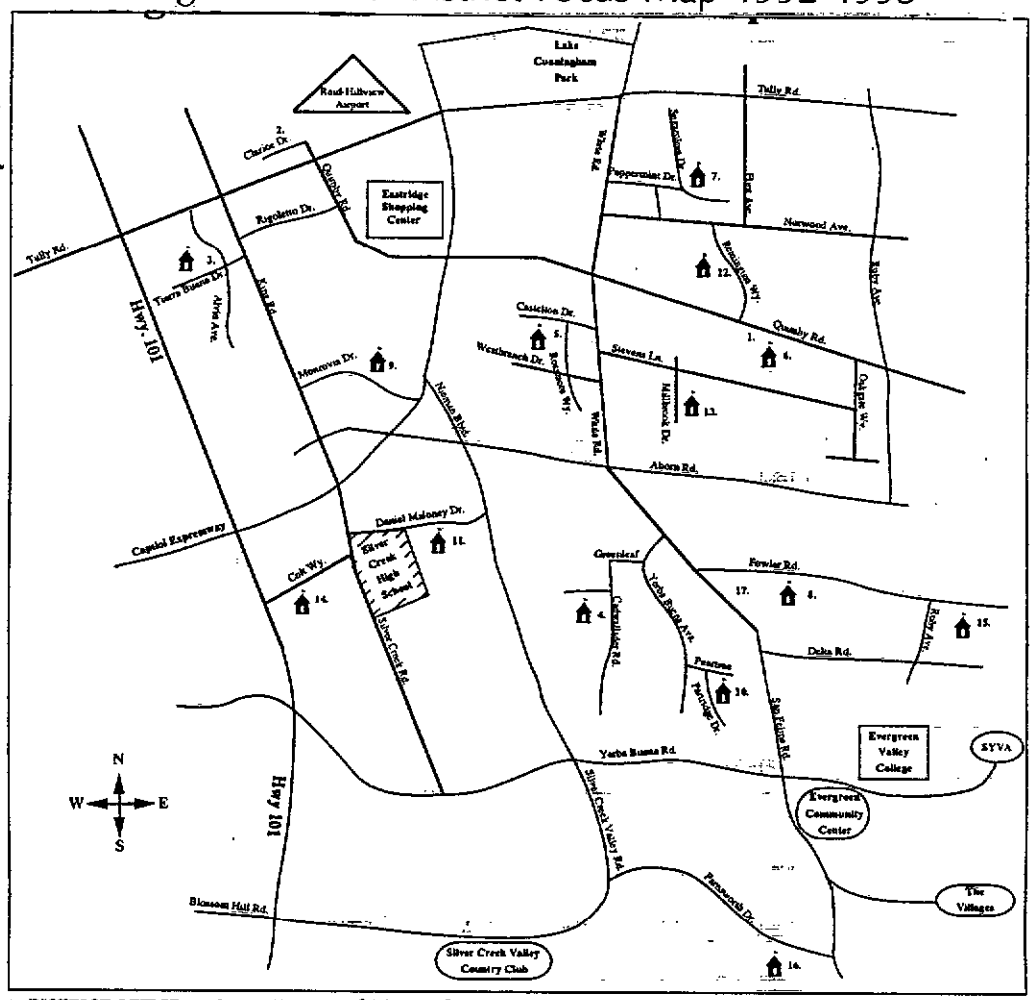
SCALE

0 1/10 1 mile




CUPERTINO UNION
SCHOOL DISTRICT
10301 VISTA DRIVE
CUPERTINO, CA. 95014
(408) 252-3000
-LEGEND-
Elementary School (K-6)
Junior High School (7-8)
District Administrative Office
Portal Teacher's Resource Center
Schools in San Jose
CLOSED SITES
AUGUST 1989
N
FREMONT AVE
SERRA
CCCFo
HOMESTEAD RD
HOLLENBECK
STELLING RD
SARATOGA SUNNYVALE
FOOTHILL EXPWY
FOOTHILL BLVD
STEVENS CREEK BLVD
MC CLELLAN
BUBB RD
PROPOSED FREEWAY
DE ANZA BLVD
BLANEY AVE
WOLFE RD
MILLER AVE
BOLLINGER RD
LAWRENCE EXPWY
RAINBOW
PROSPECT
NAN A LAN
EATON
MURDOCK
LUTHER
280
85

Evergreen School District Focus Map 1992-1993



1. **DISTRICT OFFICE** Grades K-8
   408-270-6800
   3188 Quimby Rd., 95148
   James F. Smith, Superintendent
   District Enrollment: 10,500
2. **K.R. SMITH SCHOOL** •
   408-270-6751
   2025 Clarice Dr., 95122
   Grades K-6 Enrollment: 730
   Principal: Chris Corpus
3. **O.B. WHALEY SCHOOL** •
   408-270-6759
   2655 Alvin Ave., 95121
   Grades K-5 Enrollment: 684
   Principal: Jennie Collett
4. **CADWALLADER SCHOOL**
   408-270-4950
   3799 Cadwallader Rd., 95121
   Grades K-6 Enrollment: 528
   Principal: Susan Hanna
5. **HOLLY OAK SCHOOL**
   408-270-4975
   2995 Rossmore Wy., 95148
   Grades K-6 Enrollment: 700
   Principal: Mercedes Boles
6. **QUIMBY OAK MIDDLE SCHOOL** •
   408-270-6735
   3190 Quimby Rd., 95148
   Grades 6-8 Enrollment: 1,065
   Principal: Phil Bond
   A.P. Mark Jimenez
   Quimby Oak cont.
   A.P. Barbara Dabel
   A.P. Ken Barber
7. **CEDAR GROVE SCHOOL**
   408-270-4958
   2702 Sugar Plum Dr., 95148
   Grades K-6 Enrollment: 840
   Principal: Jozie Autry
   A.P. Sally Serrano-Hill
8. **EVERGREEN SCHOOL**
   408-270-4966
   3010 Fowler Rd., 95135
   Grades K-6 Enrollment: 526
   Principal: Judy Rule, Ed.D.
9. **G. LEY VA MIDDLE SCHOOL** •
   408-270-4992
   1865 Monrovia Dr., 95121
   Grades 6-8 Enrollment: 889
   Principal: Clif Black
   A.P. Rick Miller
   A.P. Evelyn Ortiz-Stanley
10. **LAUREL WOOD SCHOOL**
    408-270-4983
    4280 Partridge Dr., 95121
    Grades K-6 Enrollment: 540
    Principal: Robert Pruitt, Ed.D.
11. **MONTGOMERY SCHOOL**
    408-270-6718
    2010 Daniel Maloney Dr., 95121
    Grades K-6 Enrollment: 810
    Principal: Carole Martin
    A.P. Lin Corpus
12. **NORWOOD CREEK SCHOOL** •
    408-270-6726
    3241 Remington Wy., 95148
    Grades K-5 Enrollment: 870
    Principal: Carole Greenwald
    A.P. Patricia Low
13. **MILLBROOK SCHOOL**
    408-270-6767
    3200 Millbrook Dr., 95148
    Grades K-5 Enrollment: 740
    Principal: Lawrence Milligan
14. **DOVE HILL SCHOOL**
    408-270-4964
    1460 Colt Wy., 95121
    Grades K-6 Enrollment: 709
    Principal: Will Ector
15. **CHABOYA MIDDLE SCHOOL**
    408-270-6900
    3276 Fowler Rd., 95135
    Grades 6-8 Enrollment: 725
    Principal: Bette Saindahl
    A.P. Sallie McAlear
    A.P. Jeff Smith
16. Site of the future Elementary School
    Under Construction
17. **DISTRICT MAINTENANCE/ TRANSPORTATION**
    408-270-6797
    2976 Fowler Rd., 95135

• National & California Distinguished School
• California Distinguished School

EAST SIDE UNION HIGH SCHOOL DISTRICT
830 NORTH CAPITOL AVENUE
SAN JOSE, CALIFORNIA 95133
408-272-6400

ANDREW HILL
3200 SENTER ROAD
SAN JOSE, CA 95111
227-8800
BILL KUGLER, PRINCIPAL

INDEPENDENCE
1776 EDUCATIONAL PK. DR.
SAN JOSE, CA 95133
729-3911
JOHN SELLAROLE, PRINCIPAL

JAMES LICK
57 NORTH WHITE ROAD
SAN JOSE, CA 95127
729-3580
CATHY GIAMMONA, PRINCIPAL

MT. PLEASANT
1750 SOUTH WHITE ROAD
SAN JOSE, CA 95127
251-7820
MANNY MORALES, PRINCIPAL

OAK GROVE
285 BLOSSOM HILL ROAD
SAN JOSE, CA 95123
226-9332
KARALEE ROLAND, PRINCIPAL

PIEDMONT HILLS
1377 PIEDMONT ROAD
SAN JOSE, CA 95132
729-3950
FRANCISCA MIRANDA, PRIN.

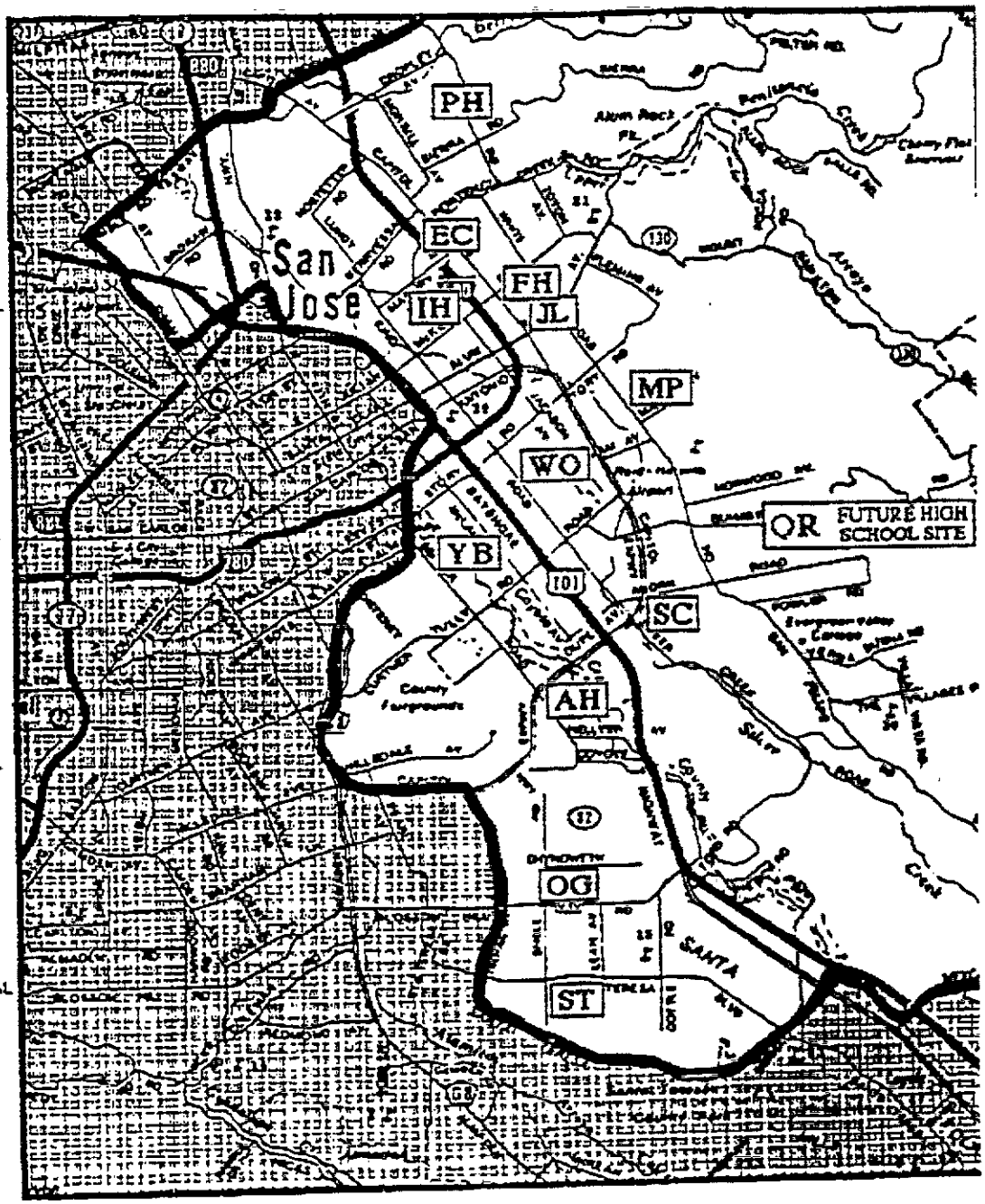
WILLIAM C. OVERFELT
1835 CUNNINGHAM AVENUE
SAN JOSE, CA 95112
259-0540
ELIAS CHAMORRO, PRINCIPAL

SANTA TERESA
6150 SNELL ROAD
SAN JOSE, CA 95123
578-9100
MIKE WELCH, PRINCIPAL

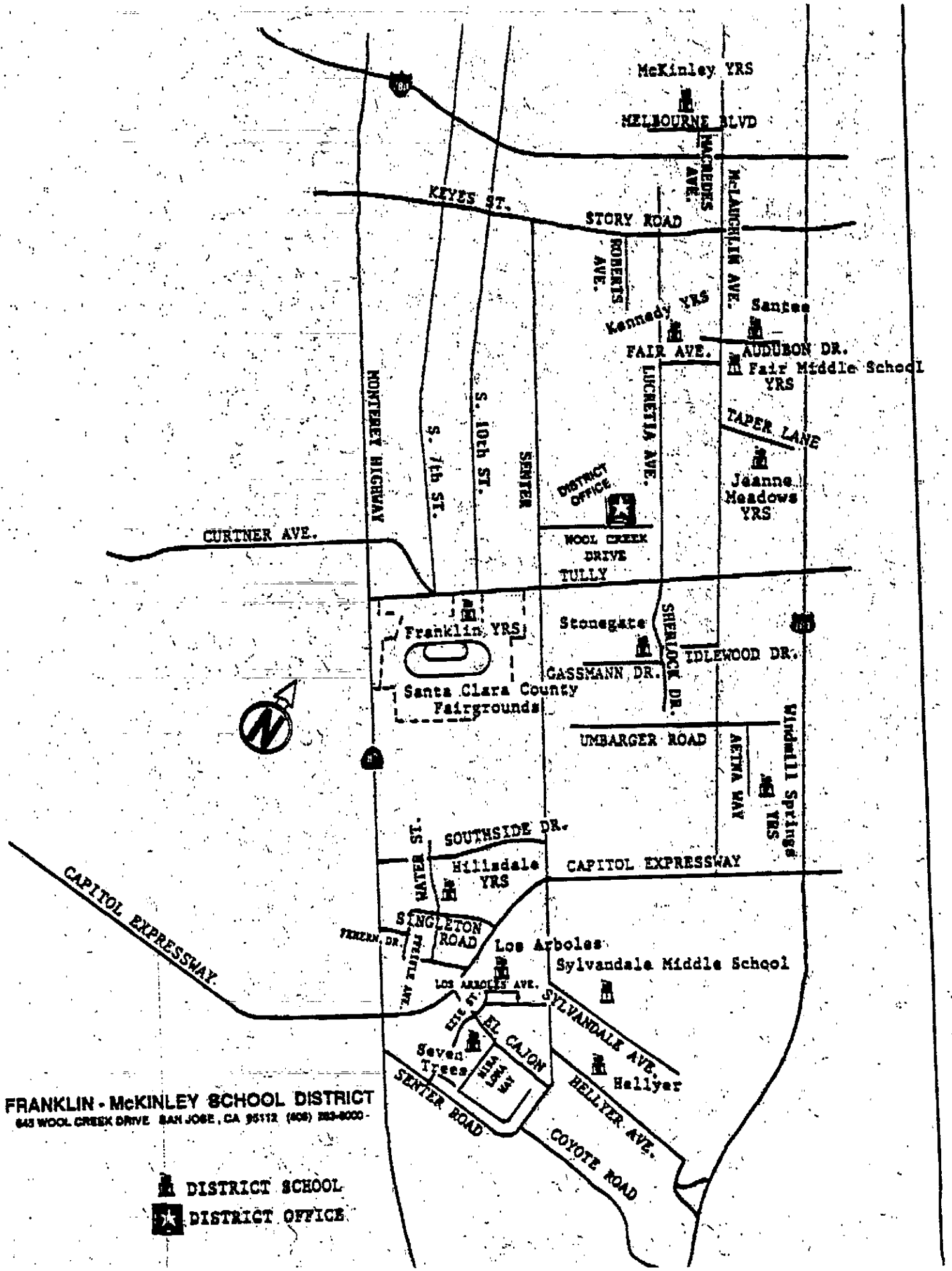
SILVER CREEK
3434 SILVER CREEK ROAD
SAN JOSE, CA 95123
274-1700
RAFAEL RENTERIA, PRINCIPAL

YERBA BUENA
1855 LUCREJIA AVENUE
SAN JOSE, CA 95122
279-1500
GARY ZELLNER, PRINCIPAL

FOOTHILL
230 PALA AVENUE
SAN JOSE, CA 95127
229-4464
ALICIA MENDEKE, PRINCIPAL



TOTAL P.005


McKinley YRS
MELBOURNE BLVD
MACHADOS AVE.
McLAUGHLIN AVE.
KEYES ST.
STORY ROAD
ROBERTS AVE.
Kennedy YRS
Santee
FAIR AVE.
AUDUBON DR.
Fair Middle School
YRS
LUCRETIA AVE.
TAPER LANE
Jeanne Meadows YRS
MONTEREY HIGHWAY
S. 7th ST.
S. 10th ST.
SENTER
DISTRICT OFFICE
WOOL CREEK DRIVE
CURTNER AVE.
TULLY
Franklin YRS
Stonegate
SHERLOCK DR.
IDLEWOOD DR.
GASSMANN DR.
Santa Clara County Fairgrounds
UMBARGER ROAD
AETNA WAY
Windmill Springs YRS
SOUTHSIDE DR.
CAPITOL EXPRESSWAY
Hillsdale YRS
WATER ST.
SINGLETON ROAD
FERERN DR.
FEILTE AVE.
Los Arboles
Sylvandale Middle School
LOS ARBOLES AVE.
SYLVANDALE AVE.
EL CAJON
Seven Trees
Hellyer
HELLYER AVE.
SENTER ROAD
COYOTE ROAD
FRANKLIN - McKINLEY SCHOOL DISTRICT
645 WOOL CREEK DRIVE SAN JOSE, CA 95112 (408) 283-8000
DISTRICT SCHOOL
DISTRICT OFFICE

Fremont Union High School District

CUPERTINO ■ C/P
10100 Finch
Cupertino 95014 (408) 366-7360

PHOENIX HIGH SCHOOL C/P
(CONTINUATION)
10100 Finch
Cupertino 95014 (408) 252-1736

FREMONT ■ F
1279 Sunnyvale-Saratoga
Sunnyvale 94087 (408) 522-2400

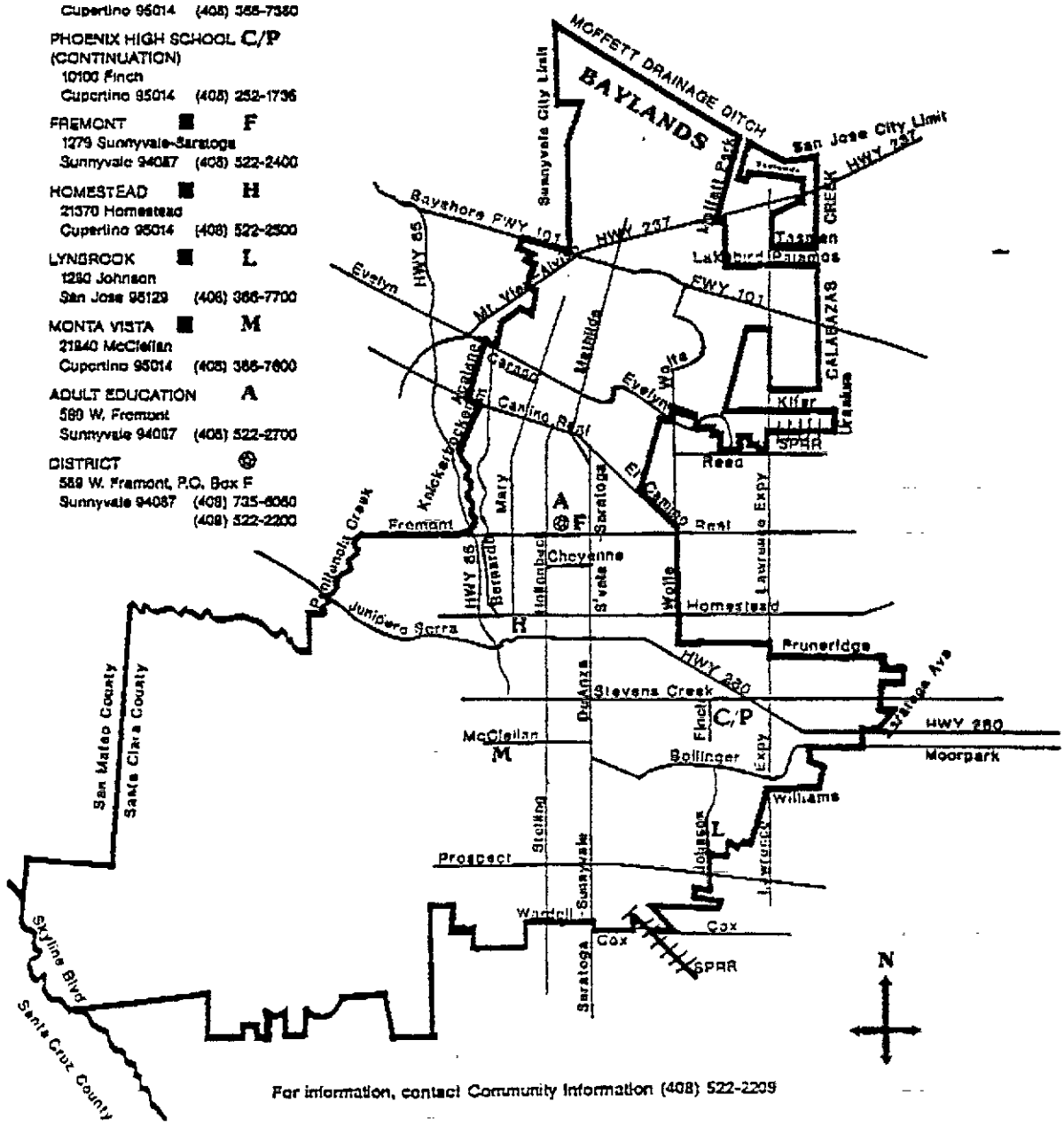
HOMESTEAD ■ H
21370 Homestead
Cupertino 95014 (408) 522-2500

LYNBROOK ■ L
1290 Johnson
San Jose 95129 (408) 366-7700

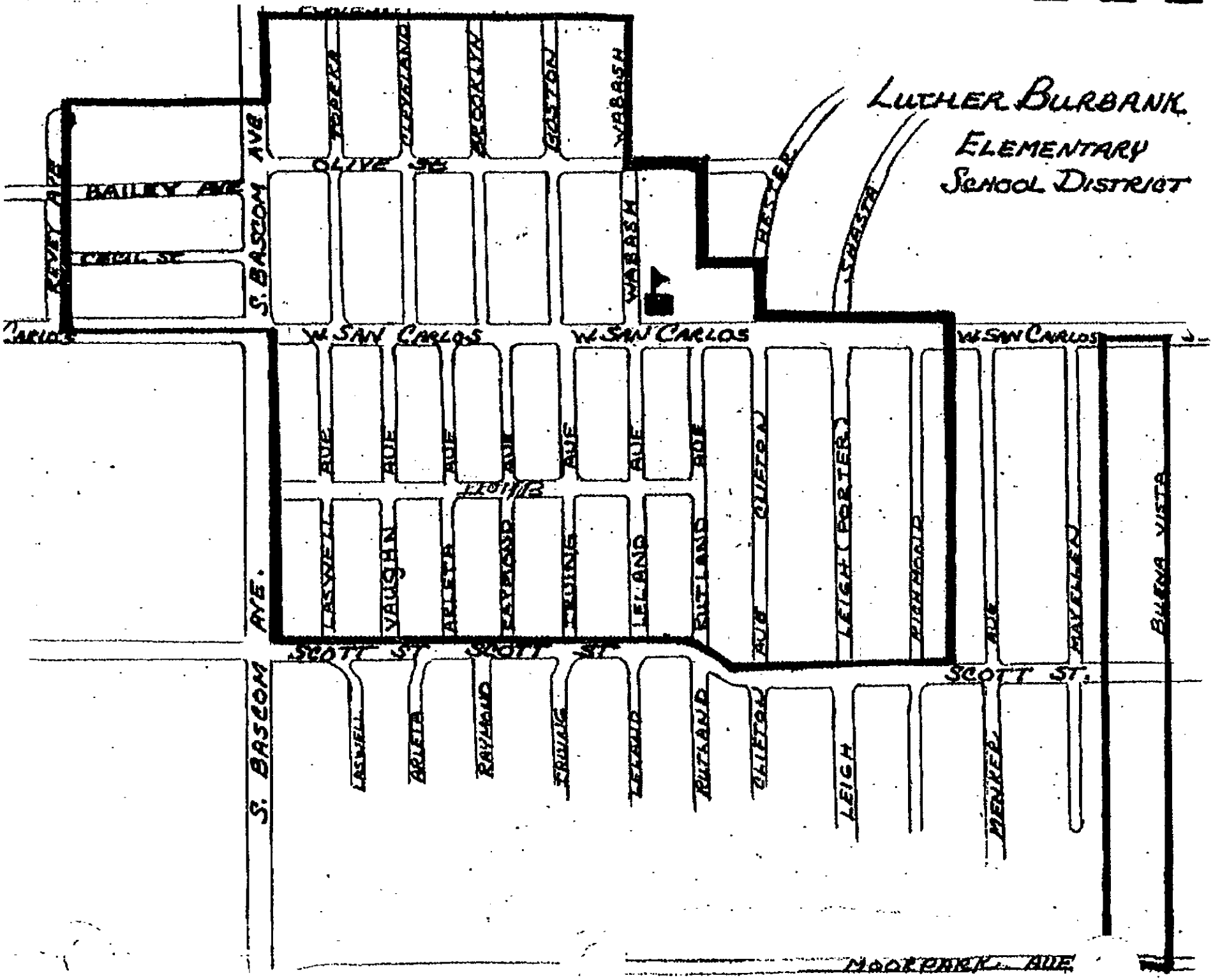
MONTA VISTA ■ M
21840 McClellan
Cupertino 95014 (408) 366-7600

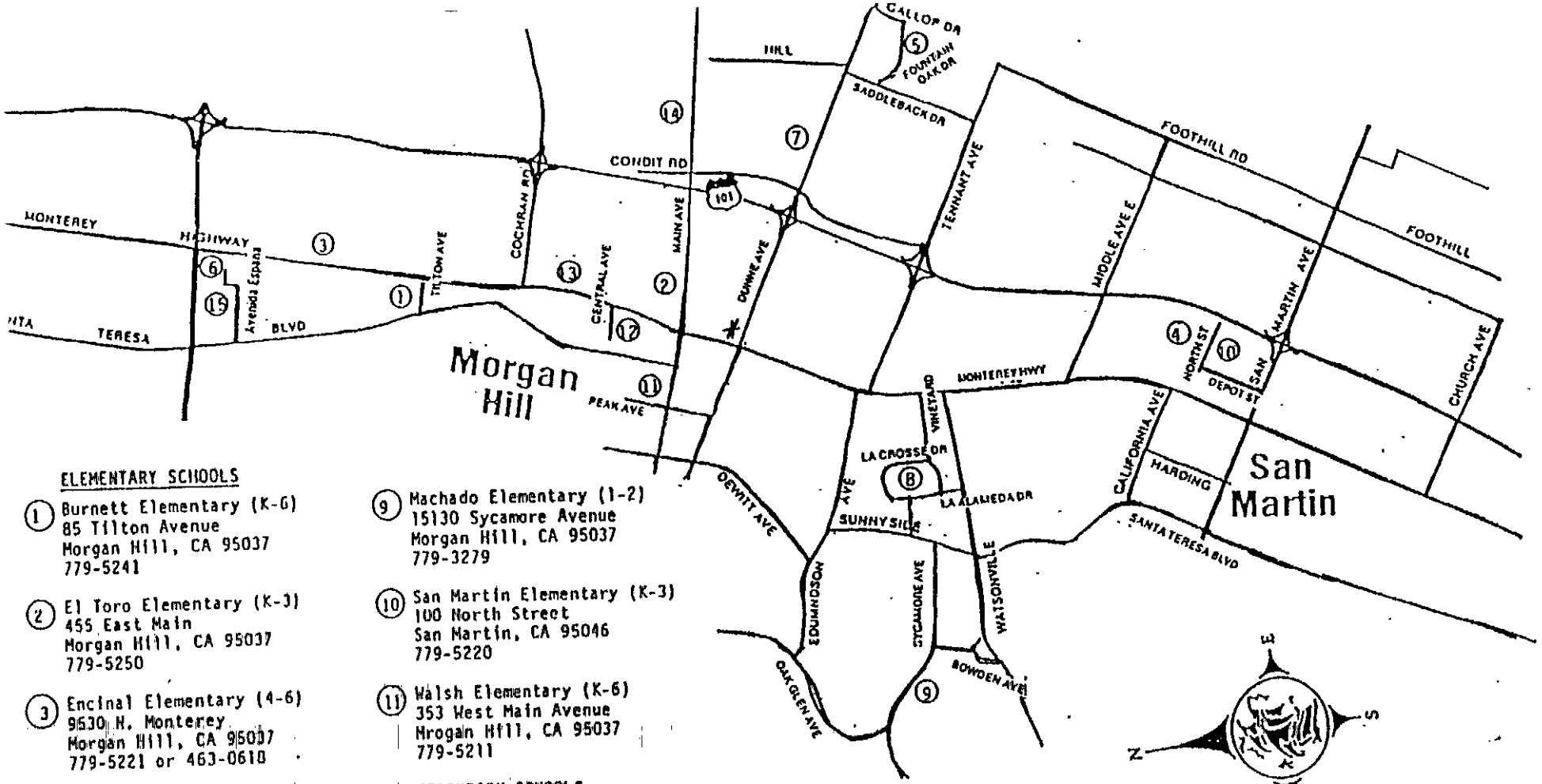
ADULT EDUCATION A
589 W. Fremont
Sunnyvale 94087 (408) 522-2700

DISTRICT ⊕
589 W. Fremont, P.O. Box F
Sunnyvale 94087 (408) 735-8060
(408) 522-2200



For information, contact Community Information (408) 522-2209


LUTHER BURBANK
ELEMENTARY
SCHOOL DISTRICT
BAILEY AVE
CECIL ST
KEYES AVE
S. BASCOM AVE
OLIVE ST
FOSTER
HEYSLAND
BROOKLYN
GOLTON
WABASH
HESLER
SHASTA
W. SAN CARLOS
W. SAN CARLOS
W. SAN CARLOS
AVE
AVE
AVE
AVE
AVE
AVE
AVE
HOFFER
LASWELL
VAUGHN
ARLETA
RAYMOND
SPRING
LELAND
RUTLAND
ULLETON
LEIGH (PORTER)
MERKELEY
AVE
BAYFELLER
BUENA VISTA
AVE.
SCOTT ST.
SCOTT ST.
SCOTT ST.
S. BASCOM
LASWELL
ARLETA
RAYMOND
SPRING
LELAND
RUTLAND
ULLETON
LEIGH
MERKELEY
MOORPARK AVE



* Morgan Hill School site (for sale)

ELEMENTARY SCHOOLS

1. Burnett Elementary (K-6)
   85 Tilton Avenue
   Morgan Hill, CA 95037
   779-5241

2. El Toro Elementary (K-3)
   455 East Main
   Morgan Hill, CA 95037
   779-5250

3. Encinal Elementary (4-6)
   9530 N. Monterey
   Morgan Hill, CA 95037
   779-5221 or 463-0610

4. Gwinn Elementary (4-6)
   95 North Street
   San Martin, CA 95046
   779-5219

5. Jackson Elementary (K-6)
   2700 Fountain Oaks Drive
   Morgan Hill, CA 95037
   779-8301

6. Los Paseos Elementary (K-3)
   121 Avenida Grande
   San Jose, CA 95139
   779-5209 or 578-8800

7. Nordstrom Elementary (K-6)
   1425 East Dunne Ave.
   Morgan Hill, CA 95037
   779-5278

8. Paradise Valley Elementary (K-6)
   1400 La Crosse Drive

9. Machado Elementary (1-2)
   15130 Sycamore Avenue
   Morgan Hill, CA 95037
   779-3279

10. San Martin Elementary (K-3)
    100 North Street
    San Martin, CA 95046
    779-5220

11. Walsh Elementary (K-6)
    353 West Main Avenue
    Mrogan Hill, CA 95037
    779-5211

SECONDARY SCHOOLS

12. Britton Middle School (7-9)
    80 West Central Avenue
    Morgan Hill, CA 95037
    779-5200

13. Central High School (10-12)
    (Continuation School)
    17960 Monterey Street
    Morgan Hill, CA 95037
    779-5244

14. Live Oak High School (10-12)
    1505 East Main Avenue
    Morgan Hill, CA 95037
    779-5210

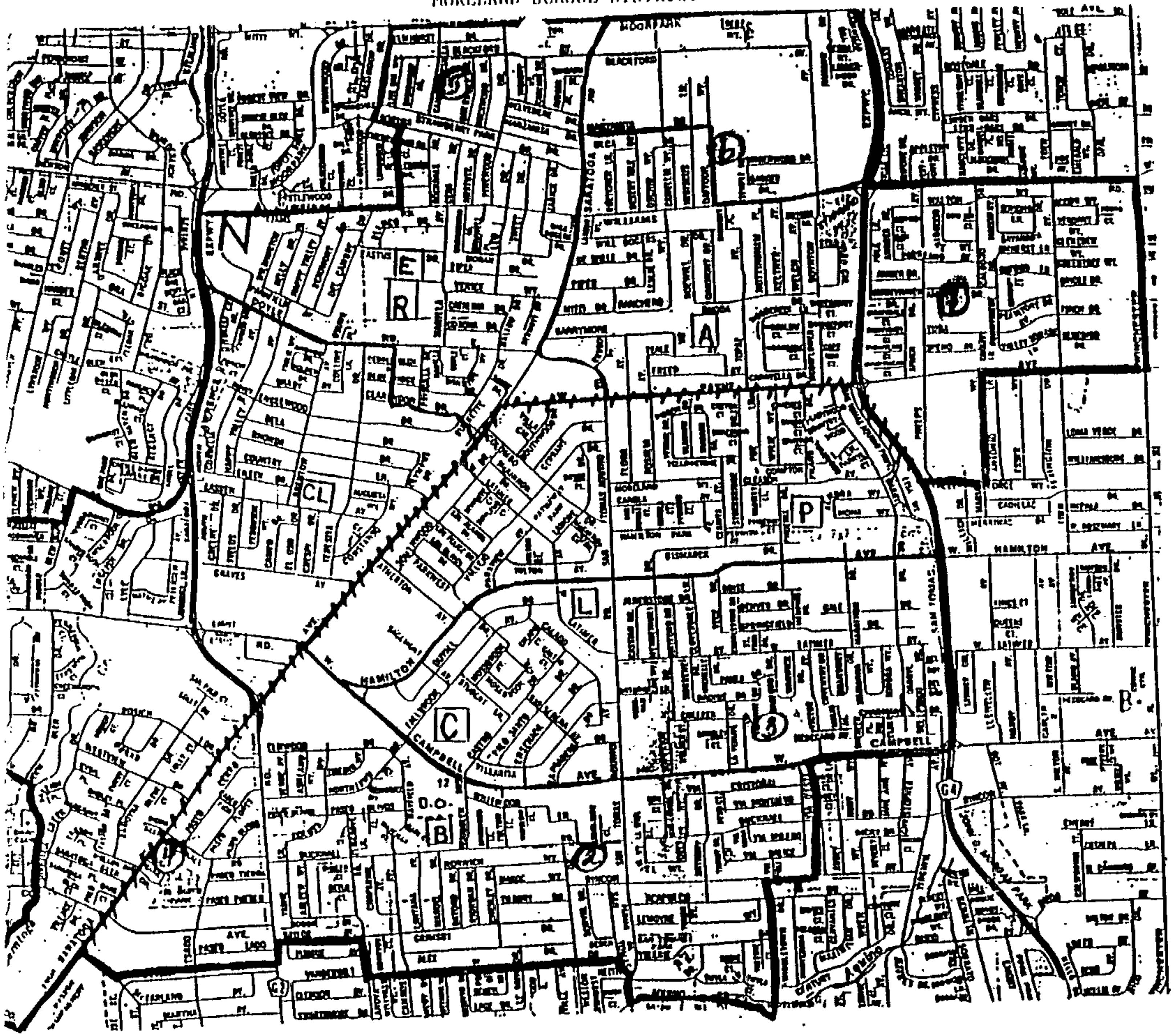
15. Murphy Middle School (7-9)
    141 Avenida España
    San Jose, CA 95139
    779-8351 or 281-1500

Morgan Hill UNIFIED SCHOOL DISTRICT

MORGAN HILL UNIFIED SCHOOL DISTRICT

P.O. BOX 927 · MORGAN HILL, CA 95038-0927 · (408) 779-5272

MORELAND SCHOOL DISTRICT



A = ANDERSON
243-6031

B = BAKER
379-2101

C = CASTRO MS
379-3620

CL = COUNTRY LANE
252-3444

E = EASTERBROOK
253-3424

L = LATIMER
379-2412

P = PAYNE
241-1788

R = ROGERS MS
253-7262

LEASED SCHOOL

1. Amber Drive
3500 Amber Dr.
San Jose, CA 95117

2. Bucknall School
4300 Bucknall Rd.
San Jose, CA 95130

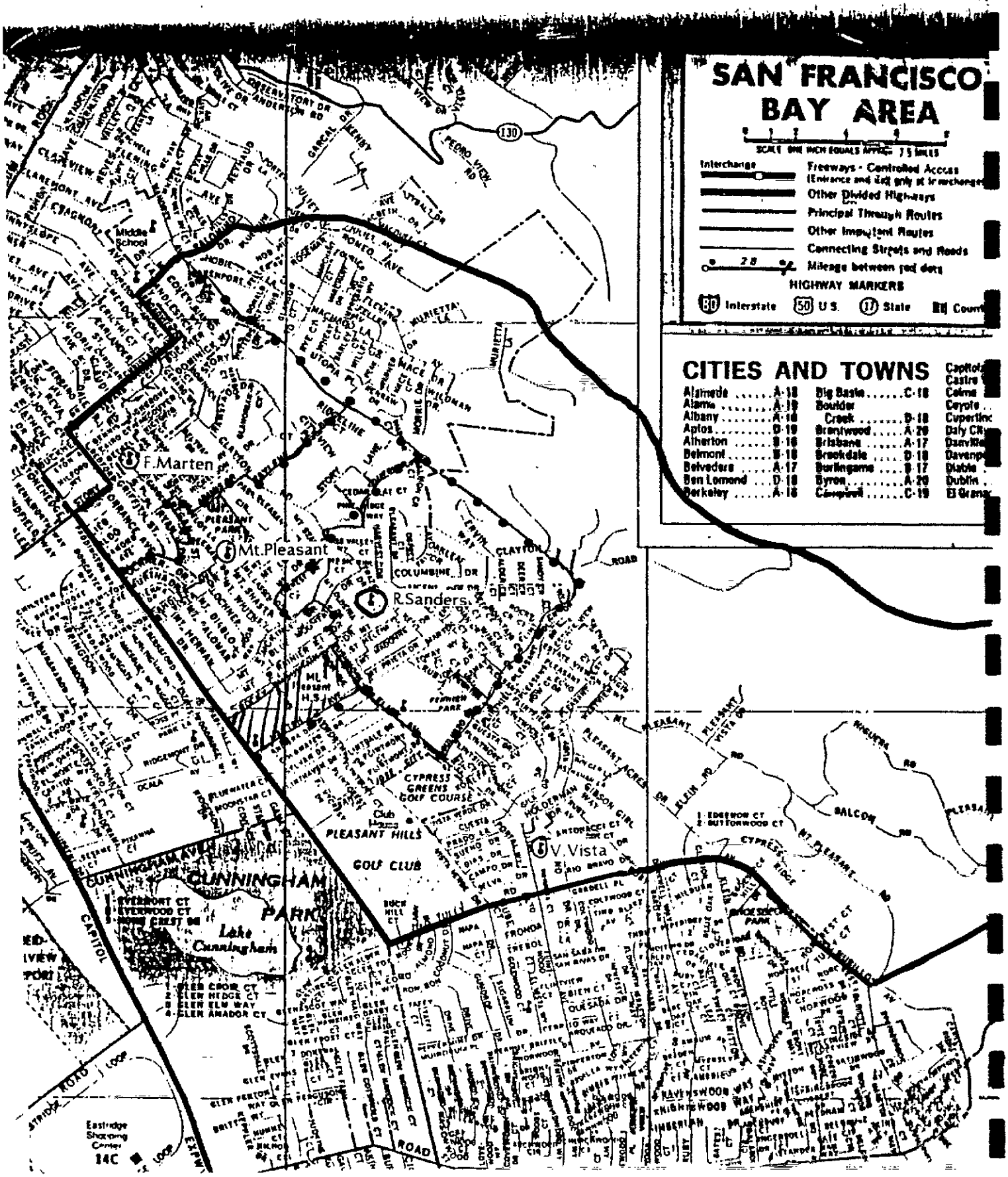
3. Coventry School
1125 W. Campbell Ave.
Campbell, CA 95008

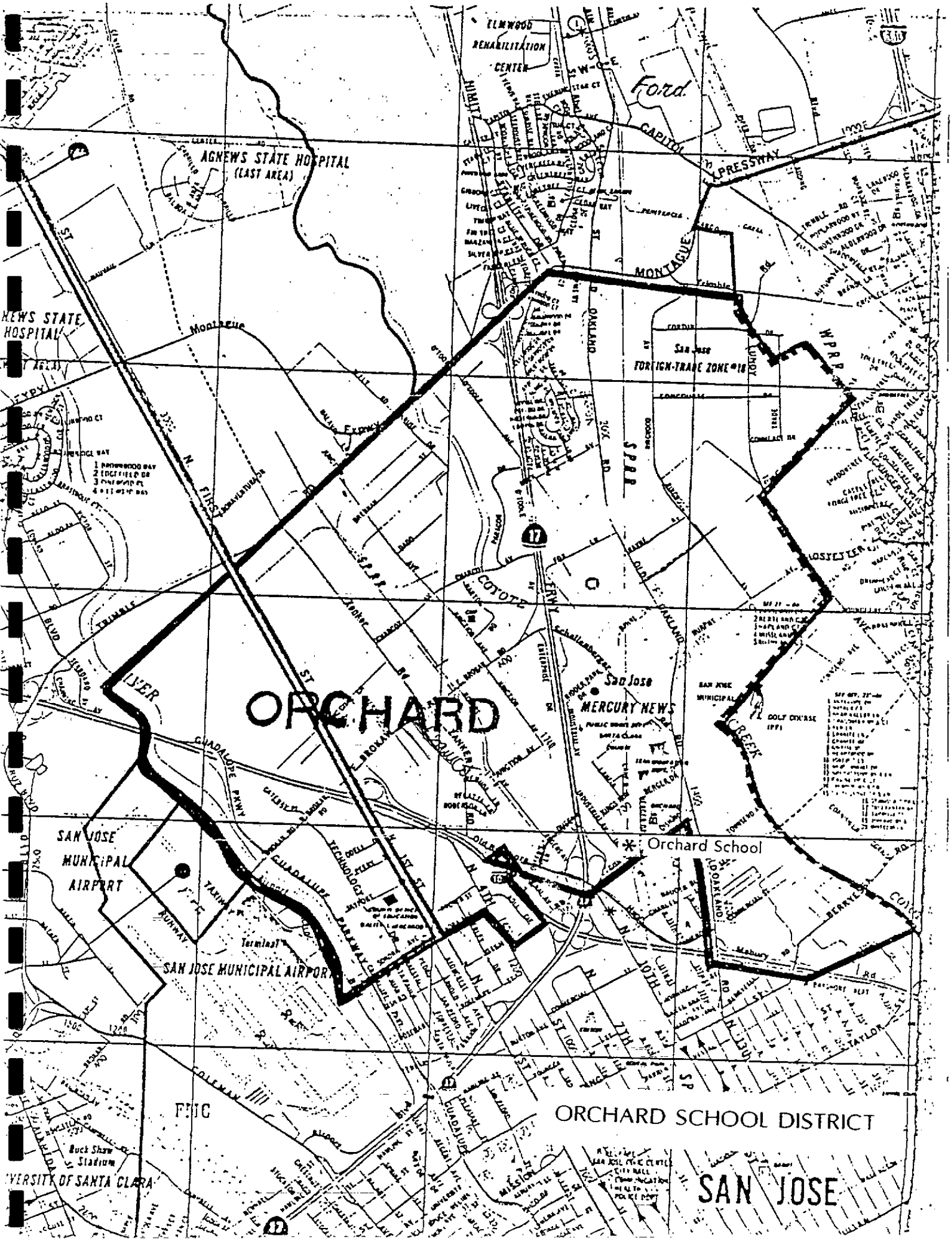
4. El Quito Park School
18720 Bucknall Rd.
Saratoga, CA 95070

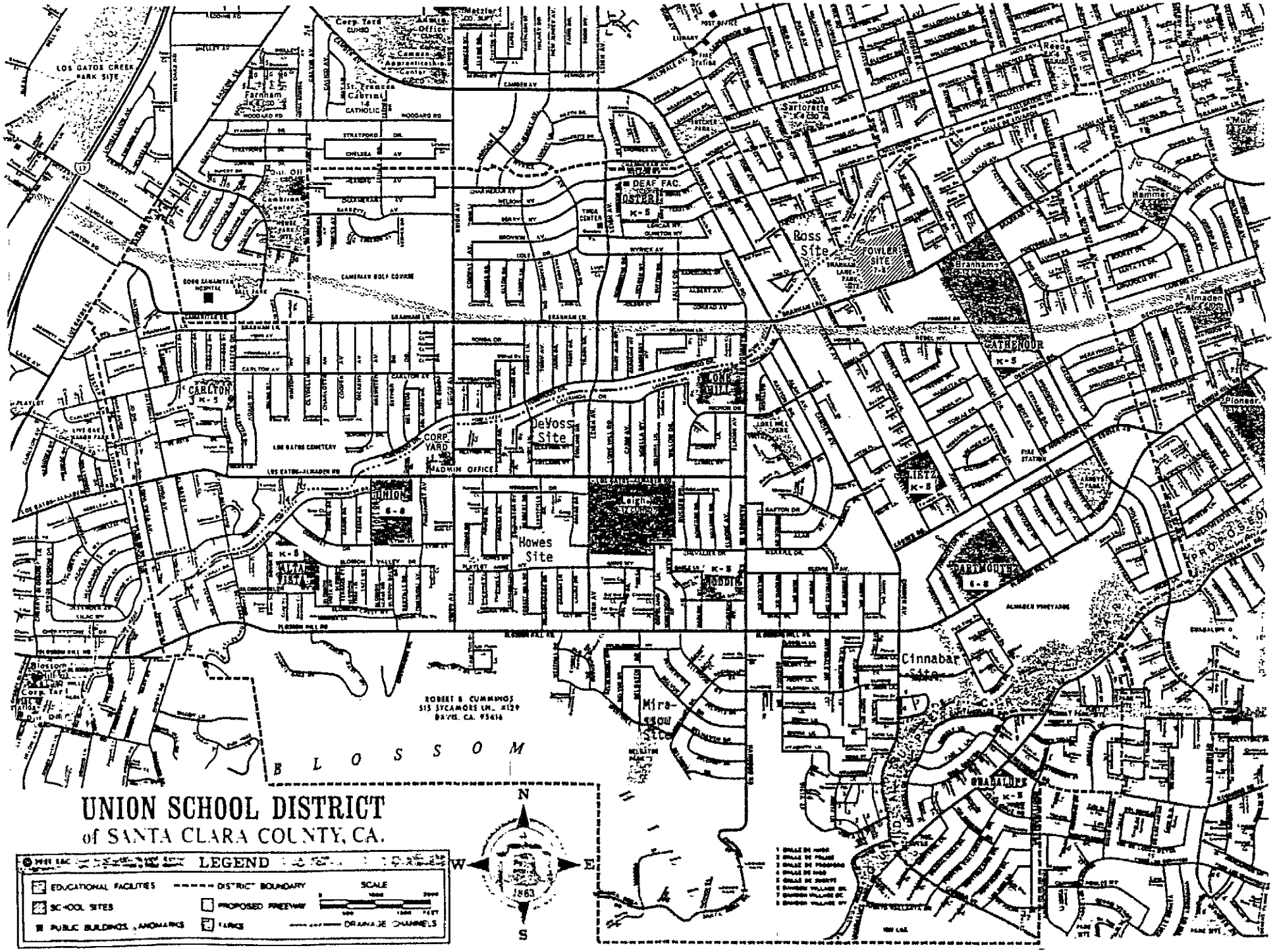
5. Strawberry Park School
730 Camina Escuela
San Jose, CA 95129

6. Phelan School
801 Hibiscus Ln.
San Jose, CA 95117

MT. PLEASANT ELEMENTARY SCHOOL DISTRICT




ORCHARD
ORCHARD SCHOOL DISTRICT
Orchard School
AGNEWS STATE HOSPITAL
(EAST AREA)
ELMWOOD
REHABILITATION
CENTER
Ford
CAPITOL
EXPRESSWAY
MONTAGUE
San Jose
FOREIGN-TRADE ZONE #18
San Jose
MERCURY NEWS
SAN JOSE
MUNICIPAL
AIRPORT
SAN JOSE MUNICIPAL AIRPORT
Terminal
Buck Shaw
Stadium
SAN JOSE


UNION SCHOOL DISTRICT
of SANTA CLARA COUNTY, CA.
LEGEND
EDUCATIONAL FACILITIES
SCHOOL SITES
PUBLIC BUILDINGS, LANDMARKS
DISTRICT BOUNDARY
PROPOSED FREEWAY
LARGE
SCALE
DRAINAGE CHANNELS
N
W
E
S
1863
B L O S S O M
LOS GATOS CREEK PARK SITE
Farnham K-8
St. Frances Cabrini 1-8 CATHOLIC
Corp. Yard
Admin. Office
Cameron Apprenticship Center
Sartorette K-5
DEAF FAC.
OSTER K-5
Boss Site
FOWLER SITE
Hammer
Branham
Almaden
CATHEDRAL K-5
CARLTON K-5
LONE HILL
Pioneer
DeVoss Site
CORP. YARD
ADMIN. OFFICE
LISTZ K-5
UNION 6-8
Leigh
Howes Site
ALTA VISTA K-5
WOODING K-5
DARTMOUTH 6-8
PROPOSED
Blossom Hill
Cinnabar Site
Mira-sou Site
GRANADITOS K-5
ROBERT B. CUMMINGS
515 SYCAMORE LN., #129
DAVIS, CA. 95616

Student Generation Calculations

SCHOOL DISTRICT	EXISTING CONDITIONS				EXISTING GENERAL PLAN			GENERAL PLAN UPDATE			NET CHANGE - Existing vs. Update	
	Enrollment E/M/H	Capacity E/M/H	Surplus/Deficit Capacity E/M/H	Student Generation Rate SF/MF	Dwelling Units Total SF/MF	Student Yield Total SF/MF	Capacity (+/-)	Dwelling Units Total SF/MF	Student Yield Total SF/MF	Capacity (+/-)	Dwelling Units Total SF/MF	Student Yield Total SF/MF
Elementary School Districts												
Alum Rock	15.972 11.169/4.803	16.995 11.629/5.366	+1,203 +460/+563	0.62/0.28	1,104 583/521	507 361/146	+516	1,863 583/1,280	719 361/358	+304	+759 0/+759	+212 0/+212
Berryessa	8,643 5,871/2,772	7,915 5,575/2,340	-728 -296/-432	0.40/0.21	2,820 1,480/1,340	873 592/281	-1,601	2,820 1,480/1,340	873 592/281	-1,601	No Change	No Change
Cambrian	2,657 1,886/771	3,248 2,212/1,036	+591 +326/+265	0.55/0.21	605 478/127	290 263/27	+301	605 478/127	290 263/27	+301	No Change	No Change
Campbell	7,165 4,346/2,819	8,269 5,075/3,194	+1,104 +729/+375	0.55/0.21	680 29/651	153 16/137	+951	1,537 29/1,508	333	+771	+857 0/+857	+180 0/+180
Cupertino	13,731 10,681/3,050	14,380 10,850/3,530	+649 +169/+480	0.226	234 5/229	53 1/52	+596	2,711 5/2,706	613 1/612	+36	+2,477 0/+2,477	+560 0/+560
Evergreen	10,585 7,712/2,873	11,176 7,872/3,304	+591 +160/+431	0.52	7,249 7,233/16	3,769 3,761/8	-3,178	7,249 7,233/16	3,769 3,761/8	-3,178	No Change	No Change
Franklin/McKinley	10,633 7,784/2,849	10,400 8,000/2,400	-233 +216/-449	0.56	5,294 702/4,592	2,965 393/2,572	-3,198	5,294 702/4,592	2,965 393/2,572	-3,198	No Change	No Change
Luther Burbank	357	350	—	—	2 2/0	1	-8	2 2/0	1	-8	No Change	No Change
Moreland	4,151 2,922/1,229	4,248 2,968/1,280	+97 +46/+51	0.55/0.21	20 19/1	11 10/1	+86	20 19/1	11 10/1	+86	No Change	No Change
Mt. Pleasant	2,562 2,042/520	3,115 2,515/600	+553 +473/+80	0.55/0.21	206 206/0	113 113/0	+440	206 206/0	113 113/0	+440	No Change	No Change
Oak Grove	12,014 9,412/2,593	+12,140 +9,427/+2,713	+126 +6/+120	0.50/0.25	4,985 3,052/1,933	2,009 1,526/483	-1,883	7,247 4,105/3,142	2,839 2,053/786	-2,713	+2,262 +1,053/+1,209	+830 +527/+303
Orchard	384	400	—	0.50	831 155/676	416 78/338	-16	1,284 155/1,129	643 78/565	—	+453 0/+435	+227 0/+227
Union	4,679 3,336/1,343	5,317 3,737/1,584	+638 +397/+241	0.40/0.25	369 163/206	182 65/117	+456	369 42/327	203 17/186	+435	No Change -121/+121	+21 -48/+69

STUDENT GENERATION CALCULATIONS

TABLE 1

SCHOOL DISTRICT	EXISTING CONDITIONS				EXISTING GENERAL PLAN			GENERAL PLAN UPDATE			NET CHANGE - Existing vs. Update	
	Enrollment E/M/H	Capacity E/M/H	Surplus/Deficit Capacity E/M/H	Student Generation Rate SF/MF	Dwelling Units Total SF/MF	Student Yield Total SF/MF	Capacity (+/-)	Dwelling Units Total SF/MF	Student Yield Total SF/MF	Capacity (+/-)	Dwelling Units Total SF/MF	Student Yield Total SF/MF
High School Districts												
Campbell	6,304	8,309	+2,005	0.20	1,674 689/985	335 138/197	1,670	2,561 568/1,993	513 114/399	1,492	+887 -121/+1008	+178 -24/+202
Eastside	22,031	22,295	+264	0.20	22,491 13,413/9,078	4,499 2,683/1,816	-4,235	25,875 14,376/11,499	5,175 2,875/2,300	-4,911	+3,384 +963/+2,421	+676 +192/484
Fremont	7,769	8,304	+535	0.20	234 5/229	47 1/46	+488	2,711 5,2,706	542 1/541	-7	+2,477 0/+2,477	+495
Unified School Districts												
Morgan Hill	8,866 4,900 E 2,161 M 1,686 H 119 O	9,168 5,115 E 2,018 M 1,900 H 135 O	+302 +215 E -143 M +214 H +16 O	K-8 0.55/0.19 High 0.22/0.07	9,175 6,175/3,000	5,535 K-8 3,966 3,396/570 High 1,569 1,359/210	-5,233	175 175/0	135 K-8 96/0 High 39/0	+167	-9,000 -6,000/-3,000	-5,400 -4,620/-780
San Jose	29,685 15,204 E 7,054 M 7,427 H	33,652 16,320 E 7,853 M 9,479 H	+3,967 +1,116 E +799 M +2,052 H	K-8 0.42/0.42 High 0.25/0.30	13,441 2,558/10,883	9,549 K-8 5,645 1,074/4,571 High 3,904 639/3,265	-5,582	16,639 3,236/13,403	11,818 K-8 6,988 1,359/5,629 High 4,830 809/4,021	-7,851	+3,198 +678/2,520	+2,269 +1,342/+926
Santa Clara	13,792 6,963 E 2,947 M 3,417 H 465 O	16,023 7,980 E 4,110 M 3,450 H 483 O	+2,231 +1,017 E +1,163 M + 33 H + 18 O	K-12 0.70/0.10	4,860 207/4,653	610 145/465	+1,621	4,860 207/4,653	610 145/465	+1,621	No Change	No Change

NOTES:

E - Elementary School
M - Middle School
H - High School
SF - Single Family Unit
MF - Multi-Family Unit

STUDENT GENERATION CALCULATIONS

TABLE 1 (CONTINUED)

City of San Jose - PBCE – Planning Division - Imaging Index Cover Sheet

Address/Location: **City Wide (GP2020)**

Permit/Project No.: **PP94-019** Issuance Date: **08/16/94**

Prepped By: _____ Closed By: **SADVANI** RSN: **1253413**

Category	Document Type	Sub Document Type
☒ (EF) Environmental Files (203)	☒ (PP) Public Project Files (203-03) Page II	☐ (EN) EIR ☐ (DA) Approved Document ☐ (EM) Maps ☐ (AE) Application ☒ (AG) Agency Correspondence ☐ (EG) General Correspondence ☐ (TR) Technical Reports ☐ (RE) Archaeological Reports ☐ (EP) Plans
☐ (GP) General Plan (204)	☐ (GA) General Plan Amendments (204-02)	☐ (AM) Amendment ☐ (AA) Application ☐ (CG) Correspondence
	☐ (GE) Environmental Review (for 204 series GP Amendments)	☐ (GD) Approved Document ☐ (GI) EIR ☐ (GS) Supporting Documents ☐ (GT) Technical Reports ☐ (GR) Archaeological
☐ (DR) Development Review (207) Mixed 2 Pages	☐ (PR) Projects (207-02, 207-03, etc.)	☐ (ZN) Zoning ☐ (PE) Permit ☐ (MP) Maps ☐ (AP) Application ☐ (AC) Agency Correspondence ☐ (GC) General Correspondence ☐ (PL) Plans
	☐ (ER) Environmental Review (for 207 series Project Files)	☐ (EA) Approved Document ☐ (EI) EIR ☐ (ES) Supporting Documents ☐ (ET) Technical Reports ☐ (AR) Archaeological
	☐ (AD) Adjustments (207-12)	☐ (DO) Documents ☐ (PA) Plans
	☐ (PI) Public Info Letters (207-29)	☐ (LE) Letter ☐ (LS) Supporting Docs

CITY OF SAN JOSÉ - MEMORANDUM

TO:	City Clerk's Office	FROM:	Helia Sousa TC II, Planning Department
SUBJECT:	EIR PUBLIC HEARING NOTICE PUBLICATION FILE NO. PP 94-02-019	DATE:	July 20, 1994

APPROVED: DATE:

Please publish the attached Public Hearing Notice in the publication(s) listed below and charge Account #001-58000040.

Publish In: Mercury News

RECEIVED
1994 JUL 20 P 2:22
SAN JOSE CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

PAPER S.J. Mercury	SENT 7-20-94
PUBLISH July 27, 1994	
AGENDA	PROOF 7-21-94

NOTICE OF A PUBLIC HEARING ON AN APPEAL OF AN ENVIRONMENTAL IMPACT REPORT

NOTICE IS HEREBY GIVEN that there will be a public hearing before the City Council on **August 16, 1994,** on an Appeal of an Environmental Impact Report certified by the Planning Commission on June 22, 1994, for the San Jose 2020 General Plan. All persons interested in the matter shall be given a reasonable opportunity to provide testimony at the hearing. This public hearing will be held by the City Council of the City of San Jose, in the City Council Chambers, 801 North First Street, San Jose, California, at **7:00 p.m.** for the PURPOSE OF CONSIDERING THE SIGNIFICANCE OF THE PROJECT ON THE ENVIRONMENT. The project file listed below is available for public review in the Department of City Planning, Room 400, 801 North First Street.

File No.: PP 94-02-019 **City Council District:** Citywide

Description and Location: FINAL ENVIRONMENTAL IMPACT REPORT (SCH No. 94023031) for the San Jose 2020 General Plan addressing changes to the Land Use/Transportation Diagram and refinement of major policies contained in the adopted Horizon 2000 General Plan for a growth alternative that proposes 52,900 additional dwelling units and 126,000 jobs by the year 2020.

Gary J. Schoennauer

G Edward Graf
Deputy

Date: July 27, 1994

Protestant(s): Lozano Smith, Smith Woliver & Behrens on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District

Applicant(s): City of San Jose
801 North First St.
San Jose, CA 95110
Contact person: Julie E. Caporgno
Senior Planner

Note: If you challenge this land use decision in court, you may be limited to raising only those issues raised by you or someone else at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing. Notice of this hearing is given pursuant to the San Jose Municipal Code.

PROTEST.ND/79

PROOF OF PUBLICATION

San Jose Mercury News

750 RIDDER PARK DRIVE
SAN JOSE, CALIFORNIA 95190

IN THE

CITY OF SAN JOSE

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

City of San Jose/City Clerk office

801 North First St. RM 116

San Jose CA 95110

Barb

legal ad No. 4719-L

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA) SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the city of San Jose in said County of Santa Clara, State of California, that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000 and following, of the Government Code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to the interests or published for the entertainment or instruction of a particular class, professional, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professionals, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said city of San Jose in said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned; that said notice was set in type not smaller than nonpareil and was preceded with words printed in black-face type not smaller than nonpareil, describing and expressing in general terms, the purport and character of the notice intended to be given; that the clipping of which is annexed is a true printed copy, was published and printed in said newspaper on the following dates, to-wit:

July 27, 1994

Dated at San Jose, California

this 28th day of July 19 94

I declare under penalty of perjury that the foregoing is true and correct.

Signed [signature]

Principal clerk of the printer and publisher of the San Jose Mercury News.

SEE REVERSE SIDE

4 1/4

3 3/4

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ON AN
APPEAL OF AN ENVIRONMENTAL IMPACT REPORT

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Gary J. Schoennauer
Deputy

Date: July 27, 1994

Protestants: Lozano Smith, Smith Woliver & Behrens on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District

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Contact Person: Julie B. Caporgno,
Senior Planner

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July 27, 1994 4/19-1.

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CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

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PROTEST.ND/79

LOZANO SMITH
SMITH WOLIVER & BEHRENS

ATTORNEYS AT LAW

FAX TRANSMITTAL

DATE: June 27, 1994 TIME: 4:50 pm

TO: Gary Schoennauer

FROM: Harold Freiman

FAX NUMBER: (408) 277-3250 PAGES: 7 (plus cover sheet)

CLIENT/MATTER: San Jose 2020

HARD COPY TO FOLLOW: YES X NO

MESSAGE: URGENT - PLEASE REVIEW IMMEDIATELY

The document being faxed is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the address below via United States Postal Service.

If you do not receive all pages or if the pages are not legible, please call Elizabeth at (408) 646-1501.

One Harris Court · Building A · Suite 200 · Monterey, California
Telephone (408) 646-1501 FAX (408) 646-1801

LOZANO SMITH
SMITH WOLIVER & BEHRENS
ATTORNEYS AT LAW

June 27, 1994

BY FACSIMILE & MAIL

Gary Schoennauer
Director of Planning
Department of City Planning and Building
City of San Jose
801 North First Street, Room 400
San Jose, CA 95110

Re: San Jose 2020 General Plan Update -- Notice of Appeal

Dear Mr. Schoennauer:

Introduction

Pursuant to San Jose City Ordinance No. ___ ("An Urgency Ordinance of the City of San Jose Amending Chapter 21.07 of Title 21 of the San Jose Municipal Code to Allow an Appeal to the City Council of the Planning Commission's Certification of an Environmental Impact Report and Stating the Reasons for the Urgency," adopted June 21, 1994), we hereby appeal in writing the Planning Commission's certification of the Draft Environmental Impact Report ("DEIR"). This appeal, which is being directed to your attention in accordance with the instructions of the City Attorney's office, is brought on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District (jointly referred to as the "Consortium").

Initially, the Consortium notes that it remains hopeful that some agreement can be reached between the Consortium school districts and the City that will resolve any disagreements between them regarding the impact of the San Jose 2020 General Plan Update ("2020 Plan") on school districts. The Consortium also does not seek to delay unnecessarily the approval of the 2020 Plan. Towards this end, I had asked in my oral testimony, offered at the June 22, 1994 Planning Commission meeting, that the Planning Commission postpone any vote approving or otherwise ratifying the DEIR for a period of time sufficient for (1) a conceptual agreement that was then pending between the Consortium and the City to

be finalized, (2) the Task Force to finish its work, and (3) the Planning Commission to review the two volumes of testimony offered by Community Systems Associates, Inc. ("CSA") in critique of the City's response to the Consortium's comments on the EIR.

Unfortunately, the Planning Commission did not respond to my request, and very shortly thereafter did take a vote. As a result, and in light of the City Attorney's very recent enactment of the above-referenced Ordinance, the Consortium members now feel that they have no choice but to lodge this appeal in order to preserve the full extent of their legal rights. The Consortium hopes that it will continue to be able to work with the City towards a satisfactory resolution of the issues raised in this letter and in prior testimony offered to the Planning Commission.

The Planning Commission's Action

The Consortium notes first that it was unaware that the Planning Commission had formally "certified" the DEIR within the meaning of CEQA. It became aware of this fact only late this morning, when I received a call from Tom Ruby of the City Attorney's office. As I explained to Mr. Ruby, the Planning Commission Agenda for the June 22, 1994 meeting did not announce that action would be taken on the DEIR.

The specific recommendation of the Planning Department staff noted on page five of the agenda simply states: "Find EIR complete as amended and in conformance with CEQA." This statement does not indicate that the Planning Department could or would take action at this meeting that would certify the DEIR as final. Furthermore, this agenda entry follows shortly after the introductory comment that reads:

> The Planning Commission's action on General Plan amendments is advisory only to the City Council.

This further created the impression that final action would not be taken by the Planning Commission at the June 22, 1994 meeting. Finally, neither Marshall Krupp of CSA, a consultant for the Consortium, nor myself, both of whom attended the meeting, heard the Commission state that its vote would actually "certify" the DEIR, as opposed to simply recommending its certification to the City Council. This may have been due in part to the non-operative microphone system, which made it very difficult for the audience to

hear what actions were being taken by the Commission.

Because there was no advance public notice that the action to be taken was a final certification, either by the posted agenda or by public disclosure at the meeting, the action taken is invalid under Government Code section 54954.2. The Commission's action should have been reported out to the public, with an explanation of why the action taken did not conform to the agenda. There was no such reporting.

Nevertheless, even if the Commission's action could be interpreted as having certified the DEIR, the Commission is not the appropriate "decisionmaking body" to have taken that action. (CEQA Guidelines §15090.) The lead agency's decisionmaking body, here the City Council, cannot delegate its obligation to "review[] and consider[]" an EIR to an inferior entity within the agency hierarchy. (CEQA Guidelines §15025; Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770, 779 ("Delegation is inconsistent with the purposes of the EIR itself").)

As a second objection to the action taken at the meeting on the 22nd, the Consortium protests the fact that speakers were limited to two minutes of oral testimony each. This limitation immediately followed the Chairman's comment, as set out orally and on page five of the Agenda, that:

> If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

There was no advance notice of this two minute limitation, nor was that limitation set out in the Agenda. This action was arbitrary, unreasonable and in violation of Government Code section 54954.3, governing the public's right to address a public entity.

By limiting the Consortium's oral testimony, the Commission prohibited the Consortium from raising or further clarifying certain issues, thus curtailing our ability to raise those same issues in court if later necessary. We represent eight school districts, yet were allowed the same or less time to testify than individuals who spoke on their own behalf. Indeed, the two minute limit was enforced only on Mr. Krupp, myself, and one other speaker in the course of

the entire meeting. Others were allowed to address the Commission without limit.

The combination of the misleading and incomplete public agenda, the failure of the Commission to report out its action and the basis for divergence from the agenda, the non-functioning public address system, and the limitation to two minute presentations constitutes a plethora of Brown Act violations.

A third objection is the fact that the Planning Commission did not review two lengthy volumes of written testimony offered by Mr. Krupp on behalf of the Consortium prior to voting on the DEIR. This testimony was prepared in response to what the Consortium contends were inadequate responses to the Consortium's comments on the DEIR. A suggestion was made by a Commissioner that submitting this testimony at the meeting was a delaying tactic, but in fact the Consortium had received the City's responses only nine days before, making an earlier response impossible. More significantly, the Agenda clearly references "written correspondence delivered to the City <u>at</u> . . . the public hearing." Thus, the Consortium's delivery of the written testimony at the meeting itself was proper, and should have been considered prior to a vote. Instead, the Planning Commission voted on the DEIR without ever looking at or considering the Consortium's extensive written testimony.

<u>The New City Ordinance</u>

As referred to above, the Consortium learned for the first time this morning that the Commission's vote was intended to certify the DEIR. At that same time, Mr. Tom Ruby informed me that the Consortium had three days in which to appeal the certification, and that this three day limit ran as of 5:00 p.m. today. Again, there was no indication at the June 22 meeting that there would be any three day limit on appeals.

The three day limit appears in the City Ordinance identified earlier in this letter. We are informed by Mr. Ruby that this ordinance was passed on June 21, 1994, <u>the night before the Planning Commission meeting</u>. No notice was provided of the adoption of this ordinance to affected parties, including the Consortium school districts. Further, no mention was made of this ordinance at the Planning Commission meeting on June 22, 1994. As a result, the Consortium and others affected by the Planning Commission's

actions were deprived of any advance notice that they would be limited to a three day period in which to appeal the Commission's alleged certification of the DEIR.

In addition to the deficient notice, the Consortium believes that the ordinance is invalid on its face, as three days is an inadequate time in which to prepare a "specific" appeal.

In this instance, the Consortium was given less than one day, as it was not made aware either that the Commission's vote certified the EIR or that it had only three days in which to appeal this certification.

Mr. Ruby did indicate in another telephone conversation with me today that an appeal under the new ordinance would be sufficient if it was in the form of a letter, and if it referred back to the testimony already submitted by the Consortium, rather than setting out in detail once again the Consortium's objections to the EIR. A paralegal in this office today independently confirmed with Julie Caporgno, Senior Planner, that such a non-specific letter setting would be sufficient to preserve an appeal under the new ordinance.

<u>Objections to the EIR</u>

Turning to the specific grounds for appeal previously raised, the Consortium incorporates by reference all prior oral and written testimony previously submitted to the Planning Commission regarding the DEIR. The written testimony incorporated herein includes, but is not limited to, the following: the documents prepared by CSA entitled "San Jose 2020 General Plan/Draft Environmental Impact Report (Revised) . . . Comments" (dated 5/23/94) and all attachments thereto; two volume document prepared by CSA entitled "Public Hearing Testimony & Critique of Response to Comments for the Consortium of San Jose School Districts" and all attachments thereto (dated 6/22/94); and all correspondence between the Consortium school districts, this law firm or CSA on the one hand, and the City of San Jose, the Planning Department, the Planning Commission, the City Attorney's office, the Mayor's office or the City Council, on the other hand, regarding the DEIR or the compilation of information for that DEIR.

The Consortium reserves its right to present further oral and/or written testimony regarding the DEIR to the Planning

Commission, the City Counsel and other relevant City agencies prior to or at future meetings of those bodies, including at the hearing on this appeal.

As expressed in the testimony already submitted to the Planning Commission, the Consortium maintains that the DEIR was not prepared in compliance with and fails to conform to CEQA. In particular, the Consortium contends that the DEIR's assessment of school impacts is inadequate. The EIR employed in this instance was a "program" EIR, which is inadequate under the circumstances of a general plan. Furthermore, the DEIR determines impacts not by comparing the plan against existing conditions, as required by CEQA and relevant case law, but rather by comparing it against the Horizon 2000 General Plan. Another significant failing of the DEIR is that it does not analyze the impact of the plan on each school facility, nor does it provide a sufficient analysis of each separate school district. Other specific deficiencies of the DEIR and relevant citations to CEQA, the CEQA Guidelines, and case law are set forth in the documents referenced above.

Conclusion

The Consortium maintains that appropriate certification of the DEIR has not yet occurred, making an appeal unnecessary. The Consortium also contends that the City Ordinance governing that appeal is facially invalid, and further that due process has been denied the Consortium districts in that they were not notified of the three day limit for appeals. If the DEIR is later found to have been properly certified, and the Ordinance is upheld as valid, the Consortium maintains, based on conversations with the Planning Department and the City Attorney's Office, that this letter constitutes an adequate appeal.

If for any reason the Planning Department, Planning Commission, City Council or City Attorney's Office reject this facsimile letter as an appropriate appeal, we would appreciate your immediately notifying us of this fact. Additionally, Mr. Ruby has indicated that once this letter is received, he will send written confirmation that the general plan will be taken off of the agenda for tomorrow night's City Council meeting.

We hope to be able to continue working with the City towards a satisfactory and amicable resolution of the school impacts issue.

Very truly yours,

LOZANO SMITH
SMITH WOLIVER & BEHRENS

Harold M. Freiman

HMF:hf

cc: (all by facsimile)
Tom Ruby, City Attorney's Office
Dr. Linda Murray, San Jose Unified School District
G. Herbert Wadley, Berryessa Union School District
Pedro Perales, Alum Rock Union School District
Paul A. Pettig, East Side Union High School District
Tim Cuneo, Oak Grove School District
Donna Elder, Orchard School District
Dr. H. James Crow, Morgan Hill Unified School District
William Glynn, Frnklin-McKinley School District
Marshall Krupp, CSA

CITY OF SAN JOSÉ – MEMORANDUM

TO:	City Clerk's Office	FROM:	Shirley Hill S.H. Typist Clerk II Planning Department
SUBJECT:	**EIR PUBLIC HEARING NOTICE PUBLICATION FILE NO. PP 94-2-19**	DATE:	March 24, 1994

APPROVED: DATE:

Please publish the attached Public Hearing notice in the publication(s) listed below and charge Account #001-58000-20.

Publish In (Check all that apply):

[ ] Post Record
[X] Mercury News
[ ] Other _____

RECEIVED
APR 8 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

PP94-2-19.PH.77A

to be published by
April 8.

NOTICE OF CIRCULATION OF DRAFT ENVIRONMENTAL IMPACT REPORT AND PUBLIC HEARING NOTICE

The Planning Commission of the City of San José will hold a Public Hearing on **Wednesday, June 22, 1994.** This Public Hearing will be held in accordance with Title 21 of the San José Municipal Code.

The Public Hearing is to be in the City Council Chambers, on the second floor of City Hall, at 801 North First Street, San José, California, at **7:00 p.m.** or as soon thereafter as this item can be heard. You are welcome to attend and to speak on this issue. If you choose to challenge the decision on this Draft Environmental Impact Report in court, you may be limited to only those issues you, or someone else, raised and discussed at the Public Hearing or in written correspondence delivered to the City at or prior to the Public Hearing.

The project being considered is:

> **PP 94-02-019 DEIR**, Draft Environmental Impact Report (SCH No. 94023031) for the San Jose 2020 General Plan addressing changes to the Land Use/Transportation Diagram and refinement of major strategies, goals and policies contained in the adopted Horizon 2000 General Plan for a growth alternative that proposes 52,900 additional dwelling units and 126,000 jobs by the year 2020 (Council District Citywide)

The Draft Environmental Impact Report for this project is on file and available for review 9:00 a.m. to 5:00 p.m., Monday through Friday at:

Department of City Planning and Building
801 North First Street, Room 400
San José, CA 95110
(408) 277-4576

Copies of the Draft EIR are also available for review at all City Libraries. Comments received on the Draft Environmental Impact Report and the City's responses to these comments will be available for your review during the week of the Public Hearing at the Department of City Planning and Building.

Comments and questions are welcome, and should be referred to **Julie Caporgno** of the Department of City Planning and Building. Please refer to the above file number for further information on this project. For your convenience, contact **Susan Fergerson** at the above telephone number the week of the Public Hearing to verify that this item will be heard and is not scheduled for deferral to a later date.

Gary J. Schoennauer
Director of Planning

Ed Gawf

Ed Gawf, Deputy

Dated: April 8, 1994

PP94-19.77A

FAX

PAPER S.J. MERCURY	SENT 3/31/94
PUBLISH TUE. APRIL 5, 1994	
AGENDA	PROOF 4-1-94

PROOF OF PUBLICATION

San Jose Mercury News

750 RIDDER PARK DRIVE
SAN JOSE, CALIFORNIA 95190

IN THE

CITY OF SAN JOSE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

41½ X 5¼

CITY OF SAN JOSE CITY CLERK
BARB BALANGUE
801 N. 1ST STREET/ROOM 116
SAN JOSE CA 95110
LEGAL AD No. 1216-L

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA) SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the city of San Jose in said County of Santa Clara, State of California, that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000 and following, of the Government Code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to the interests or published for the entertainment or instruction of a particular class, professional, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professionals, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said city of San Jose in said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned; that said notice was set in type not smaller than nonpareil and was preceded with words printed in black-face type not smaller than nonpareil, describing and expressing in general terms, the purport and character of the notice intended to be given; that the clipping of which is annexed is a true printed copy, was published and printed in said newspaper on the following dates, to-wit:

April 5, 1994

SEE REVERSE SIDE

Dated at San Jose, California

this 6th day of April 19 94

I declare under penalty of perjury that the foregoing is true and correct.

Signed Gwen Nelson

Principal clerk of the printer and publisher of the San Jose Mercury News.

NOTICE OF CIRCULATION OF DRAFT ENVIRONMENTAL IMPACT REPORT AND PUBLIC HEARING NOTICE

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The project being considered is:

> PP 94-09-019 DEIR, Draft Environmental Impact Report (SCH No. 92093030) for the San Jose 2020 General Plan addressing changes to the Land Use/Transportation Diagram and refinement of major strategies, goals and policies contained in the adopted Horizon 2000 General Plan for a growth alternative that proposes 52,900 additional dwelling units and 126,000 jobs by the year 2020 (Council District Citywide)

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Gary J. Schoennauer
Director of Planning

By Grant Deputy
Dated: April 8, 1994
April 8, 1994

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

PERSONNEL DEPT.
JUN 10 1994

June 9, 1994

Berryessa union Elementary
Attn: Superintendent
1376 Piedmont Rd.
San Jose, CA 95132

Dear Superintendent:

Enclosed is a copy of the First Amendment for the San Jose 2020 General Plan EIR. This Amendment consists of comments received on the Draft EIR, the responses to those comments, and revisions to the text of the Draft EIR. The Planning Commission will hold a public hearing on the adequacy of the Draft EIR on June 22, 1994 at 7:00 p.m.

Should you have any questions regarding the public hearing, please call me at (408) 277-4576.

Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 9, 1994

East Side Union High
Attn: Superintendent
830 N. Capitol Avenue
San Jose, CA 95133

Dear Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

Received by Key Planner 6-10-94

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 9, 1994

Alum Rock Union Elementary
Attn: Superintendent
2930 Gay Avenue
San Jose, CA 95127

Dear Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

RECEIVED
JUN 09 1994
Superintendent's Office

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 9, 1994

Franklin-McKinley Elem. School
Attn: Asst. Superintendent
645 Wool Creek Dr.
San Jose, CA 95112

Dear Asst. Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

Pauline J.
6-10-94

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

RECEIVED
JUN 10 1994
BUSINESS SERVICES
SAN JOSE UNIFIED SCHOOL DISTRICT

June 9, 1994

San Jose Unified
Attn: Superintendent
250 Stockton Avenue
San Jose, CA 95126

Dear Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 9, 1994

Oak Grove Elementary
Attn: Superintendent
6578 Santa Teresa Blvd.
San Jose, CA 95119

Dear Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

MORGAN HILL
UNIFIED SCHOOL DISTRICT
94 JUN 10 PM 4:52

June 9, 1994

Morgan Hill Unified
Attn: Superintendent
15600 Concord Cir.
Morgan Hill,CA 95037

Dear Superintendent:

Enclosed is a copy of the First Amendment for the San Jose 2020 General Plan EIR. This Amendment consists of comments received on the Draft EIR, the responses to those comments, and revisions to the text of the Draft EIR. The Planning Commission will hold a public hearing on the adequacy of the Draft EIR on June 22, 1994 at 7:00 p.m.

Should you have any questions regarding the public hearing, please call me at (408) 277-4576.

Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 9, 1994

Orchard Elementary
Attn: Superintendent
711 E. Gish Road
San Jose, CA 95112

Dear Superintendent:

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:sh

Enclosure

SJ2020.Ltr/Env

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 10, 1994

Ms. Genevieve Fire
Santa Clara Valley Water District
Nonpoint Source Pollution
5750 Almaden Expressway
San Jose, CA 95118

Dear Ms. Fire:

Enclosed is a copy of the First Amendment for the San Jose 2020 General Plan EIR. This Amendment consists of comments received on the Draft EIR, the responses to those comments, and revisions to the text of the Draft EIR. The Planning Commission will hold a public hearing on the adequacy of the Draft EIR on June 22, 1994 at 7:00 p.m.

Should you have any questions regarding the public hearing, please call me at (408) 277-4576.

Sincerely,

Julie E. Caporgno
Senior Planner

JEC:hs

Enclosure

SJ2020.LTR/79A

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHUENNAUER
DIRECTOR OF PLANNING

June 10, 1994

Ms. Kathleen Russick
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Ms. Russick:

Enclosed is a copy of the First Amendment for the San Jose 2020 General Plan EIR. This Amendment consists of comments received on the Draft EIR, the responses to those comments, and revisions to the text of the Draft EIR. The Planning Commission will hold a public hearing on the adequacy of the Draft EIR on June 22, 1994 at 7:00 p.m.

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:hs

Enclosure

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CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 10, 1994

Mr. Jeffrey McGrath
Community Systems Associates
730 El Camino Way, Suite 200
Tustin, CA 92680

Dear Mr. McGrath:

Enclosed is a copy of the First Amendment for the San Jose 2020 General Plan EIR. This Amendment consists of comments received on the Draft EIR, the responses to those comments, and revisions to the text of the Draft EIR. The Planning Commission will hold a public hearing on the adequacy of the Draft EIR on June 22, 1994 at 7:00 p.m.

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Sincerely,

Julie E. Caporgno
Senior Planner

JEC:hs

Enclosure

SJ2020.LTR/79A

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

June 10, 1994

Mr. Marc Klemencic
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Mr. Klemencic:

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Should you have any questions regarding the public hearing, please call me at (408) 277-4576.

Sincerely,

Julie E. Caporgno
Senior Planner

JEC:hs

Enclosure

SJ2020.LTR/79A

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

March 24, 1994

Ms. Leianne Humble
David J. Powers and Associates
1885 The Alameda, Suite 204
San Jose, CA 95126

Dear Leianne:

RE: SAN JOSE 2020 GENERAL PLAN EIR

The following summarizes the revisions to the San Jose 2020 ADEIR that we discussed Tuesday.

1. The school section will be revised to include a methodology section that describes the data sources and factors used for determining student generation and school capacity.

2. The General Plan policies identified as mitigation need to be checked with the revised General Plan document to ensure that all policy revisions have been incorporated.

3. Language will be added to the text incorporating the newly adopted City Council policy regarding the East Foothills Moratorium Area.

4. The existing Airport Noise Contours map will be updated to reflect the 1993 Third Quarter Airport 65 CNEL Contour.

5. Language will be added to the TRANPLAN methodology section that further describes the participatory process for developing the T2010 transportation program and affirms consistency of the T-2010 document with transportation plans and programs of local jurisdictions throughout the Country.

Please let me know if you have questions regarding these comments or if you need additional information to make the requested revisions.

Sincerely,

Julie Caporgno
Senior Planner

JC:sh
LeiSJ2020.77A

The City Council has directed that the City's Geologic Hazard Ordinance be amended to establish the Penetencia Creek Geologic Hazard Area (PCGHA) to address geologic concerns unique to this area. The PCGHA will require a regional study for new development in the area generally north of Penetencia Creek to the Milpitas border and east of Piedmont Road from Penetencia Creek to the City/County border. All new development in this area will be required to comply with the provisions of the PCGHA which will exceed those requirements contained in the current Geologic Hazard Ordinance. .

Rush —

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Julie Caporgno	From Tom Ruby
Co.	Co.
Dept. Planning	Phone # 2424
Fax # 3250	Fax #

NOTICE OF COMPLETION — APPENDIX F

See NOTE below

SCH #

Mail To: State Clearinghouse, 1400 Tenth St., Sacramento, CA 95814 (916) 445-0613

Project Title San Jose 2020 General Plan Draft Environmental Impact Report

Local Agency: City of San José — Contact Person: Julie E. Caporgno

Street Address: 801 North First Street — Phone: (408) 277-4576

City: San José — Zip: 95110-1795 — County: Santa Clara

Project Location

County: Santa Clara — City/Nearest Community: City of San José

Cross Streets: _____ Total Acres: _____

Assessor's Parcel No. _____ Section: _____ Twp. _____ Range: _____ Base: _____

Within 2 miles: State Hwy #: _____ Waterways: _____

Airports: _____ Railways: _____ Schools: _____

Document Type

CEQA: [ ] NOP [ ] Early Cons [ ] Neg Dec [x] Draft EIR [ ] Supplemental/Subsequent [ ] EIR (Prior SCH No.) [ ] Other _____

NEPA: [ ] NOI [ ] EA [ ] Draft EIS [ ] FONSI

Other: [ ] Joint Document [ ] Final Document [ ] Other _____

Local Action Type

[x] General Plan Update
[ ] Gen Plan Amendment
[ ] Gen Plan Element
[ ] Community Plan
[ ] Specific Plan
[ ] Master Plan
[ ] Planned Unit Development
[ ] Site Plan
[ ] Rezone
[ ] Prezone
[ ] Use Permit
[ ] Land Division (Subdivision, Parcel Map, Tract Map,etc)
[ ] Annexation
[ ] Redevelopment
[ ] Coastal Permit
[ ] Other _____

Development Type

[ ] Residential: Unit _____ Acres _____
[ ] Office: Sq.Ft. _____ Acres _____ Employees _____
[ ] Commercial: Sq.Ft. _____ Acres _____ Employees _____
[ ] Industrial: Sq.Ft. _____ Acres _____ Employees _____
[ ] Educational _____
[ ] Recreational _____
[ ] Other _____

[ ] Water Facilities: Type _____ MGD _____
[ ] Transportation: Type _____
[ ] Mining: Mineral _____
[ ] Power: Type _____ Watts _____
[ ] Waste Treatment: Type _____
[ ] Hazardous Waste: Type _____

Project Issues Discussed in Document

[ ] Aesthetic/Visual
[ ] Agricultural Land
[ ] Air Quality
[ ] Archeological/Historical
[ ] Coastal Zone
[ ] Drainage/Absorption
[ ] Economic/Jobs
[ ] Fiscal
[ ] Flood Plain/Flooding
[ ] Forest Land/Fire Hazard
[ ] Geologic/Seismic
[ ] Minerals
[ ] Noise
[ ] Population/Housing Bal
[ ] Public Services/Facilities
[ ] Recreation/Parks
[ ] Schools/Universities
[ ] Septic Systems
[ ] Sewer Capacity
[ ] Soil Erosion/Compaction/Grading
[ ] Solid Waste
[ ] Toxic/Hazardous
[ ] Traffic/Circulation
[ ] Vegetation
[ ] Water Quality
[ ] Water Supply/Groundwater
[ ] Wetland/Riparian
[ ] Wildlife
[ ] Growth Inducing
[ ] Landuse
[ ] Cumulative Effects
[ ] Other _____

Present Land Use/Zoning/General Plan Use

Project Description

The project consists of the San Jose 2020 General Plan that addresses a growth alternative proposing 52,900 additional dwelling units and 126,000 jobs.

Note: Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g., from a Notice of Preparation or previous draft document), please fill it in.

EVNOC.CH/HD (Rev. 7-92)

REVIEWING AGENCIES CHECKLIST

KEY
S = Document sent by Lead Agency
X = Document sent by SCH
✓ = Suggested distribution

RESOURCES AGENCY
___BOATING & WATERWAYS
___COASTAL COMMISSION
___COASTAL CONSERVANCY
___COLORADO RIVER BOARD
___CONSERVATION
✓ FISH & GAME
___FORESTRY
✓ OFFICE OF HISTORIC PRESERVATION
✓ PARKS & RECREATION
___RECLAMATION
✓ S.F. BAY CONSERVATION & DEVELOPMENT COMMISSION
✓ WATER RESOURCES (DWR)

BUSINESS, TRANSPORTATION & HOUSING
___AERONAUTICS
___CALIFORNIA HIGHWAY PATROL
✓ CALTRANS DISTRICT # 4
___DEPT OF TRANSPORTATION PLANNING (HEADQUARTERS)
✓ HOUSING & COMMUNITY DEVELOPMENT
___FOOD & AGRICULTURE

HEALTH & WELFARE
___HEALTH SERVICES _____

STATE & CONSUMER SERVICES
___GENERAL SERVICES
___OLA (SCHOOLS)

ENVIRONMENTAL AFFAIRS
✓ AIR RESOURCES BOARD
___APDC/AQMD
✓ CALIFORNIA WASTE MANAGEMENT BOARD
___SWRCB: CLEAN WATER GRANTS
___SWRCB: DELTA UNIT
___SWRCB: WATER QUALITY
___SWRCB: WATER RIGHTS
✓ REGIONAL WQCB #____ (_____)

YOUTH & ADULT CORRECTIONS
___CORRECTIONS

INDEPENDENT COMMISSIONS & OFFICES
___ENERGY COMMISSION
✓ NATIVE AMERICAN HERITAGE COMMISSION
___PUBLIC UTILITIES COMMISSION
___SANTA MONICA MOUNTAINS CONSERVANCY
___STATE LANDS COMMISSION
___TAHOE REGIONAL PLANNING AGENCY

___OTHER _____

PUBLIC REVIEW PERIOD (TO BE FILLED IN BY LEAD AGENCY)

STARTING DATE APRIL 8, 1994 ENDING DATE MAY 23, 1994

SIGNATURE _____ DATE APRIL 5, 1994

Lead Agency (Complete if applicable)	
Consulting Firm:	City of San José
Address:	801 North First Street, CHA 400
City/State/Zip:	San José, CA 95110-1795
Contact:	Julie Caporgno
Phone:	(408) 277-4576

For SCH Use Only
Date Received at SCH:
Date Review Starts:
Date to Agencies:
Date to SCH:
Clearance Date:
Notes:

Applicant:
Address:
City/State/Zip:
Phone:

SJ2020D.EIR/79A

DRAFT ENVIRONMENTAL IMPACT REPORT

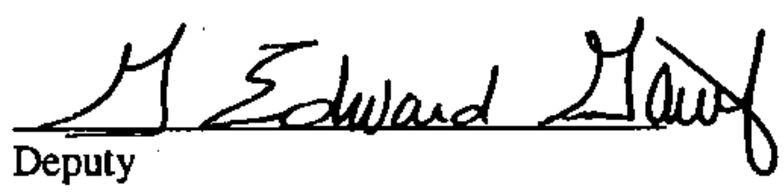
CERTIFICATION OF COMPLETENESS

FILE NO. PP 94-02-019

SCH NO. 94023031

The Director of the Department of City Planning and Building of the City of San José hereby certifies that, to the best of his knowledge, the information contained in this Draft Environmental Impact Report is complete, as required by Subsections (a) through (g) of Section 21100 of Division 13 of the State of California Public Resources Code, and represents the independent judgment of the City.

Gary J. Schoennauer
Director of Planning



Deputy

Date: April 5, 1994

JC:hs

SJ2020D.EIR/79A

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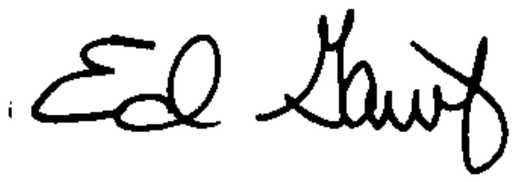
Gary J. Schoennauer
Director of Planning



Ed Gawf, Deputy

Dated: April 8, 1994

PP94-19.77A

CITY OF SAN JOSÉ - MEMORANDUM

TO:	City Clerk's Office	FROM:	Shirley Hill Typist Clerk II Planning Department
SUBJECT:	**EIR PUBLIC HEARING NOTICE PUBLICATION FILE NO. PP 94-2-19**	DATE:	March 24, 1994
APPROVED:		DATE:	

Please publish the attached Public Hearing notice in the publication(s) listed below and charge Account #001-58000-20.

Publish In (Check all that apply):

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Published 4/5/94

PP94-2-19.PH.77A

CITY OF SAN JOSE - MEMORANDUM

TO:	Julie Caporgno Planning Department	FROM:	Ron Conn Public Works Department
SUBJECT:	RESPONSE to San Jose GP 2020 DEIR	DATE:	May 23, 1994

Public Works has reviewed the subject administrative draft EIR and submits the following comments and requirements:

GEOLOGY SECTION: NO COMMENT
SANITARY SECTION: YES, SEE ATTACHED
STORM SECTION: YES, SEE ATTACHED
FLOOD SECTION: NO COMMENT

Please contact Gary Fones at extension 5161 if you have any questions.

RON CONN
Senior Civil Engineer
Development Engineering Division

RC:GF
SJ GP 2020 DEIR

Sanitary

- Development of Site 8 would require the construction of a sewer extension from Calero Avenue to the site. Site 8 may also require the construction of supplemental sewers to increase the sewer capacity on Hillsdale Avenue, Snell Avenue, Calero Avenue, and Chesbro Avenue;

- Development of Site 13 may require the construction of supplemental sewers to increase the sewer capacity on Hillsdale Avenue and Snell Avenue.

Due to possible inadequate downstream sanitary sewer capacity from development on the above sites, field testing of the sewers described above would be required to determine available sewer capacity. Specific mitigation measures would be formulated, as necessary, based on the field tests.

Urban Reserve

There is insufficient downstream sanitary sewer capacity to serve the South Almaden Valley Urban Reserve. Development of the South Almaden Valley Urban Reserve would require the installation of supplementary sewers in portions of Camden Avenue and Almaden Expressway.

General Plan 1993 Annual Review Amendments

GREYSTONE LANE

RA 4/15/94

None of the minor land uses changes associated with the General Plan Annual Review Amendments would result in significant impacts to sanitary sewer capacity.

Increased sanitary sewer flows from implementation of the General Plan update would result in potentially significant impacts upon sanitary sewer lines.

Comparison of Existing General Plan and General Plan Update

Implementation of both the existing and updated General Plans would significantly increase demands upon sanitary sewer services. The General Plan update would result in somewhat greater impacts than the existing General Plan associated with the proposed increase in residential development (900 units).

MITIGATION

The following General Plan goals and policies would reduce the sanitary sewer impacts to a nonsignificant level.

SERVICES AND FACILITIES
Level of Service Goal

Goal 2. Achieve the following level of service for these City services:

- For sanitary sewers, level of service D.

- For sewage treatment, to remain within the capacity of the Water Pollution Control Plant.

storm

Improvement Program. According to State law, the RTP must incorporate the recommendations made by countywide transportation plans (i.e. T-2010 and the CMP) that are developed in accordance with that law.

Consistency: The traffic analysis prepared for the San Jose 2020 General Plan update assumed implementation of the transportation improvements included in the RTP.

Santa Clara Valley Nonpoint Source Program

general construction activity

The Nonpoint Source Program was developed in accordance with the requirements of the 1986 San Francisco Bay Basin Water Quality Control Plan to control non-point sources of pollution from entering water sources and deteriorating water quality. The Nonpoint Source Program was also designed to fulfill the requirements of the Federal Clean Water Act and the Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) permit requirements for storm water runoff. A NPDES permit was prepared by the State Water Resource Control Board and adopted on October 1, 1992. This permit requires the implementation of storm water management practices for projects disturbing five or more acres.

In California, the U.S. Environmental Protection Agency delegated its authority, under the Federal Clean Water Act, to the State Water Resources Control Board (SWRCB) to administer the NPDES permits for industrial discharge. In October 1992, the SWRCB issued regulations for a state-wide general industrial storm water discharge permit program. Under this program, permits for municipal discharge (i.e. from industrial, retail, service, and commercial facilities) must be obtained from the SWRCB.

Consistency: The General Plan provides goals and policies designed to protect water quality. Development allowed for by the General Plan update would be required to implement storm water management practices during and after construction in accordance with the NPDES General Permit for Storm Water Discharges Associated with Construction Activity. The City would also be required to conform to the NPDES municipal storm water discharge permit and its requirements.

Local Agency Formation Commission Policies

The Local Agency Formation Commission (LAFCO) is responsible for review and amendment of Urban Service Area boundaries in a manner that encourages orderly City growth. LAFCO applies eight Urban Service Area policies to proposed Urban Service Area expansions, addressing the local and regional effects of these expansions.

Consistency: The General Plan update includes minor revisions to the Urban Service Area. These minor changes in the USA would be consistent with LAFCO policies.

Policy 6. When new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities, the potential for surface water and groundwater contamination should be assessed and appropriate preventative measures should be recommended.

Policy 7. The City shall require the proper construction and monitoring of facilities storing hazardous materials in order to prevent contamination of surface water, groundwater, and underlying aquifers. In furtherance of this policy, design standards for such facilities should consider high groundwater tables and/or the potential for freshwater or saltwater flooding.

Policy 8. The City should establish nonpoint source pollution control measures and programs to adequately control the discharge of pollutants into the City's storm sewers.

Policy 9. The City should take a proactive role in the implementation of the Santa Clara Valley Nonpoint Source Pollution Control Program, as well as implementation of the City's local nonpoint source control and storm water management program.

Policy 10. The City should encourage a more efficient use of water by promoting water conservation techniques and the use of water-saving devices.

Policy 11. The City should promote the use of reclaimed water when feasible, particularly for industrial uses, for irrigation and in groundwater recharge areas.

Bay and Baylands

Policy. 5 The City should continue to participate in the Santa Clara Valley Non-Point Source Pollution Control Program and take other necessary actions to formulate and meet regional water quality standards which are implemented through National Pollutant Discharge Elimination System permits and other measures.

COMMUNITY DEVELOPMENT
Industrial Land Use

Policy 6. Expansion and improvement of heavy industrial uses should incorporate measures to comply with current anti-pollution and design standards including the City's waste water minimization program and other pollution reduction programs.

SERVICES AND FACILITIES
Sewage Treatment

Policy 8. The operation of the Water Pollution Control Plant should comply with the water quality standards for the South San Francisco Bay established by the Regional Water Quality Control Board and implemented through NPDES (National Pollutant Discharge Elimination System) permits.

Policy 9. The City should continue to encourage water conservation programs which result in reduced demand for sewage treatment capacity.

assessing environmental impacts under the California Environmental Quality Act.

The General Plan includes a level of service policy regarding flood control although the City is not responsible for providing this service. Flood control is the responsibility of the Santa Clara Valley Water District (SCVWD) and interfaces directly with the City's storm drain system. It is City and SCVWD policy that all urban development be protected from flood damage.

While the provision of basic education is not a City responsibility, the City does recognize that it is in the best interests of all citizens of San Jose that public schools, an important part of the urban living environment, be reliably funded and have adequate facilities for educating students. Quality education benefits the entire City and all citizens and is only ensured when school districts have a reliable source of funding for programs and facilities. The City of San Jose recognizes that land use decisions and policies impact school operations.

The State and school districts are responsible for providing and maintaining the school facilities that serve the City's children. In addition to funding provided by the State legislature and the approval of bond measures by the voters, State law currently allows school districts to collect limited development fees to help provide facilities for the students generated by new residential development. The school districts have indicated that these combined sources of funds are often not adequate to provide the needed school facilities. School districts should explore all the methods within their powers to efficiently use or reuse school facilities and resources. Options the school districts could consider include adjusting attendance area boundaries or the consolidation of some districts to facilitate the efficient delivery of school services.

Goals and policies for infrastructure management, transportation and ~~for~~ solid waste which are not related to service levels are set forth in Subsections ~~1 and~~ 2, 3 and 4, respectively, below. Goals and policies for parks and recreation which are not related to service levels are set forth in Section E, Subsection 2 of this Chapter.

1. Level of Service

The services and facilities most directly related to growth and development are sewage treatment, sanitary and storm sewers, transportation and flood protection. These services and facilities are essential to the successful development of individual projects and to the City's ability to accommodate economic development citywide. Police and fire protection, parks and recreation, and libraries are other services important to the City as a whole but these services do not have a necessary functional relationship with each individual development project. The City is directly or indirectly involved in the provision of these services, with several local, regional and State agencies sharing in the responsibility and authority for some of these services as well.

Goals:

1. Provide a full range of City services ~~and other public services~~ to the community at ~~desired~~ service levels consistent with a safe, convenient and pleasant place to live and work.

2. ~~Promote~~ Achieve the following level of service ~~goals~~ for these City services:

   - For transportation, level of service "D".
   - For sanitary sewers, level of service "D".
   - For sewage treatment, to remain within the capacity of the Water Pollution Control Plant.
   - For storm drainage, to minimize flooding on public streets and to

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Mailed By JEC

Environmental Coordinator Julie Caporgno

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***IMPORTANT NOTE:** NOPs must be sent by Certified Mail; DEIRs, regular mail.*

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4270 Pearl Avenue
San Jose, CA 95136

NOTICE OF COMPLETION

APPENDIX F

See NOTE below

SCH #

Mail To: State Clearinghouse, 1400 Tenth St., Sacramento, CA 95814 (916) 445-0613

Project Title San Jose 2020 General Plan Draft Environmental Impact Report

Local Agency: City of San José — Contact Person: Julie E. Caporgno

Street Address: 801 North First Street — Phone: (408) 277-4576

City: San José — Zip: 95110-1795 — County: Santa Clara

Project Location

County: Santa Clara — City/Nearest Community: City of San José

Cross Streets: _____ Total Acres: _____

Assessor's Parcel No. _____ Section: _____ Twp. _____ Range: _____ Base: _____

Within 2 miles: State Hwy #: _____ Waterways: _____

Airports: _____ Railways: _____ Schools: _____

Document Type

CEQA:
[ ] NOP
[ ] Early Cons
[ ] Neg Dec
[x] Draft EIR
[ ] Supplemental/Subsequent
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NEPA:
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[ ] Air Quality
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[ ] Coastal Zone
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[ ] Fiscal
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Present Land Use/Zoning/General Plan Use

Project Description

The project consists of the San Jose 2020 General Plan that addresses a growth alternative proposing 52,900 additional dwelling units and 126,000 jobs.

Note: Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g., from a Notice of Preparation or previous draft document), please fill it in.

Community Systems Associates, Inc.

August 16, 1994
Agenda Item 15F

August 8, 1994

Chairman and Members of the City Council
CITY OF SAN JOSÉ
801 North First Street
San José, California 95110-1795

SUBJECT: San José 2020 General Plan Update
City of San José City Council Public Hearing
August 16, 1994

Public Hearing Testimony of
Morgan Hill Unified School District

Dear Chairman and Members of the City Council:

Community Systems Associates, Inc. ("CSA, Inc.") and the law firm of Lozano, Smith, Smith, Woliver & Behrens ("LSSW&B") have been retained by **Morgan Hill Unified School District** ("District") to represent the District individually in reviewing the proposed San José 2020 General Plan Update (referred to herein as "General Plan Update") and the Draft Environmental Impact Report ("DEIR") for the Project, to provide public hearing testimony before the City of San José City Council ("City Council") in order to protect and preserve the District's administrative and legal remedies, to provide the City of San José ("City") with the information supporting the District's contentions regarding the impact of the San Jose 2020 General Plan on the school districts of San Jose, and to enable the District to consistently and effectively participate in the Draft General Plan amendments adoption process and the environmental review process. It should be noted that the District is also a member of the "Consortium", which includes the District, Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Oak Grove School District, Orchard School District, and San Jose Unified School District.

The District has included the two volumes of its Planning Commission Public Hearing Testimony of June 22, 1994 ("Testimony") as Attachments "A" and "B" to this letter, and incorporates them herein as public hearing testimony before the City Council. The Planning Commission did not consider the District's or the Consortium's Testimony prior

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to certifying the DEIR and recommending approval of the San Jose 2020 General Plan to the City Council, despite the fact that the testimony was offered in a timely fashion. As such, the District has attached the Testimony for consideration by the City Council. This Testimony is specifically directed at describing: 1) The inadequacies and inconsistencies of the San Jose 2020 General Plan Update; 2) The non-compliance of the San Jose 2020 General Plan Update with Title 18 of the City's Municipal Code; 3) The non-compliance of the San Jose 2020 General Plan Update with the Horizon 2000 General Plan; 4) The non-compliance of the San Jose 2020 General Plan Update with the State of California General Plan Guidelines; 5) The non-compliance of the San Jose 2020 General Plan Update with the statutes of the State of California Planning and Zoning Law; and 6) The mis-statement and misrepresentation to the General Plan Task Force by the City Attorney and City's staff of the law pertaining to mitigation of school impacts.

Additionally, the Consortium's Critique of the City's Responses to the Consortium School District's Comments on the Draft Environmental Impact Report for the San Jose 2020 General Plan Update, provided as Attachment "B", evaluates and critiques the City's responses to the Consortium's comments on the DEIR, and finds that: 1) The City's responses to the Consortium's comments on the DEIR are conclusory, not made with a good faith, reasoned analysis, and are unsupported by factual information, as required by Section 15088 of the CEQA Guidelines; 2) The City has ignored recent statutory and case law pertaining to the appropriate type of EIR to use when evaluating a General Plan Amendment, and has incorrectly chosen to use a "program" EIR which the court has ruled cannot be used for an amendment of a general plan or similar plan-level decision (Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners (2d Dist. 1993) 18 Cal.App. 4th 729 [Cal.Rptr.2d 618].); 3) The assessment of school impacts is purposely misleading in its representation of the degree of impact by stating that the impact is only 248 students City-wide (the difference between students expected to be generated under the existing Horizon 2000 General Plan versus the students expected under the San Jose 2020 General Plan) rather than the 32,165 additional students to be generated above existing 1993/94 school year enrollments levels; 4) The assessment of school impacts is inadequate, fails to assess the impact of the San Jose 2020 General Plan versus the existing physical conditions; 5) The assessment of impacts on schools is made at an overly broad level considering all nineteen school districts as a single entity, rather than as independent political jurisdictions, or on a school attendance area basis as requested by the school districts in their response to the Notice of Preparation; 6) The Draft EIR fails to address all of the scope and content requests submitted to the City by the school districts in response to the Notice of Preparation; and 7) The City's continued reliance upon several "Measures to Increase School Capacity", which are utilized by the City to minimize the impacts upon the school districts by stating that the use of one or more of the measures will provide sufficient capacity to offset the enrollment growth of every school district within the City. These measures, which are not identified as part of the existing

physical environmental setting, as part of the proposed General Plan Update, as one of the impacts of the General Plan Update upon the environmental setting, or as mitigation measures, are simply listed with no discussion of their feasibility for use by any particular district; and 8) The City's response to comments fails to reply to the Consortium's comment that the schools section of the DEIR is inadequate in scope and content, fails to provide a true picture of the existing physical conditions, fails to assess the full impact of the General Plan Update on schools, tries to place the responsibility for the City's faulty and inadequate analysis in the DEIR on the school districts for not having provided the information to the City when, in fact, the school districts did complete the City's survey in full, the law office of Lozano, Smith, Smith, Woliver & Behrens responded orally and in writing to the City's request for clarification regarding the responses to the survey, numerous other sources were available to the City to obtain any information they might need, and the City never requested any additional information from the school districts or their legal and technical representatives.

The District contends that the Planning Commission has abused its discretionary powers in certifying the DEIR and the San Jose 2020 General Plan, and subsequently recommending its approval to the City Council, for the following reasons:

1) The Planning Commission's action to certify the DEIR is invalid under CEQA and the CEQA Guidelines in that the Planning Commission is not the appropriate "decision-making body" to have taken that action (CEQA Guidelines Section 15090). The lead agency's decision-making body, which in this case is the City Council, cannot delegate its obligation to "review[ ] and consider [ ]" and EIR to an inferior entity within the agency hierarchy. (CEQA Guidelines Section 15025; Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770, 779 ("Delegation is inconsistent with the purposes of the EIR itself").)

2) Despite the fact that the Consortium's consultants timely submitted two extensive volumes of written testimony, the Planning Commission voted on the DEIR without viewing or considering that testimony. This served to preclude the consultants from providing an oral summary of the Consortium's extensive written Testimony. Therefore, even if the Planning Commission could certify the DEIR, the actions taken by the Planning Commission were made without any knowledge or consideration of the Consortium's written Testimony. However, the DEIR was found adequate and was certified by the Planning Commission, even though there was no consideration of the Testimony of the Consortium or the District. This served to trivialize the Consortium school districts' standing as public agencies which serve the population of the City of San Jose.

3) With no advance warning, the Planning Commission limited the legal and technical representatives of the Consortium school districts to a two minute limit for oral public hearing testimony. At the same time, it appeared that no other person wishing to provide oral commentary was restricted by such a limit. The Planning Commission abused its discretionary power by randomly placing such a limit only upon the representatives of the Consortium. By thus limiting the oral testimony of the representatives of the eight school districts, representing 60% of San Jose's total school enrollment, the Planning Commission again trivialized the standing of these public agencies.

4) The Planning Commission conducted its meeting of June 22, 1994 in violation of the "Brown Act" in that the Planning Commission's agenda did not state that the purpose of the public hearing was to "certify the EIR", but rather states that the Planning Commission's action on the General Plan Update is only advisory to the City Council. The actual item appearing on the agenda states nothing about certification of the EIR but rather states, "Staff recommendation: Find EIR complete as amended and in conformance with CEQA."

In addition, it appears from Agenda item 8a. that if in fact the Planning Commission did certify an EIR, that it was the Draft EIR that was certified and not the Final EIR, which includes the City's responses to comments on the DEIR and the revisions to text and diagrams. Specifically, under "7:00 P.M. PUBLIC HEARINGS", the Agenda states:

a. San Jose 2020 General Plan **DEIR**

DRAFT ENVIRONMENTAL IMPACT REPORT (SCH No. 92123085) for the San Jose 2020 General Plan Update addressing a preferred growth alternative that proposes 52,900 additional units and 126,000 additional jobs by the year 2020. Staff recommendation: Find EIR complete as amended and in conformance with CEQA.

As seen in the above agenda item, there is not only no discussion concerning the certification of an EIR, but there is also no discussion about consideration of the final EIR, as opposed to the DEIR.

5) The Planning Commission conducted its meeting of June 22, 1994 in violation of the Brown Act in that every public agenda must contain a period for public comments. No such item appeared upon the Planning Commission's agenda of June 22, 1994.

6) The malfunctioning microphones utilized at the June 22, 1994 Planning Commission public hearing did not allow for the members of the public in the audience to hear discussion between Planning Commission members, City staff, and oral presenters. The Planning Commission meeting was conducted in a manner whereby dialogue or discussion between the Planning Commission and City staff was not comprehendible to all in attendance. As such the Consortium school districts' legal and technical representatives and the audience in general were unable to tell precisely what action the Planning Commission was taking.

7) The Planning Commission members provided no dialogue or discussion concerning the significant and controversial school issues relating to the certification of the DEIR and the adoption of the San Jose 2020 General Plan. Throughout the General Plan Update process, the City has been made acutely aware of the Consortium's concerns regarding the General Plan Update. In fact, the City identified "Schools" as an area of controversy in the DEIR. The Consortium school districts have provided extensive commentary on the DEIR, and provided extensive written testimony at the Planning Commission Public Hearing of June 22, 1994. The City even created a schools "task force" to address the school districts' concerns regarding mitigation of school impacts created by new development. Despite all events leading up to the Planning Commission's consideration of the DEIR and the General Plan Update, the members of the Planning Commission and the City staff found it unnecessary to even discuss the issue of "schools" in certifying the EIR for the General Plan Update. This failure of the Planning Commission is compounded by the fact that the Consortium's representatives raised significant issues during their brief opportunities to address the Planning Commission, which were likewise ignored in the Planning Commission's decision to certify the DEIR.

8) The Horizon 2000 Land Use/Transportation Diagram was included in the body of the San Jose 2020 General Plan. The Horizon 2000 Land Use/Transportation Diagram does not represent the final land use allocation map to be adopted by the City Council, as twenty-three (23) amendments are being recommended for approval. Also, the San Jose 2020 General Plan calls for several Intensification Zones, which are not identified in the Horizon 2000/Land Use Transportation Diagram.

9) In addition, Section 65302(a) of the California Government Code states that a land use element must "designate the proposed general distribution and general location and the extent of the uses of the land for housing, business,

industry, open space, agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private land use." The Horizon 2000 Land Use/Transportation Diagram does not show these locations, specifically educational land uses.

10) Finally, the Horizon 2000 Land Use Transportation Diagram is dated August, 1987, and since it has not been updated, it must be in non-compliance with Section 65302 of the California Government Code and the San Jose 2020 General Plan. Therefore, the City Council received a recommendation from the Planning Commission to approve an inadequate land use diagram.

11) The Planning Commission acted on the DEIR without waiting for the Schools Task Force appointed by Mayor Susan Hammer to conclude its deliberations and make recommendations, again failing to demonstrate either good faith or that a reasoned analysis had taken place.

12) The night before the June 22, 1994 Planning Commission meeting, an"urgency" ordinance was enacted providing that appeal of certification of the DEIR must be brought to the City Council within three (3) days of that certification. The Consortium was never informed of this ordinance, nor did the Planning Commission make the public aware of the ordinance at the Planning Commission meeting. It does not appear that this ordinance was even lawfully enacted, as there was clearly no urgency involved. rather, the ordinance appeared intended solely to curtail and potentially foreclose the Consortium's ability to appeal certification to the City Council.

The Planning Commission failed to consider any of the school-related issues raised in the Consortium school districts' written public hearing testimony, nor in the oral testimony provided by the Consortium's legal and technical representatives, in certifying the DEIR. This is not considered by the Consortium to constitute "good faith." The Consortium continues to believe that the school districts of San Jose will be significantly impacted by the General Plan Update.

The 52,900 additional housing units called for in the San Jose 2020 General Plan will have widespread significant impacts upon all educational and operational aspects of the school districts within the City of San Jose. These impacts go far beyond just the generation of new students and the related "school facilities" impact (i.e., the need to provide additional school facilities to house projected students to be generated under the General Plan Update). There is also a related "personnel" impact, including the need to hire additional teachers and administrative, maintenance, and transportation staff, to meet growth

demands. There is a "transportation" impact, in that new busses will have to be purchased, operated, and maintained, as well as redesigning existing bus routes and providing new bus stops. There is a related "educational materials" impact, in that additional text books, computers, supplies, etc. will have to be provided to meet growth demands. There is a related "curriculum" impact, in that curriculum will have to be tailored to meet the demand for education, and the facilities, teachers, and supplies available to the district (i.e., a school on a traditional calendar may have to go to a year-round school program, which has significant impacts all its own). All of these impacts related to increased service demand will have a related fiscal impact which the affected school districts will have to somehow attain the necessary revenues to offset. State statutory school development fees mitigate a small portion of just the facilities impact, and cannot be used under State law for any purposes other than capital facilities.

Exhibit "A" shows the projected impact on the Consortium school districts in terms of student generation, surplus or deficit capacity, and a minimum and maximum estimated fiscal impact. The existing conditions, student generation rates, and projections of new units and generated students within each of the Consortium school districts comes directly from Table 23 of the DEIR. As seen, 25,167 new students are projected to be generated within the eight (8) Consortium school districts, representing a 23.25% increase in enrollment over the 108,223 existing enrollment. It should be noted that the numbers shown in Exhibit "A" are based upon the City's information regarding the number and type (i.e., single-family and multi-family units) of units and the corresponding student generation within each of the Consortium school districts, as found in Table 23 of the DEIR. The Consortium has no way of validating or confirming these numbers.

On an individual school district basis, for instance, the projected enrollment growth includes 873 students within Berryessa Union School District ("BUSD"), representing an 11% increase over existing conditions. Currently, BUSD is already operating at over its existing physical capacity by 728 students. The implementation of the General Plan Update would serve to further exacerbate this condition.

This projected enrollment growth includes 2,965 students within Franklin-McKinley Union School District ("FMUSD"), representing a 28% increase over existing conditions. Currently, FMUSD is already operating at over its existing 10,400-student physical capacity by 233 students. The implementation of the General Plan Update would serve to further exacerbate this condition.

The projected enrollment growth also includes 2,839 additional students within Oak Grove Union School District ("OGUSD"), representing a 24% increase over existing enrollment. Currently, OGUSD is operating at just under its existing 12,140-student physical capacity.

The implementation of the General Plan Update would serve to place OGUSD at 2,713 students, or 22% above existing capacity of the district.

Orchard School District ("OSD") operates just one (1) school facility, with an existing physical capacity of 400 students. OSD has a current enrollment of 384 students. Implementation of the General Plan Update is projected to generate an additional 643 students to OSD's current enrollment, or an increase of 167%. The implementation of the General Plan Update would serve to place OSD at 627 students, or 157%, above the existing 400-student capacity of the district.

East Side Union High School District ("ESUHSD") has a current enrollment of 22,031 students, with an existing physical capacity to serve 22,295 students. As such, ESUHSD is operating at a surplus capacity for 264 students, or at 99% capacity utilization. The projected enrollment growth within ESUHSD is 5,175 students, representing a 23% increase over existing enrollment. The implementation of the General Plan Update would serve to place ESUHSD at 4,911 students, or 22%, above existing capacity of the district.

San Jose Unified School District ("SJUSD") is the largest school district in the City of San Jose, and one of the largest in the State of California. SJUSD has a current enrollment of 29,685 students, and an existing physical capacity for 33,652 students. The implementation of the General Plan Update is projected to generate an additional 11,818 students within SJUSD. This enrollment growth would place the school district at 7,851 students, or 23%, above existing physical capacity.

The Consortium has estimated the related fiscal impacts for providing additional capacity to house all students generated by the implementation of the General Plan Update, as well as the fiscal impact of providing capacity for just those students generated above existing capacity levels of each school district. The costs utilized by the Consortium in calculating the estimated fiscal impacts of the General Plan Update upon the Consortium school districts are estimates based upon average costs, and are not adjusted for individual school district-specific characteristics. The fiscal impacts shown are for descriptive purposes only, to depict quantitatively the impact upon the Consortium school districts. A cost per student of $23,000 has been utilized for elementary school facilities, a cost of $29,000 has been utilized for middle school facilities, and a cost of $32,000 has been utilized for high school facilities. For K-8 elementary school districts, an average cost per student has been utilized of $24,333, which is a weighted average cost per student based upon the elementary and middle school student costs stated above. For unified school districts, a cost per student of $26,692, equalling the weighted average of elementary, middle, and high school student costs.

As seen in Exhibit "A", the Estimated Maximum Gross Fiscal Impact, the cost to house all students generated by implementation of the General Plan Update would be $680,268,821. The Estimated Minimum Gross Fiscal Impact, which includes the cost to house only the students generated by the implementation of the General Plan Update above existing physical capacity, would be $564,762,308. On a district-by-district basis, these fiscal impacts would include:

District	Maximum Gross Fiscal Impact	Minimum Gross Fiscal Impact
Alum Rock Union	$ 17,495,677	$ 0
Berryessa Union	$ 21,243,000	$ 21,243,000
Franklin-McKinley Union	$ 72,148,333	$ 72,148,333
Oak Grove	$ 69,082,333	$ 66,016,333
Orchard	$ 15,646,333	$ 15,257,000
East Side Union High	$165,600,000	$157,152,000
Morgan Hill Unified	$ 3,603,462	$ 0
San Jose Unified	$315,449,692	$209,561,308
Consortium Total	$680,268,821	$541,377,974

Please note that these estimated fiscal impacts represent only the cost for providing additional school facilities. These costs do not include the personnel, transportation, and educational materials impacts discussed previously. It should also be noted that the Estimated Minimum Gross Fiscal Impact does not consider the effects of additional residential growth beyond that called for in the General Plan Update, or the location of available student capacity district-wide. For example, the majority of Morgan Hill Unified's land area is within the City of Morgan Hill. Despite the fact that there is available capacity district-wide for 302 students, this capacity may be filled by students residing within new residential developments in the City of Morgan Hill, or the existing capacity may be located in an area unsuitable for San Jose-resident students.

Because of the significance of the impacts identified above, the Consortium has participated throughout the General Plan Update process in order to protect its administrative and legal remedies. The position which the Consortium has consistently taken throughout the adoption process of the General Plan Update is simple. The Consortium believes that the General Plan should incorporate policies which address the following three areas:

- Policies which reinforce the City's commitment to schools and that the City shall require "mitigation to the fullest extent permitted by law" in the development review process.

- Policies which ensure concurrence of school facilities with development and growth of the community.

- Clarification of policies to preclude limitations on the school districts' ability to manage their school property assets.

It is important that the City Council be aware of the Consortium's concern with respect to the City Attorney's Office's legal analyses, and our disappointment that the City Council may not be prepared to deal with these school issues within the context of the San Jose 2020 General Plan, just as the Planning Commission was unprepared at its June 22, 1994 Public Hearing.

Respectfully, the issue which presently confronts the City at this date is not "what role the City can and should play in supporting the school districts", but rather the <u>responsibility and obligation</u> of the City has pursuant to a) Title 18 and 21 of the City of San Jose Municipal Code; b) the California Environmental Quality Act and the State of California CEQA Guidelines; c) the California Planning and Zoning Law and the State of California General Plan Guidelines; d) the statutory provisions relating to the imposition of development fees and other development mitigation measures; and e) the Court rulings in the cases of <u>Mira Development Corporation v. City of San Diego</u>, <u>William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles</u>, and <u>Murrieta Valley Unified School District v. County of Riverside</u>, as all of these relate to the adoption of the San Jose 2020 General Plan and the certification of the Environmental Impact Report.

As we see it, the real issues are: 1) The legal responsibility which the City has to mitigate the significant impacts caused to the school districts of the City by the adoption of the San Jose 2020 General Plan; and 2) The onerous text of the San Jose 2020 General Plan relating to growth of the community and the City's stated direction in the General Plan Update relating to parks, open space and recreation relationships with school properties.

Acknowledging that the City is sensitive and supportive of the school community, we can only assume that the City's lack of consideration of our recommended changes to the San Jose 2020 General Plan and the conclusion that the General Plan Update is the wrong vehicle to be used to address school issues, is based upon the direction and opinions which have been offered by the City Attorney's Office. We would respectfully suggest that the opinions of the City Attorney's Office have mislead the City, have not provided the City

with a complete and thorough understanding of the authority and responsibility the City has under State Law and case law, and have misrepresented the purpose of the General Plan, CEQA documentation, and the planning process.

Prior to the failure of Proposition 170, the City Attorney's Office based their opposition to the school districts position on the fact that, in their opinion, S.B. 1287 and Proposition 170 (if approved) would "tie the hands of the City" in addressing the school issues, and that the General Plan was and is the inappropriate place to be dealing with school issues. Now, following the failure of Proposition 170, the City Attorney's Office is arguing that the General Plan is not a "development plan", and that the school impacts should not be addressed in the General Plan.

Prior to the failure of Proposition 170, the City Attorney's Office based their opposition to the school districts position on the fact that, in their opinion, S.B. 1287 and Proposition 170 (if approved) would "tie the hands of the City" in addressing the school issues, and that the General Plan was and is not a "development plan", and that the school impacts should not be addressed in the General Plan.

We agree that the General Plan is not a "development plan". Rather, Section 65300 of the Government Code defines a general plan as a comprehensive, long-range plan for the physical development of the community. We believe that the school community is part of this physical environment, and as such should be adequately addressed in the same manner as the City addresses other infrastructure, public facilities, and public services (i.e., see the discussion in the DEIR of the impacts on libraries, police protection, fire protection, etc.)

Of significant importance are the provisions of Section 65030.1 of the Government Code, which sets forth, in part, the declaration of State policy and Legislative intent regarding the Planning and Zoning Law, as follows:

> "The Legislature also finds that the decisions involving future growth of the State, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within a framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors."

Section 65030.2 of the Government Code states further:

> "It is further the policy of the State and the intent of the Legislature that land use decisions be made with full knowledge of their economic and fiscal implications,

> giving consideration to short-term costs and benefits, and their relationship to long-term environmental impact as well as long-term costs and benefits."

Clearly, the Legislature, in adopting the Planning and Zoning Law and the applicable provisions to the preparation and adoption of general plans, declared its intent; and, we believe that the City Attorney's Office has mislead the City when it suggests that it is inadvisable to address school impacts in the General Plan.

The Consortium is not asking that the General Plan incorporate specific "programs" of impact mitigation, but rather to establish specific goals and policies which set forth the relationship of adequate school facilities concurrent with the growth of the community. As stated in the State of California General Plan Guidelines:

> "A General Plan provides a basis for rational decision making regarding a city's or county's long-term physical development. A developing community is like an incomplete and evolving puzzle. A general plan serves as a generalized and dynamic picture of the puzzle. The plan directs decision makers in fitting together numerous community development components....The role of each community's general plan is to act as a "constitution" for development, the foundation upon which all land use decisions are based. It expresses community development goals and embodies public policy relative to the distribution of future land use, both public and private. (emphasis added)

Clearly, if the General Plan is to be an effective foundation for rational decision-making by the City Council on land use decisions, which result in growth in the community, it must include the City's public policies with regard to its commitment to the school community, and implications which growth has on the adequacy of school facilities and the liveability and well-being of the City. To ignore the physical, social and economic relationships between growth and school facilities in the General Plan is the same as having lost or thrown away pieces of the evolving puzzle.

We believe that the City Attorney's Office has failed to acknowledge the purpose of the City's General Plan, and in particular, its role of embodying public policy and issues.

We respectfully request that the City Council incorporate into the San Jose 2020 General Plan the recommended modifications which are included in the Consortium's Testimony. However, if the City Council, as the policy leaders of the community, is not prepared to do so, then we would recommend that the City consider a "binding contractual arrangement" between the City and the school districts, which could accomplish the same end without modifying the proposed San Jose 2020 General Plan. This approach would provide the school districts with assurances that an appropriate mitigation policy program would be implemented by the City, without the school districts jeopardizing their administrative and legal remedies.

As you know, the San Jose 2020 General Plan Update Task Force ("Task Force") spent over eighteen (18) months in formulating the Draft General Plan Update. Only in their last several meetings did the Task Force, prior to conclusion of their deliberations, even begin to address the impacts of the General Plan Update on the school community, or consider policy language in some manner similar to how they had addressed other public services, facilities, and infrastructure in the community.

It appears that the Task Force was prepared to address school issues in a comprehensive manner, if it were not for the City Attorney taking a strong, and in our opinion, unjustifiable position, suggesting that the Task Force, Planning Commission, and City Council were precluded by statute and case law from considering school impact mitigation policies in the General Plan, and that to address school mitigation, level of school service standards, "concurrence" of school facilities with the implementation of the General Plan, and consistency of other General Plan policies with school conditions, was inappropriate in the General Plan.

As a result of the City Attorney's opinion, the Task Force reversed its decisions to recommend a policy which would have required mitigation to the extent legally feasible, and instead made a recommendation to the City Council that the issue of school facility mitigation be re-examined after the November 2, 1993 election on Proposition 170. The Task Force further recommended that the City Council appoint a special task force to address the impacts of new development on school facilities and consider adopting a school facilities mitigation policy outside the General Plan.

The City Attorney's opinion appeared to be based upon the fact that to support the Districts' position would be an invitation of litigation to the development community, not only on the General Plan, but subsequent development project approvals which would be required to comply with the policies of the General Plan in accordance with State law. The Consortium is confident that we can substantiate our position that the City Council has the authority and is required to address schools in the General Plan, that the California Environmental Quality Act ("CEQA") requires the Draft Environmental Impact Report prepared on the San Jose 2020 General Plan Update to address the issues raised by the school community, and that the adoption of the General Plan Update, as presented by the Task Force, is not in compliance with the Title 18 of the City of San Jose Municipal Code, the State of California General Plan Guidelines, and applicable statutes. In addition, we are confident that we can provide an adequate public record to substantiate our position that the Draft Environmental Impact Report has not been prepared in accordance with the provisions of the City's Environmental Clearance Ordinance (Title 21 of the Municipal Code), CEQA, or the CEQA Guidelines, and that Title 21 of the Municipal Code is not in compliance with CEQA or the CEQA Guidelines.

Community Systems Associates, Inc., along with Lozano, Smith, Smith Woliver & Behrens, have been directed by the District and the Consortium to prepare the written and oral testimony to be introduced into the public record of the City Council public hearing on the General Plan Update and the DEIR, in order to protect the District's and the Consortium's administrative and legal remedies. However, it is not in the best interest of the City or the school districts to pursue this controversy in a "public forum." Rather, we should attempt to resolve our differences in a cooperative and coordinated manner, resulting in the Consortium's support for the General Plan Update. To date, we have attempted to do this through the Task Force, the Department of Planning and Building, and the City Attorney's Office. However, it has been suggested by City representatives that this matter be resolved in the public hearing process before the Planning Commission and the City Council. We disagree that this is the most appropriate way to create the kind of relationship which best serves the City's and the school district's elected officials and constituencies. However, we have no other option but to present our testimony as set forth herein.

It is unfortunate that both the City and the Consortium school districts have been placed in this precarious position. The community of San Jose as a whole is better served if we can jointly create a relationship which will enable the City to effectively pursue the implementation of the General Plan Update, while at the same time enabling the school districts of the City of San José to be able to adequately and effectively address the impacts of growth contemplated under the General Plan Update.

As one reads through the San Jose 2020 General Plan, school properties are an integral part of the community, not only for the purposes of education, but also to enable the City to meet its open space and recreational program requirements. One cannot separate the responsibility of the City Council to consider the implications of the General Plan Update and growth in the community on the students, employees, and facilities of the school districts, if the City Council is to attain the present and proposed purposes, goals and policies of the Draft General Plan.

The District does incorporate herein by reference:

1) The District's and the Consortium's written and oral testimony presented to the Planning Commission at its public hearing of June 22, 1994 (See attached Planning Commission Public Hearing Testimony);

2) The Draft San Jose 2020 General Plan, as proposed by the San Jose 2020 General Plan Update Task Force;

3) The Draft Environmental Impact Report on the San Jose 2020 General Plan dated January, 1994 (SCH # : 02123085);

4) The Horizon 2000 General Plan for the City of San Jose adopted by the San Jose City Council on November 7, 1984, and amended on December 10, 1992;

5) Title 18 and Title 21 of the City of San Jose Municipal Code;

6) All of the technical reports, letters, and memorandums prepared by the departments of the City of San Jose, including but not limited to the Department of Planning and Building and the Office of the City Attorney as presented to the San Jose 2020 General Plan Update Task Force during their deliberations on the preparation of the Draft San Jose General Plan;

7) September 13, 1993 Memorandum of the City Attorney to the San Jose 2020 General Plan Task Force regarding School Mitigation Policy;

8) May 29, 1992 Memorandum of the City Attorney to the School Impact Task Force regarding Legal Analysis;

9) October 6, 1993 Memorandum of the Co-Chairs of the San Jose 2020 General Plan Update Task Force to the Mayor and Members of the City Council regarding the Draft San Jose 2020 General Plan; and

10) Opinion No. 30455 of the Legislative Counsel of the State of California dated December 4, 1992 regarding School Facility Fees.

11) October 27, 1993, letter from Carol Hamilton, Senior Planner, City of San Jose to Community Systems Associates, Inc. denying an extension of time to submit comments on the Draft Environmental Impact Report.

12) November 3, 1993, letter from Mayor Susan Hammer to Community Systems Associates, Inc. and the attached Memorandum from the City Attorney to the Mayor and City Council dated November 3, 1993 regarding the Attorney's Office Legal Analysis of School Impact Mitigation.

13) The October 13, 1993, Public Hearing written testimony to the Planning Commission regarding the Draft General Plan.

14) November 5, 1993 letter to Mayor Susan Hammer from Community Systems Associates, Inc. responding to the Mayor's November 3, 1993 letter.

15) The Comments of the Consortium and individual school districts, including the District, on the Draft EIR made during the public review period.

16) The City's Response to the Consortium's and the District's Comments on the Draft EIR.

17) March 2, 1994 letter to Ms. Lee Quitana from Lozano, Smith, Smith, Woliver & Behrens regarding school survey requests for Consortium.

This letter and its attached written testimony is presented to the City Council of the City of San José for the purpose of establishing the public record for the Consortium, and to protect and preserve the individual and collective administrative and legal remedies of the school districts within the Consortium.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President

attachment with enclosures

MBK:jbm:dd
1182gp4_cc1.ar

cc: Mr. Les White, City Manager
City of San Jose

Mr. Gary Schoennauer, Director of Planning
City of San Jose

Mr. H. James Crow
Morgan Hill Unified School District

EXHIBIT "A"

CONSORTIUM OF SAN JOSE SCHOOL DISTRICTS
IMPACT ANALYSIS

	EXISTING CONDITIONS				SAN JOSE 2020 GENERAL PLAN				ESTIMATED FISCAL IMPACT	
SCHOOL DISTRICT	ENROLLMENT	CAPACITY	=/- CAPACITY	STUDENT GENERATION RATE (SF/MF)	UNITS	STUDENT YIELD	=/- CAPACITY	COST PER STUDENT	EST. MAXIMUM GROSS FISCAL IMPACT (ALL NEW STUDENTS)	EST. MINIMUM GROSS FISCAL IMPACT (INCLUDES STUDENTS ABOVE EXISTING CAPACITY)
ALUM ROCK	15,972	16,995	1,023	0.62, 0.28	1,863	719	304	$24,333	$17,495,667	$0
BERRYESSA	8,643	7,915	-728	0.4, 0.21	2,820	873	-1,601	$24,333	$21,243,000	$21,243,000
FRANKLIN-MCKINLEY	10,633	10,400	-233	0.56	5,294	2,965	-3,198	$24,333	$72,148,333	$72,148,333
OAK GROVE	12,014	12,140	126	0.50, 0.25	7,247	2,839	-2,713	$24,333	$69,082,333	$66,016,333
ORCHARD	384	400	16	0.5	1,284	643	627	$24,333	$15,648,333	$15,257,000
EASTSIDE	22,031	22,295	264	0.20	25,875	5,175	-4,911	$32,000	$165,600,000	$157,152,000
MORGAN HILL	8,868	9,168	302	K-8 0.55, 0.19 High 0.22, 0.07	175	135	167	$26,892	$3,603,462	$0
SAN JOSE	29,685	33,652	3,967	K-8 0.42, 0.42 High 0.25, 0.30	16,639	11,818	-7,851	$26,892	$315,449,692	$209,561,308
TOTAL	108,228	112,965	4,737			25,167	20,430		$680,268,821	$541,377,974

Note: Additional housing units to be built under the San Jose 2020 General Plan do not include housing units built within other cities within school districts' jurisdictions.

City of San Jose - PBCE – Planning Division - Imaging Index Cover Sheet

Address/Location: **City Wide (GP2020)**

Permit/Project No.: **PP94-019** Issuance Date: **08/16/94**

Prepped By: _____ Closed By: **SADVANI** RSN: **1253413**

Category	Document Type	Sub Document Type
☒ (EF) Environmental Files (203)	☒ (PP) Public Project Files (203-03) Page II	☐ (EN) EIR ☐ (DA) Approved Document ☐ (EM) Maps ☐ (AE) Application ☐ (AG) Agency Correspondence ☒ (EG) General Correspondence ☐ (TR) Technical Reports ☐ (RE) Archaeological Reports ☐ (EP) Plans
☐ (GP) General Plan (204)	☐ (GA) General Plan Amendments (204-02)	☐ (AM) Amendment ☐ (AA) Application ☐ (CG) Correspondence
	☐ (GE) Environmental Review (for 204 series GP Amendments)	☐ (GD) Approved Document ☐ (GI) EIR ☐ (GS) Supporting Documents ☐ (GT) Technical Reports ☐ (GR) Archaeological
☐ (DR) Development Review (207)	☐ (PR) Projects (207-02, 207-03, etc.)	☐ (ZN) Zoning ☐ (PE) Permit ☐ (MP) Maps ☐ (AP) Application ☐ (AC) Agency Correspondence ☐ (GC) General Correspondence ☐ (PL) Plans
	☐ (ER) Environmental Review (for 207 series Project Files)	☐ (EA) Approved Document ☐ (EI) EIR ☐ (ES) Supporting Documents ☐ (ET) Technical Reports ☐ (AR) Archaeological
	☐ (AD) Adjustments (207-12)	☐ (DO) Documents ☐ (PA) Plans
	☐ (PI) Public Info Letters (207-29)	☐ (LE) Letter ☐ (LS) Supporting Docs

LOZANO SMITH
SMITH WOLIVER & BEHRENS
ATTORNEYS AT LAW

RECEIVED
MAR 3 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

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OFFICES
San Rafael
Fresno
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A Professional
Corporation

March 2, 1994

By Facsimile and Mail

Ms. Lee Quintana
City of San Jose
Department of City Planning and Building
Room 400
801 North First Street
San Jose, CA 95110

Re: School Survey Requests for Alum Rock, Berryessa Union, East Side Union High, Franklin-McKinley, Morgan Hill Unified, Oak Grove Unified, Orchard and San Jose Unified School Districts

Dear Ms. Quintana:

We represent the school districts noted above, as I informed you when I called you on Friday, February 18, 1994. In that initial conversation, you indicated to me for the first time that the City of San Jose was dissatisfied with the information it was receiving on the "School Surveys" that it sent out to San Jose area school districts. In particular, you noted that the districts did not provide any explanation of what method they employed to calculate their student generation rates ("SGR") and their enrollment capacity. Your office was also dissatisfied that the methods employed by the various school districts did not appear to achieve common results, and that uniform methods might not have been applied.

For two reasons, you will find that the information set out below is a clarification of what methods were used, rather than a recalculation of SGR and instructional capacity employing a single method across the various school districts. One reason is that there was simply not time to have each school district completely regenerate their numbers. A second and more important reason is that the type of information sought by the City cannot be generated using a universal method of determination by each of the diverse school districts. Rather, unique factors lead to separate determination of SGR and enrollment capacity. For instance, the numbers generated by San Jose Unified School District are shaped by the fact that there is a desegregation order in effect in that district. Similarly, many of the school districts' calculations are driven by the

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collective bargaining agreements that set forth maximum class size.

Comments on the OLA Methodology

You had requested in our conversation that, if at all possible, the school districts utilize the methods of calculation employed by the Office of Local Assistance ("OLA") -- now called the Educational Finance Division -- with the one exception that the OLA does not include all portable classrooms within the calculation for instructional capacity, while you had asked that all such potables be included.

The school districts generally did not employ the OLA approach for a number of reasons. First, the OLA, by applying the same method universally to each district, disregards unique circumstances in each, such as those set out above. Primarily for this reason, there is a widespread belief that the OLA approach is simply inaccurate. Second, even the OLA method would not result in uniform calculation, since that approach assumes different class sizes for different grade levels, while the City's school survey form groups together various grades. Similarly, it is my understanding the current OLA approach offers alternative means of calculating capacity, thus again offering no uniformity. Furthermore, OLA standards for determining building capacities employ criteria that are unrealistic, such as inclusion of space as being available for classroom use which cannot actually be used, as in the case of hallways and roof overhangs.

Both my conversations with you and with the successor to the OLA supports the fact that the method you now belatedly recommend would be of little assistance. When I asked you to provide the details of what OLA classifications the City wished the districts to use, you were unable to do so, suggesting that this would be no easy undertaking for the districts. I spoke to the Educational Finance Division regarding this matter, and they in turn referred me to Dr. Stan Rose at the School Facilities Planning Division of the Department of Education. Dr. Rose offered his opinion that the OLA approach would be entirely inappropriate for a school survey of the type that the City had circulated. Dr. Rose stated his belief that by failing to consider circumstances unique to each school district, the OLA

calculation methodology would not provide adequate, accurate or standardized data information.

The preparation of an Environmental Impact Report is supposed to give full consideration to all relevant factors. As you are aware, the school survey forms that the City sent to the districts contained no specific instructions as to the utilization of OLA guidelines, or that any explanation should be given by the school districts as to how the figures provided were calculated. We trust that full consideration will be given to the district's calculations, and that the districts will not in any way be prejudiced for failing to supply information that had not been asked of them. Certainly there was no way for the school districts to know that the City intended the OLA calculation method for SRG determination to apply, since California Government Code sections 53080 and 65995 do not require justification studies to use or even consider OLA methods.

Inclusion of Portable Structures

You had also raised the question with me of whether various schools had included portables in computing their enrollment capacity. As you indicated, even the OLA method that you endorse does not include leased portables. The school districts varied as to whether they included portables based on their own internal methods of calculation. We note, however, that simply adding pupils to portables, or portables to school sites, does not necessarily result in any sort of accurate enrollment capacity figure. As several of the school districts noted on their survey, the addition of portables also requires an increase of services, additional bathrooms, food service areas, plus additional space in gyms and labs, adequate electrical capacity, and the like. As a result, those school districts that did include all portable capacity within the enrollment capacity figure, as you have now urged them to do, show maximum instructional capacities that may be unrealistically optimistic.

Geographic and Market Considerations

Finally, it is critical to realize that the enrollment capacity and SGR are affected by the geographic location of the development as well as by the realities of the housing market within individual school district boundaries.

First, looking at district-wide capacity figures does not take into consideration the fact that development in a localized area may cause school overcrowding in part of a district. Thus, if development occurs in the southwest corner of a large district, and the excess capacity is in the northeast, the fact that there is excess capacity district-wide does not preclude further overcrowding in the southwest. The impact of this type of situation requires an increase in housing to move students from their residence to the school wherein capacity exists.

Second, like the capacity figures, the SGR calculation requested by the City does not necessarily reflect accurately on the realities of each district. For example, the housing market is currently stagnant, largely due to the sluggish economy. The percentage of housing turnover is currently low throughout Santa Clara County, since family homes are selling at a slow rate. The result is that students are growing older and finishing school without being replaced by incoming families with younger children. The SGR has therefore tended to decrease in recent years. If, however, the market improves and there is a corresponding jump in housing turnover, the SGR is likely to skyrocket. Thus, long term planning requires recognition that the SGR noted by the school districts at this time is likely to increase, rather than remaining stable or decreasing. Some school districts grow irrespective of the exigencies of the housing market, i.e., Franklin McKinley.

SPECIFIC DISTRICTS' RESPONSES

Below is a summary for each of the districts noted above of the three primary categories of backup information that I understand you to be seeking: (1) the method used for calculating the instructional capacity; (2) whether portables were included in that calculation; (3) and the method used for calculating SGR.

San Jose Unified School District

Instructional Capacity: This figure was based on 30 pupils per room multiplied by the number of classrooms available. The figure of 30 pupils is the standard applied by the San Jose Unified School District in calculating this rate. This number is subject to change based on the desegregation order in effect in the district, as

explained in the February 17, 1994 letter from Catherine Masters that is attached to the District's school survey form.

Portables: All portables, including leased structures, were included in the computation of instructional capacity, making the instructional capacity figures somewhat over-inflated.

SGR: The SGR was based on two in depth demographic studies, one by Marshall Krupp of Community Systems Associates and one by Shelly Lapkoff of Lapkoff and Gobalet, which was based on age, dwelling type, and geographic area. The numbers calculated by these two studies were then compared to reach the figures shown on the survey.

Morgan Hill Unified School District

Instructional Capacity: The supporting documentation returned to the City along with the school survey form adequately details the methodology used. In summary, the capacity was determined by multiplying the number of classrooms available for non-specialized education by 27 pupils. The figure of 27 pupils is determined by the district's contract with the teachers' union. As identified in the breakdown of Classroom Availability, 54 rooms were not included in this computation as they are solely for use as computer laboratories, music rooms, and similar specialized uses. Also, at all but one kindergarten, at the Walsh School, there are three classes per two classrooms, a factor also computed into the instructional capacity figure.

Portables: As explained on the survey form, all portable classrooms were included in the calculation, possibly over-inflating the total instructional capacity. If the City needs further information, the district can provide a school-by-school breakdown of the location of the 72 existing portable units.

SGR: Morgan Hill Unified School District calculated its SGR based on detailed analyses prepared by the district's own surveys and use of geographic databases and computerized systems for calculating attendance.

Franklin-McKinley School District

Instructional Capacity: Because Franklin-McKinley has numerous year-round schools, their calculation requires unique considerations. The instructional capacity was determined by multiplying the number of teaching stations available by the authorized class size. The authorization for the class size is based both on OLA or OSA design standards and the on contractual agreements with the teachers' union. The capacity is then determined on a year-round basis. Thus, for instance, while 900 middle school students can be in session at a particular school at a given time, the actual capacity is 1200, as three of the four tracks are in attendance at one time.

Portables: Portables were included in the instructional capacity, again possibly over-inflating the instructional capacity figures.

SGR: The SGR figures given in the survey were based on figures previously relied on by the District. In fact, the numbers on the survey are lower than they should be. Based on consideration of numerous methods, including the Cohort Survival Method, census tracks and calculation of move-up/growth factors, which together analyze how many children are born in the area, are likely to attend school, and will move from one grade to the next, the District more accurately calculates its SGR at an averaged .56.

You had also inquired as to why the SGR rate differed from that in the 1990 Development Impact Analysis for Communications Hill. The number included in the 1990 Analysis was the result of an informal survey, and was not based on any extensive calculations. Furthermore, the district was not given an opportunity in that instance to have those of its personnel who are responsible

for demographics issues generate an accurate number. The figure of .56, as set forth above, most accurately reflects the district's current understanding of its SGR.

East Side Union High School District

Instructional Capacity: Instructional Capacity was determined by the most recent OLA methodology that was provided to East Side Union High School District. This method assumes 28 pupils per class, or 24 students per lab, multiplied by the number of available classrooms.

Portables: Portables were included in the instructional capacity calculation, which means the numbers given may be over-inflated.

SGR: The SGR figure given was that used by East Side Union High School District in all of its justification studies and in all information provided to the state. This figure is based in large part on 1990 census data.

Berryessa Union School District

Instructional Capacity: The instructional capacity was determined by multiplying each available classroom by 29.5 pupils, which is the district's contractual staffing ratio. You had asked why the figure given was different from that on a survey from 1993. Berryessa Union School District has explained that they do not simply repeatedly use the same figures, but rather calculate what they feel is an accurate instructional capacity, as determined by the type of information requested. Furthermore, the District is uncertain to which survey you are referring, making it impossible to explain any purported discrepancies. One explanation may be that the district included classrooms in past calculations that are built for use as classrooms, but are being used as laboratories, libraries or other functions due to space shortages. Such classrooms were not included in the current calculation.

Portables: Portables were included in the calculation of instructional capacity, again unduly inflating the calculation.

SGR: The figure of .4 was based on the figure used on the District's past three developer fee justification reports. These reports relied on extensive demographic analyses, the most recent of which was prepared by Community Systems Associates.

Alum Rock Elementary School District

Instructional Capacity: The instructional capacity was determined pursuant to State Allocation Board standards for eligibility for modernization of schools (per SAB form 600S). Under this approach, Kindergarten is assumed to have a loading factor of 55; first through third grade, a factor of 29; fourth through sixth, a factor of 33; and seventh through eighty, a factor of 30. Laboratories (seventh and eighth grades) have a loading factor of 26. Those figures are then calculated against the total number of classrooms.

Portables: Portables were included in the determination of instructional capacity, thus possibly inflating the calculation.

SGR: The SGR figure was based on a demographic analysis performed by Educational Data Systems. This analysis was based on pragmatic and socioeconomic factors, and compared the demographics of the district against surrounding areas. The resulting figures have been relied on by the District for the past three years, and thus far have tested accurately, particularly when a project was undertaken involving single family homes.

Orchard School District

Instructional Capacity: The district's single school site was originally built for 250 pupils, and that was the basis used for determining capacity.

Portables: Portables were included in the calculation of the instructional capacity, possibly over-inflating the figures.

SGR: The SGR that has always been applied by Orchard is what they understand the state average to be, namely 0.5. Because this is a single school district, there have traditionally been insufficient resources or reasons to undertake extensive demographic studies of the district's population.

Oak Grove Unified School District

Instructional Capacity: Instructional capacity was determined by using state guidelines for class size limits and staffing ratios. The formula applied was to multiply the number of classrooms minus auxiliary classrooms (for special educational programs) times 30.5, the loading factor based on the state guidelines.

Portables: Portables were not included in the instructional capacity calculations on Oak Grove's school survey form. The District excluded the portables because they are temporary, and not assumed to be part of the ongoing capacity of the school. Because the school survey form did not explicitly state that portables were to be included, the District presumed that they were to be excluded. For your information, the additional temporary capacity created by temporary units is as follows: for elementary schools, there are 13 portables, with a capacity of 397; for middle school, there are 3 portables, with a capacity of 77. The capacity for middle schools was calculated by multiplying a load of 31 students times 5, for the number of periods taught a day. That number is then divided by 6, the total number of periods that could be taught a day, and multiplied by 3, the number of portable classrooms.

SGR: The SGR was based on analyses done in a prior developer fee justification report. That

report, completed in March of 1990, analyzed dwelling units against enrollment in a very detailed breakdown, and came up with the SGR identified on the survey. The District has indicated that there is no basis for believing that this calculation is no longer accurate.

I hope that the above information is of assistance to you. If you have questions, please do not hesitate to call Lou Lozano or me.

Very truly yours,

LOZANO SMITH
SMITH WOLIVER & BEHRENS

Harold M. Freiman

Harold M. Freiman

HMF:hf

cc: Larry Aceves, Franklin-McKinley School District
Joe Coto, East Side Union High School District
H. James Crow, Morgan Hill Unified School District
Tim Cuneo, Oak Grove School District
Donna Elders, Orchard School District
Linda Murray, San Jose Unified School District
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Herb Wadley, Berryessa Union School District

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June 27, 1994

BY FACSIMILE & MAIL

Gary Schoennauer
Director of Planning
Department of City Planning and Building
City of San Jose
801 North First Street, Room 400
San Jose, CA 95110

Re: San Jose 2020 General Plan Update -- Notice of Appeal

Dear Mr. Schoennauer:

Introduction

Pursuant to San Jose City Ordinance No. ___ ("An Urgency Ordinance of the City of San Jose Amending Chapter 21.07 of Title 21 of the San Jose Municipal Code to Allow an Appeal to the City Council of the Planning Commission's Certification of an Environmental Impact Report and Stating the Reasons for the Urgency," adopted June 21, 1994), we hereby appeal in writing the Planning Commission's certification of the Draft Environmental Impact Report ("DEIR"). This appeal, which is being directed to your attention in accordance with the instructions of the City Attorney's office, is brought on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District (jointly referred to as the "Consortium").

Initially, the Consortium notes that it remains hopeful that some agreement can be reached between the Consortium school districts and the City that will resolve any disagreements between them regarding the impact of the San Jose 2020 General Plan Update ("2020 Plan") on school districts. The Consortium also does not seek to delay unnecessarily the approval of the 2020 Plan. Towards this end, I had asked in my oral testimony, offered at the June 22, 1994 Planning Commission meeting, that the Planning Commission postpone any vote approving or otherwise ratifying the DEIR for a period of time sufficient for (1) a conceptual agreement that was then pending between the Consortium and the City to

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be finalized, (2) the Task Force to finish its work, and (3) the Planning Commission to review the two volumes of testimony offered by Community Systems Associates, Inc. ("CSA") in critique of the City's response to the Consortium's comments on the EIR.

Unfortunately, the Planning Commission did not respond to my request, and very shortly thereafter did take a vote. As a result, and in light of the City Attorney's very recent enactment of the above-referenced Ordinance, the Consortium members now feel that they have no choice but to lodge this appeal in order to preserve the full extent of their legal rights. The Consortium hopes that it will continue to be able to work with the City towards a satisfactory resolution of the issues raised in this letter and in prior testimony offered to the Planning Commission.

The Planning Commission's Action

The Consortium notes first that it was unaware that the Planning Commission had formally "certified" the DEIR within the meaning of CEQA. It became aware of this fact only late this morning, when I received a call from Tom Ruby of the City Attorney's office. As I explained to Mr. Ruby, the Planning Commission Agenda for the June 22, 1994 meeting did not announce that action would be taken on the DEIR.

The specific recommendation of the Planning Department staff noted on page five of the agenda simply states: "Find EIR complete as amended and in conformance with CEQA." This statement does not indicate that the Planning Department could or would take action at this meeting that would certify the DEIR as final. Furthermore, this agenda entry follows shortly after the introductory comment that reads:

> The Planning Commission's action on General Plan amendments is advisory only to the City Council.

This further created the impression that final action would not be taken by the Planning Commission at the June 22, 1994 meeting. Finally, neither Marshall Krupp of CSA, a consultant for the Consortium, nor myself, both of whom attended the meeting, heard the Commission state that its vote would actually "certify" the DEIR, as opposed to simply recommending its certification to the City Council. This may have been due in part to the non-operative microphone system, which made it very difficult for the audience to

hear what actions were being taken by the Commission.

Because there was no advance public notice that the action to be taken was a final certification, either by the posted agenda or by public disclosure at the meeting, the action taken is invalid under Government Code section 54954.2. The Commission's action should have been reported out to the public, with an explanation of why the action taken did not conform to the agenda. There was no such reporting.

Nevertheless, even if the Commission's action could be interpreted as having certified the DEIR, the Commission is not the appropriate "decisionmaking body" to have taken that action. (CEQA Guidelines §15090.) The lead agency's decisionmaking body, here the City Council, cannot delegate its obligation to "review[] and consider[]" an EIR to an inferior entity within the agency hierarchy. (CEQA Guidelines §15025; Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770, 779 ("Delegation is inconsistent with the purposes of the EIR itself").)

As a second objection to the action taken at the meeting on the 22nd, the Consortium protests the fact that speakers were limited to two minutes of oral testimony each. This limitation immediately followed the Chairman's comment, as set out orally and on page five of the Agenda, that:

> If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

There was no advance notice of this two minute limitation, nor was that limitation set out in the Agenda. This action was arbitrary, unreasonable and in violation of Government Code section 54954.3, governing the public's right to address a public entity.

By limiting the Consortium's oral testimony, the Commission prohibited the Consortium from raising or further clarifying certain issues, thus curtailing our ability to raise those same issues in court if later necessary. We represent eight school districts, yet were allowed the same or less time to testify than individuals who spoke on their own behalf. Indeed, the two minute limit was enforced only on Mr. Krupp, myself, and one other speaker in the course of

the entire meeting. Others were allowed to address the Commission without limit.

The combination of the misleading and incomplete public agenda, the failure of the Commission to report out its action and the basis for divergence from the agenda, the non-functioning public address system, and the limitation to two minute presentations constitutes a plethora of Brown Act violations.

A third objection is the fact that the Planning Commission did not review two lengthy volumes of written testimony offered by Mr. Krupp on behalf of the Consortium prior to voting on the DEIR. This testimony was prepared in response to what the Consortium contends were inadequate responses to the Consortium's comments on the DEIR. A suggestion was made by a Commissioner that submitting this testimony at the meeting was a delaying tactic, but in fact the Consortium had received the City's responses only nine days before, making an earlier response impossible. More significantly, the Agenda clearly references "written correspondence delivered to the City <u>at</u> . . . the public hearing." Thus, the Consortium's delivery of the written testimony at the meeting itself was proper, and should have been considered prior to a vote. Instead, the Planning Commission voted on the DEIR without ever looking at or considering the Consortium's extensive written testimony.

<u>The New City Ordinance</u>

As referred to above, the Consortium learned for the first time this morning that the Commission's vote was intended to certify the DEIR. At that same time, Mr. Tom Ruby informed me that the Consortium had three days in which to appeal the certification, and that this three day limit ran as of 5:00 p.m. today. Again, there was no indication at the June 22 meeting that there would be any three day limit on appeals.

The three day limit appears in the City Ordinance identified earlier in this letter. We are informed by Mr. Ruby that this ordinance was passed on June 21, 1994, <u>the night before the Planning Commission meeting</u>. No notice was provided of the adoption of this ordinance to affected parties, including the Consortium school districts. Further, no mention was made of this ordinance at the Planning Commission meeting on June 22, 1994. As a result, the Consortium and others affected by the Planning Commission's

actions were deprived of any advance notice that they would be limited to a three day period in which to appeal the Commission's alleged certification of the DEIR.

In addition to the deficient notice, the Consortium believes that the ordinance is invalid on its face, as three days is an inadequate time in which to prepare a "specific" appeal.

In this instance, the Consortium was given less than one day, as it was not made aware either that the Commission's vote certified the EIR or that it had only three days in which to appeal this certification.

Mr. Ruby did indicate in another telephone conversation with me today that an appeal under the new ordinance would be sufficient if it was in the form of a letter, and if it referred back to the testimony already submitted by the Consortium, rather than setting out in detail once again the Consortium's objections to the EIR. A paralegal in this office today independently confirmed with Julie Caporgno, Senior Planner, that such a non-specific letter setting would be sufficient to preserve an appeal under the new ordinance.

Objections to the EIR

Turning to the specific grounds for appeal previously raised, the Consortium incorporates by reference all prior oral and written testimony previously submitted to the Planning Commission regarding the DEIR. The written testimony incorporated herein includes, but is not limited to, the following: the documents prepared by CSA entitled "San Jose 2020 General Plan/Draft Environmental Impact Report (Revised) . . . Comments" (dated 5/23/94) and all attachments thereto; two volume document prepared by CSA entitled "Public Hearing Testimony & Critique of Response to Comments for the Consortium of San Jose School Districts" and all attachments thereto (dated 6/22/94); and all correspondence between the Consortium school districts, this law firm or CSA on the one hand, and the City of San Jose, the Planning Department, the Planning Commission, the City Attorney's office, the Mayor's office or the City Council, on the other hand, regarding the DEIR or the compilation of information for that DEIR.

The Consortium reserves its right to present further oral and/or written testimony regarding the DEIR to the Planning

Commission, the City Counsel and other relevant City agencies prior to or at future meetings of those bodies, including at the hearing on this appeal.

As expressed in the testimony already submitted to the Planning Commission, the Consortium maintains that the DEIR was not prepared in compliance with and fails to conform to CEQA. In particular, the Consortium contends that the DEIR's assessment of school impacts is inadequate. The EIR employed in this instance was a "program" EIR, which is inadequate under the circumstances of a general plan. Furthermore, the DEIR determines impacts not by comparing the plan against existing conditions, as required by CEQA and relevant case law, but rather by comparing it against the Horizon 2000 General Plan. Another significant failing of the DEIR is that it does not analyze the impact of the plan on each school facility, nor does it provide a sufficient analysis of each separate school district. Other specific deficiencies of the DEIR and relevant citations to CEQA, the CEQA Guidelines, and case law are set forth in the documents referenced above.

Conclusion

The Consortium maintains that appropriate certification of the DEIR has not yet occurred, making an appeal unnecessary. The Consortium also contends that the City Ordinance governing that appeal is facially invalid, and further that due process has been denied the Consortium districts in that they were not notified of the three day limit for appeals. If the DEIR is later found to have been properly certified, and the Ordinance is upheld as valid, the Consortium maintains, based on conversations with the Planning Department and the City Attorney's Office, that this letter constitutes an adequate appeal.

If for any reason the Planning Department, Planning Commission, City Council or City Attorney's Office reject this facsimile letter as an appropriate appeal, we would appreciate your immediately notifying us of this fact. Additionally, Mr. Ruby has indicated that once this letter is received, he will send written confirmation that the general plan will be taken off of the agenda for tomorrow night's City Council meeting.

We hope to be able to continue working with the City towards a satisfactory and amicable resolution of the school impacts issue.

Very truly yours,

LOZANO SMITH
SMITH WOLIVER & BEHRENS

Harold M. Freiman

HMF:hf

cc: (all by facsimile)
Tom Ruby, City Attorney's Office
Dr. Linda Murray, San Jose Unified School District
G. Herbert Wadley, Berryessa Union School District
Pedro Perales, Alum Rock Union School District
Paul A. Fettig, East Side Union High School District
Tim Cuneo, Oak Grove School District
Donna Elder, Orchard School District
Dr. H. James Crow, Morgan Hill Unified School District
William Glynn, Frnklin-McKinley School District
Marshall Krupp, CSA

project file

COUNCIL AGENDA: 8/16/94
ITEM:

CITY OF SAN JOSÉ - MEMORANDUM

TO:	Honorable Mayor and City Council	FROM:	Gary J. Schoennauer Director of Planning
SUBJECT:	**APPEAL OF CERTIFICATION OF SAN JOSE 2020 GENERAL PLAN EIR**	DATE:	July 29, 1994

APPROVED: DATE:

COUNCIL DISTRICT: Citywide

RECOMMENDATION

The Department of City Planning and Building recommends that the City Council uphold the certification of the Final Environmental Impact Report for the San Jose 2020 General Plan.

BACKGROUND

On June 22, 1994, the Planning Commission certified the Final EIR for the San Jose 2020 General Plan as complete and in conformance with CEQA. The Final EIR, comprised of the Draft EIR and the First Amendment, was distributed to the City Council prior to the Planning Commission hearing. The project addressed in the EIR consists of the San Jose 2020 General Plan addressing changes to the Land Use/Transportation Diagram and refinement of major policies contained in the adopted Horizon 2000 General Plan for a growth alternative that proposes 52,900 additional dwelling units and 126,000 jobs by the year 2020.

The majority of the comments on the Draft EIR for the San Jose 2020 General Plan were received from eight school districts within San Jose. As stated in staff's responses to the school districts' comments contained in the First Amendment to the EIR, the EIR addressed all of the significant environmental impacts associated with the provision of school facilities at a level of detail that is appropriate for a program-level environmental impact report.

At the Planning Commission hearing, Marshall Krupp of Community Systems Associates (CSA) representing eight school districts in San Jose, Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District, submitted two additional volumes of comments. Volume I consists of comments on the General Plan and Volume II consists of comments on the EIR. Both volumes are part of the public record and are available for review by the City Council in the Department of City Planning and Building.

The appended Final Amendment to the San Jose 2020 General Plan EIR provides a record of the Planning Commission meeting.

The Planning Commission voted (4-2-0) to find the EIR complete, as amended, and in conformance with CEQA.

ANALYSIS

On June 27, 1994, an appeal of the certification of the San Jose 2020 General Plan EIR was filed by Lozano Smith Smith Woliver and Behrens with the Department of City Planning and Building on behalf of Alum Rock School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District.

The appeal letter from the school districts is attached to this staff report. The school districts contend that the DEIR was not prepared in compliance with and fails to conform to CEQA. The issues raised by the school districts were delineated in the comments submitted on the Draft EIR. Staff responded adequately to those comments in the First Amendment to the EIR. Staff recommends that the City Council finds the EIR complete and in compliance with CEQA and upholds the certification of the EIR by the Planning Commission.

If the City Council upholds the certification of the EIR and approves the San Jose 2020 General Plan, the City Council is required to make findings regarding the significant effects of the project in accordance with CEQA. These findings must also include a statement of overriding considerations for significant impacts not reduced to an acceptable level explaining the Council's rationale for approving the project despite the environmental effects.

Implementation of the San Jose 2020 General Plan would result in significant, unavoidable impacts upon open space, agricultural land, and visual quality associated with the future development of adopted and proposed land uses, including the South Almaden Valley Urban Reserve. In addition, growth resulting from implementation of the General Plan would result in significant, unavoidable regional air quality and traffic-related noise impacts. All other significant impacts of the San Jose 2020 General Plan could be mitigated to a nonsignificant level with the implementation of mitigation identified in this EIR.

Due to the significant unavoidable impacts upon open space, agricultural land, visual quality, regional air quality and traffic-related noise resulting from the San Jose 2020 General Plan, the City Council would need to adopt overriding considerations prior to approval of the project.

COORDINATION

This staff report has been coordinated with the City Attorney's Office.

Gary J. Schoennauer
Director of Planning

GJS:JEC:sh
Appeal.77A

FINAL AMENDMENT

SAN JOSE 2020 GENERAL PLAN

ENVIRONMENTAL IMPACT REPORT

Record of the Meeting of the Planning Commission, June 22, 1994

1. Staff Report

Staff reported that the item under consideration by the Planning Commission was the certification of the Environmental Impact Report for the San Jose 2020 General Plan. Staff stated that a copy of the First Amendment to the EIR was delivered to the Commission and included comments, responses to comments and text revisions to the EIR. The Draft EIR and First Amendment comprise the Final EIR for the San Jose 2020 General Plan. Staff also indicated that any testimony provided during the public hearing would be summarized in an addendum to the Final EIR.

Staff stated that the majority of the comments on the Draft EIR were received from eight school districts within San Jose. As stated in staff's responses to the school districts' comments, the EIR addressed all of the significant environmental impacts associated with the provision of school facilities at a level of detail that is appropriate for a program-level environmental impact report. Staff reminded the Commission that CEQA requires that an EIR address physical impacts on the environment, and that EIRs are not required to include a discussion of fiscal impacts. The City's discussion of school impacts in the San Jose 2020 General Plan EIR, therefore, conforms to CEQA.

Staff concluded the Staff Report by reiterating that the issue before the Planning Commission was the adequacy of the EIR for the San Jose 2020 General Plan. The EIR represents the City's independent judgment regarding the environmental impacts, mitigation measures, and alternatives to the proposed project. Staff recommended that the Planning Commission certify the Final EIR as complete and to find the document in conformance with CEQA.

Chair Caruso opened the public hearing and noted that each speaker would have a two-minute time limit to provide their testimony.

2. Public Testimony

Testimony was received on the EIR from *Harold Freiman* of the law firm Lozano Smith Smith Woliver & Behrens. Mr. Freiman stated that he represented eight school districts. Mr. Freiman identified the eight school districts as Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley Union School District,

Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District. Mr. Freiman stated that he would like the Planning Commission to postpone their decision on the certification of the EIR and adoption of the General Plan until the school districts and the City of San Jose had agreed to the treatment of school impacts in the San Jose 2020 General Plan and EIR for three reasons. First, Mr. Freiman remarked that within the last 48 hours, the school districts were closer to an understanding with the City that would remove most of the school districts' objections to the General Plan and EIR. Secondly, Mr. Freiman stated that the Mayor-appointed school impacts task force had not presented their recommendations, and that adoption of the General Plan should wait until these recommendations are available. Finally, Mr. Freiman stated that the school districts were submitting additional testimony in written form that would be described by Mr. Krupp from Community Systems Associates.

Commissioner Madrid responded that she was concerned that the school districts waited until this evening to submit volumes of additional comments. All comments should have been submitted during the 45-day review period.

Testimony was received on the EIR from *Marshall Krupp* of Community Systems Associates (CSA) on behalf of the eight school districts. Mr. Krupp stated that on behalf of the school districts, CSA was submitting two volumes of comments in response to the responses prepared by the City that addressed the comments submitted by CSA on the Draft EIR. Volume I consists of comments on the inadequacies of the General Plan and Volume II consists of comments on the inadequacies of the EIR. Mr. Krupp was concerned whether the two volumes of comments submitted by the school districts wuold be incorporated into the public record. Chair Caruso assured him that the information submitted by CSA would become part of the public record and made available to the City Council.

Mr. Krupp indicated that there were major flaws with the EIR. First, Mr. Krupp stated that under the 1993 Al Larson Boat Shop case, a program EIR is not authorized for a General Plan; a Master EIR was required for a General Plan. In addition, Mr. Krupp believed that the EIR did not properly evaluate the schools' impacts. Mr. Krupp stated that the conclusion does not compare the 2020 General Plan with existing conditions; it only compares the 2020 General Plan with the Horizon 2000 General Plan. Mr. Krupp also added that each school district and each school is its own political body. He said that the EIR, therefore, should have considered the impacts on each individual school.

Commissioner LeZotte asked for clarification regarding Mr. Freiman's statement that the school task force recommendations would remove the school districts' objections to the EIR, since the recommendations could not correct any inadequacies of an EIR. Mr. Krupp responded that the task force is addressing the issue of impacts to schools and mitigation, not the adequacies of the EIR. Regardless of the task force decision, CSA considers the EIR inadequate. In addition, the task force is addressing the school districts' concerns about the school survey proposed by the Planning Department. Mr. Krupp contended that due to the nature of the survey, many of the school districts did not know what was required of them in providing information.

Testimony was also received from *Carol Anne Mastropiejo* who wanted to know what the impact on roads would be as a result of the growth projected under the General Plan. Since Route 85 took 20 years to build and is still not finished, she wanted to know what provisions are being made to provide roadways for the growth. In addition, she wanted to know what possible way there was of addressing jobs/housing growth. Chair Caruso responded that the General Plan is a long-range planning document that plans for growth, jobs, and housing, together with the roadways needed to accommodate that growth.

Testimony was received from *Kathy Nellis* who stated that she and her husband were property owners whose General Plan amendment was revoked after the City rescinded the certification of the EIR and approval of the General Plan last year. She stated that they have suffered hardship over the last few months and requested that the Planning Commission certify the EIR and adopt the General Plan so that they could proceed with their project.

3. Action of the Commission

The Planning Commission voted (4-2-0) to find the EIR complete, as amended, and in conformance with CEQA.

Gary J. Schoennauer
Director of Planning

LOZANO SMITH
SMITH WOLIVER & BEHRENS
ATTORNEYS AT LAW

Council Agenda: 6/28/94
Item: 15A

June 27, 1994

BY FACSIMILE & MAIL

Gary Schoennauer
Director of Planning
Department of City Planning and Building
City of San Jose
801 North First Street, Room 400
San Jose, CA 95110

Re: San Jose 2020 General Plan Update -- Notice of Appeal

Dear Mr. Schoennauer:

Introduction

Pursuant to San Jose City Ordinance No. ___ ("An Urgency Ordinance of the City of San Jose Amending Chapter 21.07 of Title 21 of the San Jose Municipal Code to Allow an Appeal to the City Council of the Planning Commission's Certification of an Environmental Impact Report and Stating the Reasons for the Urgency," adopted June 21, 1994), we hereby appeal in writing the Planning Commission's certification of the Draft Environmental Impact Report ("DEIR"). This appeal, which is being directed to your attention in accordance with the instructions of the City Attorney's office, is brought on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District (jointly referred to as the "Consortium").

Initially, the Consortium notes that it remains hopeful that some agreement can be reached between the Consortium school districts and the City that will resolve any disagreements between them regarding the impact of the San Jose 2020 General Plan Update ("2020 Plan") on school districts. The Consortium also does not seek to delay unnecessarily the approval of the 2020 Plan. Towards this end, I had asked in my oral testimony, offered at the June 22, 1994 Planning Commission meeting, that the Planning Commission postpone any vote approving or otherwise ratifying the DEIR for a period of time sufficient for (1) a conceptual agreement that was then pending between the Consortium and the City to

be finalized, (2) the Task Force to finish its work, and (3) the Planning Commission to review the two volumes of testimony offered by Community Systems Associates, Inc. ("CSA") in critique of the City's response to the Consortium's comments on the EIR.

Unfortunately, the Planning Commission did not respond to my request, and very shortly thereafter did take a vote. As a result, and in light of the City Attorney's very recent enactment of the above-referenced Ordinance, the Consortium members now feel that they have no choice but to lodge this appeal in order to preserve the full extent of their legal rights. The Consortium hopes that it will continue to be able to work with the City towards a satisfactory resolution of the issues raised in this letter and in prior testimony offered to the Planning Commission.

<u>The Planning Commission's Action</u>

The Consortium notes first that it was unaware that the Planning Commission had formally "certified" the DEIR within the meaning of CEQA. It became aware of this fact only late this morning, when I received a call from Tom Ruby of the City Attorney's office. As I explained to Mr. Ruby, the Planning Commission Agenda for the June 22, 1994 meeting did not announce that action would be taken on the DEIR.

The specific <u>recommendation</u> of the Planning Department staff noted on page five of the agenda simply states: "Find EIR complete as amended and in conformance with CEQA." This statement does not indicate that the Planning Department could or would take action at this meeting that would certify the DEIR as final. Furthermore, this agenda entry follows shortly after the introductory comment that reads:

> The Planning Commission's action on General Plan amendments is <u>advisory only</u> to the City Council.

This further created the impression that final action would not be taken by the Planning Commission at the June 22, 1994 meeting. Finally, neither Marshall Krupp of CSA, a consultant for the Consortium, nor myself, both of whom attended the meeting, heard the Commission state that its vote would actually "certify" the DEIR, as opposed to simply recommending its certification to the City Council. This may have been due in part to the non-operative microphone system, which made it very difficult for the audience to

hear what actions were being taken by the Commission.

Because there was no advance public notice that the action to be taken was a final certification, either by the posted agenda or by public disclosure at the meeting, the action taken is invalid under Government Code section 54954.2. The Commission's action should have been reported out to the public, with an explanation of why the action taken did not conform to the agenda. There was no such reporting.

Nevertheless, even if the Commission's action could be interpreted as having certified the DEIR, the Commission is not the appropriate "decisionmaking body" to have taken that action. (CEQA Guidelines §15090.) The lead agency's decisionmaking body, here the City Council, cannot delegate its obligation to "review[] and consider[]" an EIR to an inferior entity within the agency hierarchy. (CEQA Guidelines §15025; Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770, 779 ("Delegation is inconsistent with the purposes of the EIR itself").)

As a second objection to the action taken at the meeting on the 22nd, the Consortium protests the fact that speakers were limited to two minutes of oral testimony each. This limitation immediately followed the Chairman's comment, as set out orally and on page five of the Agenda, that:

> If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

There was no advance notice of this two minute limitation, nor was that limitation set out in the Agenda. This action was arbitrary, unreasonable and in violation of Government Code section 54954.3, governing the public's right to address a public entity.

By limiting the Consortium's oral testimony, the Commission prohibited the Consortium from raising or further clarifying certain issues, thus curtailing our ability to raise those same issues in court if later necessary. We represent eight school districts, yet were allowed the same or less time to testify than individuals who spoke on their own behalf. Indeed, the two minute limit was enforced only on Mr. Krupp, myself, and one other speaker in the course of

the entire meeting. Others were allowed to address the Commission without limit.

The combination of the misleading and incomplete public agenda, the failure of the Commission to report out its action and the basis for divergence from the agenda, the non-functioning public address system, and the limitation to two minute presentations constitutes a plethora of Brown Act violations.

A third objection is the fact that the Planning Commission did not review two lengthy volumes of written testimony offered by Mr. Krupp on behalf of the Consortium prior to voting on the DEIR. This testimony was prepared in response to what the Consortium contends were inadequate responses to the Consortium's comments on the DEIR. A suggestion was made by a Commissioner that submitting this testimony at the meeting was a delaying tactic, but in fact the Consortium had received the City's responses only nine days before, making an earlier response impossible. More significantly, the Agenda clearly references "written correspondence delivered to the City <u>at</u> . . . the public hearing." Thus, the Consortium's delivery of the written testimony at the meeting itself was proper, and should have been considered prior to a vote. Instead, the Planning Commission voted on the DEIR without ever looking at or considering the Consortium's extensive written testimony.

<u>The New City Ordinance</u>

As referred to above, the Consortium learned for the first time this morning that the Commission's vote was intended to certify the DEIR. At that same time, Mr. Tom Ruby informed me that the Consortium had three days in which to appeal the certification, and that this three day limit ran as of 5:00 p.m. today. Again, there was no indication at the June 22 meeting that there would be any three day limit on appeals.

The three day limit appears in the City Ordinance identified earlier in this letter. We are informed by Mr. Ruby that this ordinance was passed on June 21, 1994, <u>the night before the Planning Commission meeting</u>. No notice was provided of the adoption of this ordinance to affected parties, including the Consortium school districts. Further, no mention was made of this ordinance at the Planning Commission meeting on June 22, 1994. As a result, the Consortium and others affected by the Planning Commission's

actions were deprived of any advance notice that they would be limited to a three day period in which to appeal the Commission's alleged certification of the DEIR.

In addition to the deficient notice, the Consortium believes that the ordinance is invalid on its face, as three days is an inadequate time in which to prepare a "specific" appeal.

In this instance, the Consortium was given less than one day, as it was not made aware either that the Commission's vote certified the EIR or that it had only three days in which to appeal this certification.

Mr. Ruby did indicate in another telephone conversation with me today that an appeal under the new ordinance would be sufficient if it was in the form of a letter, and if it referred back to the testimony already submitted by the Consortium, rather than setting out in detail once again the Consortium's objections to the EIR. A paralegal in this office today independently confirmed with Julie Caporgno, Senior Planner, that such a non-specific letter setting would be sufficient to preserve an appeal under the new ordinance.

<u>Objections to the EIR</u>

Turning to the specific grounds for appeal previously raised, the Consortium incorporates by reference all prior oral and written testimony previously submitted to the Planning Commission regarding the DEIR. The written testimony incorporated herein includes, but is not limited to, the following: the documents prepared by CSA entitled "San Jose 2020 General Plan/Draft Environmental Impact Report (Revised) . . . Comments" (dated 5/23/94) and all attachments thereto; two volume document prepared by CSA entitled "Public Hearing Testimony & Critique of Response to Comments for the Consortium of San Jose School Districts" and all attachments thereto (dated 6/22/94); and all correspondence between the Consortium school districts, this law firm or CSA on the one hand, and the City of San Jose, the Planning Department, the Planning Commission, the City Attorney's office, the Mayor's office or the City Council, on the other hand, regarding the DEIR or the compilation of information for that DEIR.

The Consortium reserves its right to present further oral and/or written testimony regarding the DEIR to the Planning

Commission, the City Counsel and other relevant City agencies prior to or at future meetings of those bodies, including at the hearing on this appeal.

As expressed in the testimony already submitted to the Planning Commission, the Consortium maintains that the DEIR was not prepared in compliance with and fails to conform to CEQA. In particular, the Consortium contends that the DEIR's assessment of school impacts is inadequate. The EIR employed in this instance was a "program" EIR, which is inadequate under the circumstances of a general plan. Furthermore, the DEIR determines impacts not by comparing the plan against existing conditions, as required by CEQA and relevant case law, but rather by comparing it against the Horizon 2000 General Plan. Another significant failing of the DEIR is that it does not analyze the impact of the plan on each school facility, nor does it provide a sufficient analysis of each separate school district. Other specific deficiencies of the DEIR and relevant citations to CEQA, the CEQA Guidelines, and case law are set forth in the documents referenced above.

Conclusion

The Consortium maintains that appropriate certification of the DEIR has not yet occurred, making an appeal unnecessary. The Consortium also contends that the City Ordinance governing that appeal is facially invalid, and further that due process has been denied the Consortium districts in that they were not notified of the three day limit for appeals. If the DEIR is later found to have been properly certified, and the Ordinance is upheld as valid, the Consortium maintains, based on conversations with the Planning Department and the City Attorney's Office, that this letter constitutes an adequate appeal.

If for any reason the Planning Department, Planning Commission, City Council or City Attorney's Office reject this facsimile letter as an appropriate appeal, we would appreciate your immediately notifying us of this fact. Additionally, Mr. Ruby has indicated that once this letter is received, he will send written confirmation that the general plan will be taken off of the agenda for tomorrow night's City Council meeting.

We hope to be able to continue working with the City towards a satisfactory and amicable resolution of the school impacts issue.

Very truly yours,

LOZANO SMITH
SMITH WOLIVER & BEHRENS

Harold M. Freiman

HMF:hf

cc: (all by facsimile)
Tom Ruby, City Attorney's Office
Dr. Linda Murray, San Jose Unified School District
G. Herbert Wadley, Berryessa Union School District
Pedro Perales, Alum Rock Union School District
Paul A. Pettig, East Side Union High School District
Tim Cuneo, Oak Grove School District
Donna Elder, Orchard School District
Dr. H. James Crow, Morgan Hill Unified School District
William Glynn, Frnklin-McKinley School District
Marshall Krupp, CSA

COUNCIL AGENDA: 6-28-94
ITEM NUMBER: 15 a

CITY OF SAN JOSÉ - MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN R. GALLO
City Attorney

SUBJECT: **Appeal of the Planning Commission's Certification of the GP2020 EIR**

DATE: June 28, 1994

CONFIDENTIAL/ATTORNEY - CLIENT

A consortium of 8 school districts has appealed the Planning Commission's certification of the GP2020 EIR to the City Council. The right to this appeal is mandated by recent changes to state law.

The hearing on the appeal cannot occur without proper notice. Therefore, the General Plan hearing needs to be postponed until the appeal hearing can be scheduled in August.

The school district's attorney has raised numerous objections to the process under which the EIR was certified. There is no merit to any of these concerns. The Planning Commission hearing was properly noticed and the time limits for speakers were reasonable. In addition, the fact that the Planning Commission did not read 8 volumes of material submitted at the meeting in no way invalidates their actions.

Once the appeal has been heard, the Council should be able to adopt the General Plan without further delay.

JOAN R. GALLO
City Attorney

By: Thomas B. Ruby
THOMAS B. RUBY
Deputy City Attorney

cc: Les White
Gary Schoennauer

Pacific Gas and Electric Company
Mission Trail Region

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005
408/280-1212

February 17, 1994

City of San Jose
City Hall Annex Room 400
801 N. First Street
San Jose, CA 95110-1795
Attention: Lee Quintana

Re: Draft Environmental Impact Report
For San Jose 2020 General Plan

Dear Mr. Quintana:

The Pacific Gas and Electric Company would be very interested in the Environmental Impact Report that you wrote about in your letter dated February 3, 1994. If you could send us six (6) copies of that report it would be greatly appreciated.

Please send copies to:
Pacific Gas & Electric Co.
Land Department, Room 601
111 Almaden Blvd.
San Jose, CA 95115

Sincerely,

Thomas J. Zlatunich

Thomas J. Zlatunich
Lead Land Technician
(408) 282-7106

called 3/14/94 - compromised on 2 copies

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

NOTICE OF A PUBLIC HEARING ON AN APPEAL OF AN ENVIRONMENTAL IMPACT REPORT

NOTICE IS HEREBY GIVEN that there will be a public hearing before the City Council on **August 16, 1994**, on an Appeal of an Environmental Impact Report certified by the Planning Commission on June 22, 1994, for the San Jose 2020 General Plan. All persons interested in the matter shall be given a reasonable opportunity to provide testimony at the hearing. This public hearing will be held by the City Council of the City of San Jose, in the City Council Chambers, 801 North First Street, San Jose, California, at **7:00 p.m.** for the PURPOSE OF CONSIDERING THE SIGNIFICANCE OF THE PROJECT ON THE ENVIRONMENT. The project file listed below is available for public review in the Department of City Planning, Room 400, 801 North First Street.

File No.: PP 94-02-019 **City Council District:** Citywide

Description and Location: FINAL ENVIRONMENTAL IMPACT REPORT (SCH No. 94023031) for the San Jose 2020 General Plan addressing changes to the Land Use/Transportation Diagram and refinement of major policies contained in the adopted Horizon 2000 General Plan for a growth alternative that proposes 52,900 additional dwelling units and 126,000 jobs by the year 2020.

Gary J. Schoennauer

G Edward Graf
Deputy

Date: July 27, 1994

Protestant(s): Lozano Smith, Smith Woliver & Behrens on behalf of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District

Applicant(s): City of San Jose
801 North First St.
San Jose, CA 95110

Contact person: Julie E. Caporgno
Senior Planner

Note: If you challenge this land use decision in court, you may be limited to raising only those issues raised by you or someone else at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing. Notice of this hearing is given pursuant to the San Jose Municipal Code.

PROTEST.ND/79

Community Systems Associates, Inc.

March 3, 1994

VIA CERTIFIED MAIL

RECEIVED
MAR 07 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994

Scope and Content Comments from
Alum Rock Union School District,
Berryessa Union School District,
East Side Union High School District,
Franklin-McKinley School District,
Morgan Hill Unified School District,
Oak Grove School District,
Orchard School District, and
San Jose Unified School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by **Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Franklin-McKinley School District, Morgan Hill Unified School District, Oak Grove School District, Orchard School District, and San Jose Unified School District** (jointly referred to as the "Consortium") to represent them jointly in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project")and to respond.

The Consortium includes eight of the nineteen school districts serving the City of San José with enrollments totaling over 106,000 students, or 72.16% of the total enrollment of all nineteen districts serving the City of San José.

Each of the member school districts of the Consortium are individually "Responsible Agencies" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

California Code of Regulations, Title 14, in that the school districts are public agencies, other than the Lead Agency, which have responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The Consortium emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the Consortium in the EIR.

The Consortium is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the Consortium may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by Consortium members commencing on February 7, 1994. On behalf of the Consortium, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The Districts' existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The Districts' past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the Districts', including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the Districts' as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school districts;

13) The fiscal impact on the Districts', including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the Districts' and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

    a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

    b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

    c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

    d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

    e) Section 53080 of the Government Code.

    f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

    g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the Districts should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the Districts' enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format. Separate cost figures shall be made by District to reflect the individual characteristics of the Districts.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by Districts.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the school districts' in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The Consortium is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the respective Districts', with an additional copy to CSA, Inc's office at the addresses listed below:

Ms. Linda Latasa
Director of Facilities Planning
ALUM ROCK UNION SCHOOL DISTRICT
2930 Gay Avenue
San Jose, California 95127

Mr. Patrick Allen
Assistant Superintendent of Business Services
BERRYESSA UNION SCHOOL DISTRICT
1376 Piedmont Road
San Jose, California 95132

Mr. Paul Fettig
Assistant Superintendent of Business Services
EAST SIDE UNION HIGH SCHOOL DISTRICT
830 North Capitol Avenue
San Jose, California 95133

Mr. William Glynn
Assistant Superintendent of Business Services
FRANKLIN-McKINLEY SCHOOL DISTRICT
645 Wool Creek Drive
San Jose, California 95112

Dr. J. James Crow
Superintendent
MORGAN HILL UNIFIED SCHOOL DISTRICT
15600 Concord Circle
Morgan Hill, California 95037

Mr. Hardy Childers
Assistant Superintendent of Business Services
OAK GROVE SCHOOL DISTRICT
6578 Santa Teresa Boulevard
San Jose, California 95119

Dr. Donna Elder
Superintendent
ORCHARD SCHOOL DISTRICT
711 East Gish Road
San Jose, California 95112

Ms. Cathie Masters
Community Services Administrator
SAN JOSE UNIFIED SCHOOL DISTRICT
250 Stockton Avenune
San Jose, California 95126

Mr. Marshal B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408),646-1801

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or any member of the Consortium.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182nop2gp.222

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Ms. Linda Latasa
ALUM ROCK UNION SCHOOL DISTRICT

Mr. Patrick Allen
BERRYESSA UNION SCHOOL DISTRICT

Mr. Paul Fettig
EAST SIDE UNION HIGH SCHOOL DISTRICT

Mr. William Glynn
FRANKLIN-McKINLEY SCHOOL DISTRICT

Dr. H. James Crow
MORGAN HILL UNIFIED SCHOOL DISTRICT

Mr. Hardy Childers
OAK GROVE SCHOOL DISTRICT

Dr. Donna Elder
ORCHARD SCHOOL DISTRICT

Ms. Cathie Masters
SAN JOSE UNIFIED SCHOOL DISTRICT

Community Systems Associates, Inc.

RECEIVED
MAR 07 1994
CITY OF SAN JOSE
PLANNING DEPARTMENT

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Orchard School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Orchard School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The District's existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the District, including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the District as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school Districts;

13) The fiscal impact on the District, including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the District and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Dr. Donna Elder
Superintendent
ORCHARD SCHOOL DISTRICT
711 East Gish Road
San Jose, California 95112

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Dr. Donna Elder
ORCHARD SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from San Jose Unified School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **San Jose Unified School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The District's existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the District, including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

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14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the District and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

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c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Ms. Cathie Masters
Community Services Administrator
SAN JOSE UNIFIED SCHOOL DISTRICT
250 Stockton Avenue
San Jose, California 95126

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Ms. Cathie Master
SAN JOSE UNIFIED SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from East Side High School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **East Side Union High School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The District is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

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The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

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d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

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We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Mr. Paul Fettig
Assistant Superintendent of Business Services
EAST SIDE UNION HIGH SCHOOL DISTRICT
830 North Capitol Avenue
San Jose, California 95133

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Mr. Paul Fettig
EAST SIDE UNION HIGH SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Alum Rock Union School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Alum Rock Union School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

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730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

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The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

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d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Ms. Linda Latasa
Director of Facilities Planning
ALUM ROCK UNION SCHOOL DISTRICT
2930 Gay Avenue
San Jose, California 95127

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Ms. Linda Latasa
ALUM ROCK UNION SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Oak Grove School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Oak Grove School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The District's existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the District, including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the District as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school Districts;

13) The fiscal impact on the District, including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the District and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Mr. Hardy Childers
Assistant Superintendent of Business Services
OAK GROVE SCHOOL DISTRICT
6578 Santa Teresa Boulevard
San Jose, California 95119

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Mr. Hardy Childers
OAK GROVE SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Franklin-McKinley School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Franklin-McKinley School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The District's existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the District, including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the District as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school Districts;

13) The fiscal impact on the District, including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the District and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Mr. William Glynn
Assistant Superintendent of Business Services
FRANKLIN-McKINLEY SCHOOL DISTRICT
645 Wool Dreek Drive
San Jose, California 95112

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Mr. William Glynn
FRANKLIN-McKINLEY SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Berryessa Union School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Berryessa Union School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

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5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

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b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition, transportation, operational and maintenance activities, and administrative activities;

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19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

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22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Mr. Patrick Allen
Assistant Superintendent of Business Services
BERRYESSA UNION SCHOOL DISTRICT
1376 Piedmont Road
San Jose, California 95132

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182BERRY.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Mr. Patrick Allen
BERRYESSA UNION SCHOOL DISTRICT

Community Systems Associates, Inc.

March 4, 1994

VIA CERTIFIED MAIL

Ms. Lee Quintana
CITY OF SAN JOSE
City Hall Annex Room 400
801 N. First Street
San Jose, California 95110-1795

SUBJECT: **Response to Notice of Preparation of an Environmental Impact Report for the Proposed SAN JOSE 2020 GENERAL PLAN, February 1994**

Scope and Content Comments from Morgan Hill Unified School District

Dear Ms. Quintana:

Community Systems Associates, Inc. ("CSA, Inc.") has been retained by the **Morgan Hill Unified School District** ("District") to represent the District in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project") and to respond. The Distrct is a "Responsible Agency" as defined by the California Environmental Quality Act ("CEQA"), Chapter 2.5, codified at Public Resources Code, Section 21069, and the CEQA Guidelines, found in the California Code of Regulations, Title 14, in that the District is a public agency, other than the Lead Agency, which has responsibility for providing (carrying out) public services (education) and facilities (schools) within the area by and directly affected by the San Jose 2020 General Plan.

Section 15096 of the CEQA Guidelines outlines the process for a Responsible Agency including its role in Response to Consultation.

Section 15096 (b)

Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

730 EL CAMINO WAY • SUITE 200 • TUSTIN, CALIFORNIA 92680 • (714) 838-9900 • FAX (714) 838-9998

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR. (emphasis added)

The District emphasizes that the use of the word "shall" identifies a mandatory element which all public agencies are required to follow according to Section 15005 (a) of the CEQA Guidelines. Therefore, the City must include the scope and content specified by the District in the EIR.

The District is in receipt of the Notice of Preparation regarding a Draft Environmental Impact Statement for the San Jose 2020 General Plan ("Project"). Pursuant to the Notice, the District may provide a response to the Notice within 30 days after receipt of the Notice. The Notice was received by District members commencing on February 7, 1994. On behalf of the District, CSA, Inc. has prepared the following list of scope and content for mandatory inclusion into the EIR:

1) The average square footage and type for anticipated typical dwelling units and the total square footage and type for projected non-residential uses shall be identified;

2) The phasing of development (residential and non-residential) over time from the present to buildout of the General Plan shall be identified with appropriate, incremental intervals (preferably not greater than two (2) years) identified;

3) The location of existing school sites, school bus stops, student pedestrian movement patterns to the school sites, bus routes, proximity to light rail stations, etc., shall be identified and mapped;

4) The District's existing conditions relative to the location, size, quality and condition of existing schools, administrative, and operation facilities shall be discussed;

5) The District's past and present enrollment trends, and present enrollment, including facility utilization shall be identified;

6) The designated schools that will be attended by students generated shall be identified;

7) The adequacy of existing infrastructure serving existing schools shall be determined and considered before recommendations for increasing student loading at any existing school is made.

8) The General Plan's utilization impact on the District, including projected enrollments, student generation factors, projected space requirements, projected busing requirements, projected teacher/staffing requirements, traffic and noise impacts shall be identified;

9) A complete and comprehensive traffic analysis shall be prepared identifying vehicular movement and volumes, and potential conflicts with school pedestrian movement, school transportation, and busing activities;

10) A complete and comprehensive noise analysis shall be prepared identifying any noise sources and volumes which may effect school facilities, classrooms and outdoor school areas;

11) A complete and comprehensive air quality analysis shall be prepared identifying any air quality deterioration that would result from the transportation and busing of students to various schools within and outside the District as a result of overcrowded conditions and the necessity to mitigate capital facility deficiencies;

12) An analysis of the inter-jurisdictional responsibilities of providing educational services and facilities should be prepared, identifying any social, educational and/or operational advantages or disadvantages associated with the City being dissected by the nineteen school Districts;

13) The fiscal impact on the District, including projected cost of land acquisition, school construction and other facilities shall be identified; present and projected capital facility, operations, maintenance, and personnel financing and funding sources should be analyzed; and personnel, operational, and maintenance costs should be identified;

14) Cumulative impacts on the District addressing item No.'s 7, 8, 9, 10, 11 and 12 should be addressed. Other projects in the geographical area of the District and included in the cumulative analysis should be identified by development name, unit size, timing and location;

15) Appropriate and legal development utilization and fiscal impact mitigation measures should be identified, including a complete discussion and analysis of the mitigation measures set forth in Section 65996 of the Government Code, as follows:

a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

e) Section 53080 of the Government Code.

f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

In addition, the decisions of Mira, Hart, and Murrieta should be discussed as vehicles for impact mitigation consideration;

16) Unavoidable development utilization and fiscal impacts on the District should be addressed, particularly as they relate to the quality, quantity, and present and future condition of the District's enrollments, space utilization, curriculum, financial and fiscal condition; transportation, operational and maintenance activities, and administrative activities;

17) Appropriate alternative projects should be considered and evaluated, and the items and issues set forth herein as No. 1 through 15 should be determined; and

18) The cost for provision of capital facilities to accommodate new students shall be identified and expressed in a per student format.

19) An estimate of the amount of development fees to be generated by development in accordance with implementation of the General Plan shall be made using $1.72 per square foot for residential uses and $0.28 for non-residential uses (inflated according to State Law). The estimate of development fees shall be clearly delineated by District.

20) The shortfall or excess between the estimated development fees to be generated and the cost for provision of capital facilities shall be identified on an individual District basis.

21) If a statement of overriding consideration is intended to be used relative to the District's development utilization and fiscal impacts for unavoidable or unmitigated impacts, the text of the statement, along with quantitative and qualitative substantiation, shall be identified and made available for public inspection. The substantiation shall also provide a comparison of the relationship of mitigation of other public services and facilities with schools.

22) The impact of the project on the District in terms of the use of school facilities and grounds for recreation (parks) and open space shall be assessed. In particular, existing quantities of City owned park and open space lands shall be identified and degree of satisfaction of the General Plan level of service standards for City owned and non-City owned land shall be determined. The implications of City General Plan policies on school district facilities shall be discussed and mitigated if significant.

The District is prepared to provide additional information and review any materials as may be prepared as a part of the environmental processes.

We further hereby request that all notices and documentation with regard to this project be specifically mailed to the following representatives of the District, with an additional copy to CSA, Inc's office at the addresses listed below:

Dr. J. James Crow
Superintendent
MORGAN HILL UNIFIED SCHOOL DISTRICT
15600 Concord Circle
Morgan Hill, California 95037

Mr. Louise T. Lozano, Esq.
LOZANO SMITH SMITH WOLIVER & BEHRENS
One Harris Court, Building A, Suite 200
Monterey, California 93940
(408) 646-1501 FAX (408) 646-1801

Mr. Marshall B. Krupp
COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900 FAX (714) 838-9998

Should you require additional information at this time, or if we can answer any questions, please don't hesitate to contact our office, the offices of Lozano Smith Smith Woliver & Behrens, or the District office.

Thank you for your assistance and consideration.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Dan M. Dunham
Associate Vice President Strategic Planning

dmd:jwl
1182alum.nop

cc: Mr. Louis T. Lozano
LOZANO SMITH SMITH WOLIVER & BEHRENS

Dr. J. James Crow
MORGAN HILL UNIFIED SCHOOL DISTRICT

MORELAND SCHOOL DISTRICT
Quality Education
Since 1851

California's Oldest Known Rural School District

4710 Campbell Avenue
San Jose, California 95130
(408) 379-1370

Jim Ritchie, Ed.D.
Superintendent

February 18, 1994

RECEIVED
FEB 22 1994
CITY OF SAN JOSE

City of San Jose
Attention: Lee Quintana
City Hall Annex, Room 400
801 North First Street
San Jose, CA 95110-1795

Dear Mr. Quintana:

Thank you for sharing the Notice of Preparation for an Environmental Impact Report to be prepared for the proposed San Jose 2020 General Plan. I believe the proposed scope of this study to be appropriate as described.

While it is my impression that the Moreland School District will not be significantly affected by these proposed land changes, I urge that the Environmental Impact Report make careful consideration of impact on public services, in particular, public schools. Without such consideration, the public can be seriously underserved.

Please contact me if I can provide you further assistance in this regard.

Sincerely,

J. Ritchie

Jim Ritchie, Ed.D.
Superintendent

JR:ch

City of San Jose - PBCE – Planning Division - Imaging Index Cover Sheet

Address/Location: City Wide (GP 2020)

Permit/Project No.: **PP94-019** Issuance Date: **08/16/94**

Prepped By: SADVANI Closed By: **SADVANI** RSN: **1253413**

Category	Document Type	Sub Document Type
☒ (EF) Environmental Files (203)	☒ (PP) Public Project Files (203-03) NOP Dated 7/27/2001	☒ (EN) EIR FEIR-Vol. III ☒ (DA) Approved Document ☐ (EM) Maps ☐ (AE) Application ☐ (AG) Agency Correspondence ☐ (EG) General Correspondence ☐ (TR) Technical Reports ☐ (RE) Archaeological Reports ☐ (EP) Plans
☐ (GP) General Plan (204)	☐ (GA) General Plan Amendments (204-02)	☐ (AM) Amendment ☐ (AA) Application ☐ (CG) Correspondence
	☐ (GE) Environmental Review (for 204 series GP Amendments)	☐ (GD) Approved Document ☐ (GI) EIR ☐ (GS) Supporting Documents ☐ (GT) Technical Reports ☐ (GR) Archaeological
☐ (DR) Development Review (207)	☐ (PR) Projects (207-02, 207-03, etc.)	☐ (ZN) Zoning ☐ (PE) Permit ☐ (MP) Maps ☐ (AP) Application ☐ (AC) Agency Correspondence ☐ (GC) General Correspondence ☐ (PL) Plans
	☐ (ER) Environmental Review (for 207 series Project Files)	☐ (EA) Approved Document ☐ (EI) EIR ☐ (ES) Supporting Documents ☐ (ET) Technical Reports ☐ (AR) Archaeological
	☐ (AD) Adjustments (207-12)	☐ (DO) Documents ☐ (PA) Plans
	☐ (PI) Public Info (207-29)	☐ (LE) Letter ☐ (LS) Supporting Docs

PP 94-019

FINAL ENVIRONMENTAL IMPACT REPORT

San Jose 2020

Focus on the Future

CITY OF SAN JOSE

VOLUME III

SCH #: 92123085

Adopted on 8/16/94 by C.C. Reso 65459

DECEMBER 1993

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C.C. 12/14/93
Agenda Item No. 15.a.

FINAL AMENDMENT TO THE DRAFT EIR

FOR THE

SAN JOSE 2020 GENERAL PLAN

CITY OF SAN JOSE
December 1993

for Gary J. Schoennauer
Director of Planning

SECTION I

FINAL AMENDMENT TO THE DRAFT EIR FOR THE SAN JOSE 2020 GENERAL PLAN

Record of the Meeting of the Planning Commission, December 1, 1993:

1. **Staff Report**

Staff indicated that the First Amendment to the Draft EIR consisting of comments, responses and text amendments had been previously transmitted to the Planning Commission. Staff corrected the following minor errors in the First Amendment: Response E.8 that refers to Letter M below should be revised to refer to Letter L; and response J.15 that refers to comments M and N should be revised to refer to comments J.13 and J.14 above.

Staff stated that Leianne Humble and David Powers from David J. Powers and Associates were available to assist staff in answering questions on the Draft EIR.

Staff recommended that, after taking public testimony, the Planning Commission continue the public hearing to December 8, 1993 to allow both the Commission and public agencies time to review the responses to comments prepared on the Draft EIR. Staff stated that, should the Commission certify the EIR as complete on December 8th, the General Plan would be heard by the Commission the same evening and by the City Council on December 14, 1993.

2. **Public Testimony**

Dan Dunham, Associate Vice President of Community Systems Associates speaking on behalf of several school districts, raised four points discussed in written comments distributed to the Commission on December 1, 1993. Mr. Dunham asked for clarification regarding the meaning of the following response to comments included in the First Amendment: "Comment noted and incorporated into the environmental record".

Staff responded that the use of "comment noted" is an indication that the comment does not require a response under the California Environmental Quality Act.

Marshall Krupp, President of Community Systems Associates asked how 52,000-70,000 additional residential units and 126,000 new jobs could not have individual or cumulative impacts on schools. Mr. Krupp stated that the financial conclusion is a representation of the physical impact. Mr. Krupp concluded by stating that the EIR is inadequate because it does not address impacts to schools and does not provide mitigation measures.

Chairperson Caruso directed staff to respond to these questions raised at the December 8th meeting.

3. **Action of the Commission**

The Planning Commission voted (7-0-0) to continue the public hearing to December 8, 1993.

Record of the Meeting of the Planning Commission, December 8, 1993

1. **Staff Report**

Staff indicated that the Planning Commission had received the Second Amendment to the San Jose 2020 Draft EIR consisting of responses to the comments from Community Systems Associates, Inc. (CSA) received at the December 1st Planning Commission meeting and additional text amendments to the Draft EIR. Staff presented responses to the four issues raised in CSA's December 1st letter (See Section II of the Second Amendment to San Jose 2020 General Plan Update Environmental Impact Report for the text of Staff's comments).

Staff recommended that the Planning Commission certify the Environmental Impact Report as complete and in conformance with CEQA.

2. **Public Testimony**

Mr. Marshall Krupp, of Community Systems Associates, summarized the following points that he has made previously:

- That the EIR and the response to comments conclude that there will be no significant environmental impact on the school districts regardless of the fact that CSA has submitted adequate testimony to indicate sever impact on the school districts from the proposed development.

- That to suggest that no mitigation is necessary because there is no significant environmental impact is not consistent with the intent of CEQA or the public disclosure requirement under CEQA.

- That CSA believes the responses to their comments have been non-responsive and conclusionary and are not supported by factual information and that the EIR before the Commission should not be determined to be complete and adequate and a full disclosure.

Mr. Krupp distributed to the Commission comments dated December 8, 1993 and a chart titled "Alternative 5 Impact on School Districts which updates a previous chart to include information on the Orchard School District.

Commissioner Williams asked Mr. Krupp for a clarification of whether the model he used to assess impacts included consideration of closed schools, portables, boundary changes etc.

Mr. Krupp responded that excess capacity was based on available instructional capacity, current enrollment and students generated by development. Mr. Krupp explained that closed schools could not be included in the analysis because they are not adequate to meet the space demands for students coming into the districts and because of the financial implications to the districts. Mr. Krupp equated school impacts to impacts from traffic.

Gary Schoennauer, the Director of Planning, clarified that when the City assesses traffic impacts planned infrastructure are considered before reaching a conclusion regarding a project's impact on traffic.

Commissioner Tanner commented that the Commission does not believe that there are no impacts on schools, nor does it believe that no additional schools or classrooms will be built in the next 26 years.

Commissioner Grayson asked Mr. Krupp whether he felt that the School Impact Task Force being established would address the concerns he has raised. Mr. Krupp replied that the Task Force is desirable but it is not a mitigation measure in the EIR and that there are no assurances that the Task Force will result in mitigation measures. Mr. Krupp stated that he cannot believe, regardless of whether schools or classrooms will be built in the future, that the conclusion can be reached that there is no significant environmental impact and that even the Mayor has acknowledged that there may be an impact by the recommendation of a policy tack force. Mr. Krupp stated that issues such as opening of schools, boundary adjustments, relocatable classroom should have been discussed in the environmental analysis as a response to the existing conditions.

Staff responded that the EIR does address all of the measures that school districts have typically used to accommodate students. Staff stated that the assertion that inadequate funding will result in a significant environmental impact is seriously lacking in any credible documentation as is required by the California Environmental Quality Act.

Tom Ruby, the City Attorney, clarified that the City Council has on several occasions acknowledged that development does impact school districts, although they have not said that the development has environmental impacts on schools. The School Impacts Task Force that met in previous years developed policy statements that also acknowledged that development impacts schools, but not that the impact is environmental.

Nick Leon, President of the East Side Teachers Association stated that the East Side Union is at capacity and that development will result in an environmental impact on the schools. Mr. Leon stated that he thought that the issue to be discussed tonight was compensation to the school district for additional students generated by development and that the schools need assistance in mitigating these impacts.

Mr. Schoennauer clarified that the subject of the public hearing tonight is not whether or not there is an impact on schools or whether the City of San Jose will help school districts provide sources of revenue from new development in their district. The purpose of this hearing is to determine whether or not the Environmental Impact Report that has been prepared for the City's General Plan should be certified and whether or not there is an environmental impact.

3. **Action of the Commission**

The Planning Commission voted (5-2-0; Grayson and Lezotte opposed) to find the EIR complete, as amended, and in conformance with CEQA.

FIN2020/73B

WRITTEN TESTIMONY ON THE DRAFT EIR

RECEIVED ON DECEMBER 8, 1993

COMMUNITY SYSTEMS ASSOCIATES, INC.

Community Systems Associates, Inc.

SAN JOSE 2020 GENERAL PLAN UPDATE
DRAFT ENVIRONMENTAL IMPACT REPORT
SCH NO. 92123085

CRITIQUE OF RESPONSE TO COMMENTS

Submitted by:

Alum Rock Union School District
Berryessa Union School District
East Side Union High School District
Oak Grove School District
Orchard School District
San Jose Unified School District

December 8, 1993

Prepared by:

COMMUNITY SYSTEMS ASSOCIATES, INC.
730 El Camino Way, Suite 200
Tustin, California 92680
(714) 838-9900

Community Systems Associates, Inc.

December 8, 1993

Chairman and Members of the Planning Commission
CITY OF SAN JOSE
801 North First Street
San Jose, California 95110-1795

SUBJECT: San Jose 2020 Draft General Plan Update
Environmental Impact Report
City of San Jose Planning Commission Public Hearing
December 8, 1993

Public Hearing Testimony of the
Alum Rock Union School District,
Berryessa Union School District,
East Side Union High School District,
Oak Grove School District,
Orchard School District, and
San José Unified School District

Dear Chairman and Members of the Planning Commission:

As you are well aware, Community Systems Associates, Inc. ("CSA") has been retained by **Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Oak Grove School District, Orchard School District, and San Jose Unified School District** (jointly referred to as the "Consortium") to represent them jointly in reviewing the proposed San José 2020 General Plan Update Amendments (referred to herein as either "Project" or "Amendments"), to provide public hearing testimony before the City of San José Planning Commission ("Planning Commission") and City Council ("City Council") in order to protect and preserve the Consortium's administrative and legal remedies, to provide the City of San José ("City") with the information supporting the Consortium's contentions of the impact of the Draft General Plan on the Consortium, and to enable the Consortium to consistently and effectively participate in the Draft General Plan amendments adoption and the environmental review process.

The Consortium received the responses to comments on the DEIR on Monday, November 29, 1993, and submitted its initial oral and written comments at the December 1, 1993, Planning Commission public hearing. The public hearing of December 1, was continued until December in order to give the commenting Public Agencies sufficient time to make

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comments on the proposed response to comments and to conform to the procedural and time requirements of Section 21092.5, subdivision (a) of CEQA, as pointed out by the Consortium. This testimony represents the Consortium's comments on the DEIR and the proposed response to comments.

The Consortium does hereby oppose and object to the certification of the Draft Environmental Impact Report by the City of San José. The Consortium's reasons for its opposition include:

1) It was inappropriate for the Planning Commission to hold a public hearing on the Draft General Plan dated October, 1993 while the 45-day public comment period on the Draft Environmental Impact Report was still incomplete, and the Planning Commission did not have a full and complete disclosure by the public, or by all public and quasi-public agencies of information and data relative to the social, financial, and environmental implications of the adoption and implementation of the recommendations contained in the Draft General Plan.

2) The responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15088. The comments are generally conclusionary in nature and unsupported by facts. It appears that the City has merely made a half-hearted attempt to make some sort of general response to the comments without the required good faith analysis effort. The impression of the Consortium is that the City has made a predetermined decision on the environmental impact in order to meet a predetermined, arbitrary adoption schedule for the General Plan Update. Section 15088 of the CEQA guidelines states:

§ 15088

a) The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or **objections**. In particular, the major environmental **issues raised when the Lead Agency's position is at variance with recommendations and <u>objections</u> raised in the**

comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusionary statements unsupported by factual information will not suffice. (emphasis added)

c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the test of the draft EIR, the Lead Agency should either:
   (1) Revise the text in the body or the EIR, or
   (2) Include marginal notes showing that the information is revised in the response to comments.

In its response to comments, the City has in numerous instances responded with the statement that the comment is acknowledged or the comment is acknowledged and incorporated into the environmental record for this project. When asked at the December 1, 1993 Planning Commission public hearing to clarify the meaning of the response for the public record, Ms. Carol Hamilton, answering on behalf of the City at the request of the Planning Commission, indicated that the statement meant the City did not have to respond to the applicable comment. When further questioned if the same meaning applied specifically to proposed response L.65, Ms. Hamilton affirmed her statement. This section of the comments (page 57 of the DEIR Comments of the Consortium) stated:

...The Consortium hereby makes the following counterproposals to the DEIR and its mitigation measures:

1) Deny the Draft General Plan because the impacts on schools are not adequately mitigated to a level of insignificance, or

2) Incorporate the following text changes to the Draft General Plan:....

The City's failure to respond to a significant number of the Consortium's comments along with its public statement that its does not have to respond to those comments which were summarily dismissed with the statement that "the comment is acknowledged and incorporated into the environmental record for this project" **CLEARLY IS A DIRECT CONTRADICTION TO THE PROVISION OF CEQA, THE CEQA GUIDELINES, AND CASE LAW. This is especially true when the since the one of the areas of comment was the Consortium's counterproposal to the project and its mitigation measures.**

The discussion following CEQA Guidelines states "The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project." Discussion following CEQA Guidelines, Section 15088; Environmental Protection Information Center v. Johnson ("EPIC") (1st Dist. 1985) 170 Cal.App.3d 604, 627 [216 Cal.Rptr. 502]; and Gallegos v. California State Board of Forestry (1st Dist. 1978) 76 Cal.App.3d 945, 952-955 [142 Cal.Rptr. 86].) Section 15088, subd. (a) of the CEQA Guidelines state the in the final EIR, the lead agency must evaluate and respond to all the comments on the DEIR it receives within the public review period. **THE CITY OF SAN JOSE DOES NOT HAVE THE AUTHORITY TO ARBITRARILY DECIDE WHICH COMMENTS IT WANTS TO EVALUATE AND RESPOND TO, AS IT HAS DONE IN ITS PROPOSED RESPONSE TO COMMENTS. CONTRARY TO THE CITY'S STATEMENTS ON THE PUBLIC RECORD, IT MUST RESPOND TO ALL COMMENTS MADE.**

3) The DEIR has not been prepared in accordance with content or procedural provisions of Title 21, Environmental Clearance Ordinance of the City of San Jose Municipal.

4) The City continues to maintain in its response to comments on the DEIR that the impacts of the Draft General Plan on schools are not significant despite substantial written documentation of the Consortium's contention of physical, financial, and social impact on the districts. As such, the City has not provided any mitigation measures to address the impacts identified by the Consortium. This action by the City is contrary to the intent and requirements of CEQA, the CEQA Guidelines, and case law. Specifically, Section 15064 of the CEQA Guidelines states:

§ 15064

c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected. If the Lead Agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the Lead Agency **shall regard the effect as adverse**.

5) The DEIR is not in compliance with the provisions of CEQA and the CEQA Guidelines.

6) The City of San Jose has incorrectly made the finding that the impacts of the Draft General Plan on schools are not significant without first defining the meaning of significant or determining the qualitative and quantitative threshold which establishes when an impact becomes significant.

7) The DEIR and the responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15142. Section 15142 requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools. It is clearly evident that the preparers of the DEIR and the response to comments do not have the required understanding of schools and school issues. Additionally, as stated in the discussion following Section 15142, an EIR must use many disciplines in order to find the interrelationships among the various factors in the environmental effects. The requirement for an interdisciplinary approach is also part of NEPA. Accordingly, this requirement comes from the legislative history of CEQA. This section also makes the essential point that an EIR must consider qualitative factors as well as quantitative, economic, and technical factors. These factors have not been considered in the DEIR or the response to comments. Section 15142 of the CEQA Guidelines states:

§ 15142

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or require undertake this evaluation.

8) The responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15144. In numerous responses to comments, the City claims "it is not possible at this time to provide...." without using its best efforts to find out and disclose all that it reasonably can as required by Section 15144 which states:

§ 15144

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not

possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

9) The responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15151.

§ 15151

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation f the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible, Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The Consortium's has repeatedly stated that its responsibility in the environmental review process is to share expertise, check for accuracy, detect omissions, relate public concerns, and provide counterproposals based on the City of San Jose' analysis as disclosed in the DEIR. **It is not the responsibility of the Consortium to rewrite the EIR, provide the analysis, correct inaccuracies in the data, or to provide the omitted data. THOSE TASKS ARE THE RESPONSIBILITY OF THE CITY OF SAN JOSE, AS LEAD AGENCY, AND MUST BE PROVIDED AS PART OF THE (FINAL) EIR.** As the Consortium has previously made known to the City of San Jose, both in writing and through public testimony, it feels that based on the significant amount of new information which needs to be added to the DEIR, recirculation will be required.

As we have stated before, the Consortium is confident that we can substantiate our position that the City Council has the authority and is required to address schools in the General Plan, that the California Environmental Quality Act ("CEQA") requires the Draft Environmental Impact Report to address the issues raised by the school community, and that the adoption of the Draft General Plan as presently recommended is not in compliance with the State of California General Plan Guidelines, and other applicable statutes. In addition, we are confident that we can provide an adequate public record to substantiate the position that the Draft Environmental Impact Report has not been prepared in accordance with the provisions of the City's Environmental Clearance Ordinance (Title 21 of the Municipal Code), CEQA, or the CEQA Guidelines, and that Title 21 of the Municipal Code is not in compliance with CEQA or the CEQA Guidelines.

Again we must emphasize that we believe it is not in the best interest of the City or the school districts to pursue this controversy in a "public forum", but rather to attempt to resolve our differences in a cooperative and coordinated manner, resulting in the Consortium's support for the Draft General Plan. To date, we have attempted to do this through the Task Force, the Department of Planning and Building, and the City Attorney's Office. However, it has been suggested by City representatives that this matter be resolved in the public hearing process before the Planning Commission and the City Council. We disagree that this is the most appropriate way to create the kind of relationship which best serves the City's and District's elected officials and constituencies. However, we have no other option but to present our testimony as set forth herein.

It certainly is in everybody's best interest, if we can jointly create a relationship which will enable the City to effectively pursue the implementation of the Draft General Plan Amendments, while at the same time enabling the school districts of the City of San José to be able to adequately and effectively address the impacts of growth contemplated under the Draft General Plan Amendments. The Consortium does incorporate herein by reference:

1) The Draft San Jose 2020 General Plan dated October, 1993, as proposed by the San Jose 2020 General Plan Update Task Force;

2) The Draft Environmental Impact Report on the San Jose 2020 General Plan dated September, 1993 (SCH # : 02123085);

3) The Horizon 2000 General Plan for the City of San Jose adopted by the San Jose City Council on November 7, 1984, and amended on December 10, 1992;

4) Title 18 and Title 21 of the City of San Jose Municipal Code;

5) All of the technical reports, letters, and memorandums prepared by the departments of the City of San Jose, including but not limited to the Department of Planning and Building and the Office of the City Attorney as presented to the San Jose 2020 General Plan Update Task Force during their deliberations on the preparation of the Draft San Jose General Plan;

6) September 13, 1993 Memorandum of the City Attorney to the San Jose 2020 General Plan Task Force regarding School Mitigation Policy;

7) May 29, 1992 Memorandum of the City Attorney to the School Impact Task Force regarding Legal Analysis;

8) October 6, 1993 Memorandum of the Co-Chairs of the San Jose 2020 General Plan Update Task Force to the Mayor and Members of the City Council regarding the Draft San Jose 2020 General Plan;

9) Opinion No. 30455 of the Legislative Counsel of the State of California dated December 4, 1992 regarding School Facility Fees;

10) October 21, 1993, certified correspondence to Mr. Mark Goss, State Clearinghouse, requesting an extension of time to prepare comments;

11) October 18, 1993, correspondence to Ms. Carol Hamilton, City of San Jose, notice of timing of submission on comments;

12) October 18, 1993, correspondence to Ms. Carol Hamilton, City of San Jose, notice of opinion that the DEIR will need to be recirculated;

13) October 13, 1993 written testimony of the Consortium to the Planning Commission;

14) November 9, 1993 written testimony of the Consortium to the City Council;

15) November 22, 1993 First Amendment to the Draft EIR Consisting of Comments, Responses to Comments and Text Revisions;

16) December 1, 1993 written testimony of the Consortium to the Planning Commission; and

17) December 1, 1993 taped record (transcribed by CSA, Inc. from the tape provided by the City) of the Planning Commission public hearing.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President

attachment with enclosures
MBK:dmd:jwl
1182eir4pc2.dmd

cc: Mr. Gary Schoennauer, Director of Planning
City of San Jose

Ms. Linda Latasa
Alum Rock Union School District

Mr. Patrick Allen
Berryessa Union School District

Mr. Paul Fettig
East Side Union High School District

Mr. Hardy Childers
Oak Grove School District

Ms. Cathy Masters
San Jose Unified School District

CRITIQUE OF RESPONSE TO COMMENTS
SAN JOSE GENERAL PLAN UPDATE EIR

The responses to comments identified by the City as L.1 though L.7 refer to the cover letter of the Consortium's comments and not to the actual comments made by the Consortium. The Consortium has no critique to the City's response to comments made on the cover letter to the comments.

L.1. *Comment noted.*

L.2. *There is no requirement that the State review period established by the State Clearinghouse run concurrently with the local review period. The State Clearinghouse forty-five day public review period for this EIR began on September 17, 1993 and ended on November 1, 1993. The local review period for this EIR began on September 20, 1993 and ended on November 3, 1993. Mr. Krupp was notified both in writing and in person of the City's review period. Prior to the close of the public review period, Mr. Krupp submitted nearly 200 pages of comments and other information on the Draft EIR.*

L.3. *Mr. Krupp's comments are noted. See response to Comments L.11 through L.85.*

L.4. *The City's records show that Mr. Krupp received a certified letter on November 1, 1993 indicating that the City could not extend the public review period and that all comments should be submitted by 5 p.m. on November 3, 1993.*

L.5. *Mr. Krupp's comments are noted.*

L.6. *Comment noted. See response to Comments L.11 through L.12 below.*

L.7. *Mr. Krupp's comments are noted.*

L.8. *See response to Comments L.11 through L.85 below.*

Response to Comment L.8 refers to the Table of Contents of the Consortium's comments.

L.9. *Mr. Krupp's comments are noted.*

Response to Comment L.9 refers to the legal basis and standing of the Consortium to make comments and to the opening paragraph of the description of the comment identification system used in the Consortium's response to comments.

L.10. *Mr. Krupp's explanation of the format of his comments is noted. Please see responses to Comments Number L.11 through L.85 below.*

The City's response indicates that it has noted the Consortium's description of the comment identification system used. However, based upon the fact that in making its responses to comments, it is clear that the City either did not understand the comment identification system or chose to ignore it in making its responses. As an example, the City has in numerous responses divided the comments into several parts, often responding to the citation of the

applicable portion of law with one comment and then the discussion of the details of the Consortium's comment as it relates to law. The result is that the City has failed to either understand the comment or has misinterpreted the comment by failing recognize the nexus between the discussion and the citation of law, and has therefore not failed to understand the intent of the comment and made inappropriate responses or has not responded to the essence of the comment at all. An example of the occurrence can be found in the City's response to comment 1A1 were the City addressed the law with response L.11 and the detailed discussion with response L.12. The resultant responses to comments fails to address the basic premise of the Consortium's comment that by failing to identify Alternative 4 and Alternative 5 in the same manner as Alternative 1, 2, and 3, the Consortium was not provided with sufficient information in the Notice of Preparation to enable them to make meaningful responses in terms of scope and content for all of the alternatives proposed in the DEIR. The Consortium points out in the discussion on the comment its contention that the impact of Alternatives 4 and 5, in particular Alternative 5, are significantly different on the Consortium than the other three Alternatives which were proposed. The City's response has not addressed this concern.

L.11. The Notice of Preparation (NOP) for this EIR included a project description, a location map and the probable environmental effects of the proposed project in conformance with the requirements of Section 15082 of the CEQA Guidelines.

The City has incorrectly interpreted the comment by separating the comment into parts and not responding to the whole comment. The Consortium has not suggested that the Notice of Preparation failed to include a project description, location map or probable environmental effect in accordance with Section 15082, but that the project description was faulty and inadequate for failing to identify two of the alternatives in the Notice of Preparation.

L.12. Section 15082 of the CEQA Guidelines specifies that a Lead Agency shall distribute a Notice of Preparation "(i)mmediately after deciding that an Environmental Impact Report is required for a project...". In conformance with this requirement, the City of San Jose distributed a Notice of Preparation prior to completing the impact analysis of the proposed alternatives and prior to determining what mitigation would be required. The analysis showed that all of the alternatives would result in significant traffic impacts. Additional alternatives were analyzed and traffic mitigation was included to insure that the EIR included an alternative that did not result in significant traffic impacts. The purpose of the EIR process is to identify impacts, and mitigation or alternatives that will reduce these impacts to an acceptable level. If the EIR analysis were complete at the time the NOP was distributed, the early consultation required by CEQA would not be achieved. Please note that Alternative 4 (64,000 units) and Alternative 5 (58,300 units) included significantly fewer residential units than the 70,000 unit alternatives discussed in the NOP.

As with the critique of response L.11, this response addresses only a part of the comment thereby missing the essence of the comment. While Alternative 4 and Alternative 5 do include fewer residential units than the 70,000 unit alternative discussed in the NOP, the location of the units, particularly in Alternative 5, have a far greater impact on the Consortium than the Alternatives identified in the NOP because the units are proposed are to be located in an area with the least available, most expensive land for schools and with the greatest degree of existing overcrowding in the existing schools.

L.13. The Preferred Alternative under consideration by the City Council is a refinement of Alternative 5. This Alternative will not result in any additional impacts that were not identified in the analysis of Alternative 5. The Preferred Alternative includes approximately 6,000 fewer housing units and the same number of jobs as Alternative 5. The Draft EIR presents a worst case analysis of the impacts of the Preferred Alternative.

The City has not addressed the Consortium's comment which makes the point that the project description is unstable, inaccurate, not consistent, and not finite as established by case law making the DEIR inadequate and not legally sufficient. Instead, the comment reinforces the Consortium's comment by admitting that the Preferred Alternative under consideration by the City Council is a refinement of Alternative 5 with a different amount of dwelling units (even though the number is lower) changing the level of impact on schools from those identified in the DEIR.

The City's contention that the Preferred Alternative will not result in any additional impacts that were not identified in the analysis of Alternative 5 is conclusionary and unsupported by factual information as it is not addressed in the DEIR. The Consortium disagrees that the DEIR presents a worst case analysis of the impacts of the Preferred Alternative. Just the mere fact that a change of 6,000 dwelling units is proposed in the Preferred Alternative, changes the potential impact on those school districts in which the units were to have been located. However, by not evaluating the Preferred Alternative in the DEIR, the Consortium has not had the opportunity to analyze the impact or to make comments on this Alternative.

L.14. Page 55 of the Draft EIR specifies (to the extent that this information is known to the lead agency) the agencies expected to use the EIR in their decision-making and the approvals for which the EIR will be used. The Uses of the EIR section states as follows:

> *"The City of San Jose will use this EIR to provide the environmental review for the adoption of the San Jose 2020 General Plan, including related text amendments and changes to the General Plan Land Use/Transportation Diagram. This EIR also provides the environmental review for LAFCO approval of the proposed minor amendments to the Urban Service Area."*

The Uses of the EIR section indicates that the EIR <u>may</u> be used for additional specified actions consistent with the goals and policies of the General Plan, but also cautions that additional environmental review may be required for these actions. The specified actions include:

> *"...adoption of ordinances and policies which implement the General Plan; minor zoning changes and General Plan amendments that are consistent with the General Plan and; special studies required by or related to implementation of the General Plan Policies."*

The City is not aware of any other responsible agencies that will use this EIR for specific approvals. The school districts are not Responsible Agencies that will be required to use this EIR for discretionary decisions to implement the General Plan. Please note that the City has been unable to find any record that any school district has ever filed a Notice of Determination as a Responsible Agency for use of the Horizon 2000 General Plan Final EIR.

If the City is not aware of any other responsible agencies that will use the EIR then why does it state that the EIR will be used by the City of San Jose, LAFCO, and surrounding jurisdictions and responsible agencies? Did the City expect that the EIR would be used by the agencies included in this list or was this just boiler plate added to the DEIR?

L.15. The City Council of the City of San Jose is the decision-making body that will approve or deny the proposed General Plan, including amendments to the text of the Plan and revisions to the Land Use/Transportation Diagram. Legal notice of all public hearings regarding the proposed General Plan has been provided. As indicated in the Draft EIR transmittal letter, the Planning Commission will hold a public hearing on the EIR on December 1, 1993. It is anticipated that this hearing will be continued to December 8, 1993 to allow adequate time for public agency review of the responses to comments submitted on the Draft EIR. The City Council is currently scheduled to consider the proposed San Jose 2020 General Plan on December 14, 1993.

The proposed General Plan is expected to be implemented over the next 26 years. It is not possible at this time to provide a comprehensive list of the specific approvals necessary to implement the Plan; however, appropriate public notice and CEQA review will be undertaken for each project at the time it is proposed.

Surely the City must have some idea of how it is going to implement the General Plan and what the approvals necessary to implement the Plan will be. Otherwise, is this plan just to sit on the shelf?

L.16. The City considered all of the Notice of Preparation responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan alternatives were adequately addressed. See response to Comments L.17 through L.56. below.

The City did not address all of the requested scope and content submitted in response to the Notice of Preparation. See critique to responses L.17 through L.56 below.

L.17. Pages 102 through 123 of the Draft EIR and Appendix E address traffic impacts of the General Plan alternatives at a level of specificity that is appropriate to the level of specificity of a General Plan in conformance with Section 15146 of the CEQA Guidelines. No significant traffic impacts are expected as a result of roadway changes or changes in transit facilities.

The District specifically asked that the EIR address the traffic impacts resulting from growth, roadway changes, and changes in transit facilities affecting the District's schools. This was not done.

L.18. General Plan Thoroughfares Policy #8 and Pedestrian Facilities Policy #16 address pedestrian safety and the need for pedestrian facilities. These policies will be implemented at the time specific developments or street improvements are proposed to ensure the provision of safe and convenient pedestrian facilities. No significant environmental impacts relative to pedestrian safety are expect as result of implementation of the San Jose 2020 General Plan. Appropriate pedestrian facilities will be provided at

the time specific developments or street improvements are proposed in conformance with General Plan policy.

In response L.15 the City indicated that it did not know how the General Plan would be implemented. Therefore, how can the Consortium rely on the City to ensure that the policies will be implemented?

L.19. The noise analysis prepared for the project by Illingworth & Rodin, Inc., contained in Appendix G of the EIR, included noise measurements recently taken throughout San Jose. The noise analysis included data from noise measurements taken from noise analyses, many of which were prepared by Illingworth & Rodkin, for other program-level, project-level and specific plan EIRs. These data were used in conjunction with the computer noise modeling to determine existing noise levels in San Jose.

The contents of the Noise Element of the General Plan are mandated in Section 65302(f) of the California Administrative Code. In the most recent revisions to this code completed several years ago, the requirement to monitor noise levels at noise sensitive area and the requirement for a noise exposure inventory were deleted.

The Consortium concurs with the City's statement that recent revisions to Section 65302(f) of the California Administrative Code deleted the requirement to monitor noise levels at noise sensitive areas and the requirement for a noise exposure inventory. However, the Consortium's comment references the City's Municipal Code, Title 18, Local Planning, Chapter 18.08, Section 18.08.030 which still requires the City to monitor noise levels and to prepare a noise exposure inventory. The City's recent modification to Title 18 occurred after the Draft General Plan and DEIR were prepared and only occurred after the Consortium pointed out to the City that it was in violation of the Ordinance. However, since the revisions were adopted by a regular resolution, they are not applicable to this Draft General Plan and DEIR. The must conform with its Municipal Ordinance as well as State law.

L.20. The air quality impacts of the proposed Plan are addressed on pages 130 through 139 of the Draft EIR. Potential impacts associated with hazardous materials are addressed on pages 228 through 234. The analysis of potential hazardous materials impacts does not identify the ages or school status of those who could potentially be exposed to hazardous materials; however, pages 234 through 235 identify program mitigation to insure that impacts associated with hazardous materials are adequately mitigated. Please note that none of the alternates propose new industrial uses adjacent to existing school sites.

The DEIR fails to address the existing setting of schools currently located with industrial areas and does not address the concern of the District relative to existing students being exposed to hazardous materials either through their proximity to existing school sites or by walking though contaminated areas to get to school.

L.21. The Draft EIR did not include data on capacity and enrollment because the City was unable to obtain consistent and parallel data from the school districts. Following is a discussion of the information provided by the school districts or obtained from other sources relative to the existing capacities and enrollments of the school.

The number of additional students expected to result from implementation of the General

Plan alternatives is shown on Table 34 of the Draft EIR. Please note that the adopted Horizon 2000 General Plan assumes approximately 52,000 additional residential units within the City's Sphere of Influence. The Preferred Alternative now under consideration by the City Council assumes approximately the same number of additional residential units as the adopted Plan, with some change in the location of the units. The student generation presented in Table 34 for Alternative 5 (which assumes approximately 58,000 additional housing units) represents a worst case estimate of additional students. The addition of these students to the school districts serving San Jose is not expected to result in a significant environmental impact relative to school services.

Alum Rock Elementary School District: *According to the information provided by the School district, the District currently has excess student capacity of 2,014 students. The Draft EIR identifies that the new residential development assumed in Alternative 5 by 2020 will result in an additional 590 students. This represents an increase of 160 students over the adopted Horizon 2000 General Plan (Alternative 1).*

It appears that Alum Rock Elementary School District has capacity to accommodate the additional students resulting from implementation of the proposed General Plan.

Berryessa Elementary School District: *The Draft EIR identifies that the Berryessa School District is currently at capacity. The lack of excess capacity is limited to the middle schools. Existing elementary schools have excess capacity of 975 students. In addition, the City's School Site Reuse Plan indicates that the District has two undeveloped school sites. Both the adopted Horizon 2000 General Plan and the proposed San Jose 2020 Plan will result in an additional 1,095 students from new residential development. Approximately 225 of these are middle school students and 870 are elementary school students. Page 257 of the Draft EIR identifies measures school districts have used in the past to provide additional capacity, including measures that do not require funds for new construction. The Berryessa School District has indicated that one of these measures, year-round schools, was used by the School District prior to the mid-seventies to alleviate over-crowded schools. A four track year-round system could increase school capacity by as much as 33 percent. Measures are available to accommodate students resulting from implementation of the General Plan in the Berryessa School District.*

Cambrian Elementary School District: *The School District's 1993 Developer Impact Study indicates that the District had an excess capacity of 248 students in 1992, but is expected to exceed the capacity of its currently open schools by 1994/95. The District is currently leasing two surplus schools and a portion of a third for non-public school uses. The School District has indicated that these schools cannot be reopened due to the District's need for the revenue generated by these leases. The Draft EIR indicates that both the adopted Horizon 2000 Plan (Alternative 1) and Alternative 5 will add an additional 290 students. It appears that measures are available to accommodate these additional students without significant environmental impact.*

Campbell Union Elementary School District:

The Draft EIR indicates that the schools serving San Jose within Campbell Union Elementary School District will exceed their capacities by 1996-1997, based on written communication by the School District. This same communication presented current data

for these schools that showed an excess capacity of approximately 375 students. The District is currently leasing one surplus elementary school within San Jose for a non-public school use. There are three additional leased or closed school sites within the District. The excess capacity would appear to accommodate the additional 333 students projected for General Plan Alternative 5. If not, measures identified on page 257 of the Draft EIR could also be used to increase capacity.

Campbell Union High School District:

The Draft EIR identifies that the Campbell Union High School District is presently operating below capacity. According to information supplied by the School District for October of 1992, the District had excess capacity of approximately 3,000 students without considering the capacity of Branham High School (capacity of 2,100) which is currently leased for non-public school uses. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would add an additional 586 students by 2020. It appears that this district has adequate capacity to accommodate the additional students associated with the proposed General Plan.

Cupertino Union School District:

The Draft EIR identifies that the Cupertino Union School District would require additional classroom space beyond current capacity to accommodate growth from new residential development. According to information supplied by the School District, an excess capacity of approximately 391 is expected in school year 1994-95. Not included in this capacity figure are two surplus schools currently not used for public school instructional purposes. Table 34 of the Draft EIR identifies that Alternative 5 will add approximately 615 students by 2020. It appears that the District has adequate capacity to serve the additional students within its existing or closed schools. If not, measures identified on page 257 of the Draft EIR could also be used to increase capacity.

East Side Union High School District:

The Draft EIR indicates that according to the District's study "Overview of Residential Development Impacts", short term growth may be accommodated in additional portable classrooms, but maximum school capacity with portables would be exceeded in the long term. The study indicates that 1176 students could be accommodated in additional portable classrooms. A comparison of school capacities provided in this study with school enrollments provided by the District for March of 1993, showed a total excess capacity in existing facilities of 1,154. The School District has received site approval from the state for a new high school located at the intersection of Quimby Road and Ruby Avenue. Assuming a capacity of 2,000 students for the new high school, the total future excess capacity of the School District would be 4,330 students.

Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 5,289 students by the year 2020. This student increase includes all approved but not yet constructed residential projects, all projects currently under consideration and all vacant land planned for residential development by 2020 within the East Side Union High School District. Please note that the preferred alternative under consideration by the City Council would generate approximately 100 fewer students than Alternative 5.

It appears that most of the students resulting from implementation of Alternative 5 could be accommodated with the existing and planned capacity of the School District. Additional capacity could be provided through measures identified on page 257 of the Draft EIR. Implementation of a four track year-round school system, alone, would increase capacity by as much as 33 percent, or almost 7,000 students.

Evergreen School District:

The Draft EIR, as modified in Section III of this Amendment indicates that while limited capacity is currently available in the Evergreen School District, the District anticipates adding capacity as needed.

Table 34 of the Draft EIR indicates that the new residential development assumed under Alternative 5 will result in an additional 3985 students by the year 2020, the same level of development assumed under the adopted Horizon 2000 General Plan (Alternative 1). Please note that this figure includes students anticipated from development of the Evergreen Specific Plan, Silver Creek Planned Residential Community, and Richmond Ranch, as well as other approved development within the District.

According to the Director of Planning for the Evergreen School District, the District does not maintain capacity figures. While limited capacity is currently available, the District creates additional capacity as needed by adding portables, adjusting school boundaries, moving students between schools and constructing new schools. the District indicated that portables could be used to create a maximum capacity of 900 students at each elementary school. Currently, additional portables can be added to all but two elementary schools.

The District anticipates opening a new elementary school approximately every three years. Each school, as built, would accommodate 600-660 students. As indicated above, the addition of portables could increase the capacity of each school to 900. The District plans to open a new school in the Silver Creek Planned Residential Community in the Fall of 1994. This school is being financed with Mello-Roos funds and developer fees. Two additional elementary schools are planned for public school sites identified in the Evergreen Specific Plan Land Use Plan. Funding for the construction of these schools is identified in the Evergreen Specific Plan.

Fremont Union High School District:

Draft EIR indicates that the Fremont Union High School District has additional school capacity. Information provided by the District indicates an enrollment of 7,259 students in April of 1993 and a capacity of 8,304 students. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 542 students by 2020. It appears that these additional students could be accommodated within existing capacity or by the measures for increasing capacity identified on page 257 of the Draft EIR.

Franklin-McKinley:

The Draft EIR identifies that the Franklin-McKinley School District is currently at capacity

and is on year-round education. The District did not submit enrollment or capacity figures in response to the City's request.

Table 34 indicates that Alternative 5 will result in the generation of 2,965 students. Please note that the Alternative 5 does would not result in the generation of any more students than that anticipated under the adopted Horizon 2000 General Plan (Alternative 1) Almost all of the students anticipated under Alternatives 1 and 5 are located in, or adjacent to, the Communications Hill Planned Community. The Communication Hill Planned Community Land Use Plan identifies a public school site that has received site approval from the State Department of Education. The District also anticipates the construction of an additional middle school (Middle Creek Jr. High School).

In 1990 the District sold its district administrative offices and constructed a new administrative headquarters. Since that time, the District has taken steps to sell portions of two middle schools for residential development. The School District has not identified any significant environmental impacts associated with the sale of these school grounds, despite the loss of playing fields and potential locations for additional portable classrooms. Proceeds from the sale of these properties are not proposed to be used to provide additional classroom facilities.

Luther Burbank:

The Draft EIR identifies that implementation of Alternative 5 would result in an increase of a single student.

Moreland School District:

The Draft EIR states that Moreland School District has additional capacity. The City's School Site Reuse Plan indicates that this District currently has four surplus schools that are leased for non-public school uses. Table 34 indicates that implementation of Alternative 5 would result in an addition of 17 students. It appears that Moreland School District has capacity to accommodate the projected increase in students.

Morgan Hill Unified School District:

The Draft EIR identifies that the Morgan Hill Unified School District has additional capacity available in the elementary schools that the middle schools are currently near capacity and that high schools are projected to be at capacity by 1997. These conclusions were based on capacity and enrollment data provided by the School District during preparation of the Draft EIR. This information indicated a total enrollment of 8,846 and a total capacity of 9,121. In commenting on the Draft EIR, the District submitted new data contained in the 1993 Justification Report for the School Facility Fees which indicates a capacity of 9029. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in 98 additional students over the next 26 years, a significant reduction over the number of students expected under the adopted Horizon 2000 General Plan (Alternative 1). It appears that these additional students could be accommodated through portable classrooms, year-round schools and other mechanisms for increasing school capacity identified on 257 of the Draft EIR.

Mount Pleasant Elementary School District:

The Draft EIR states that capacity in the Mt. Pleasant School District exceeds enrollment. Information provided by the School District indicates a capacity of 3,819 students (including a closed school site) and an enrollment of 2544 as of May 1993. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 113 students by 2020. It appears that the Mt. Pleasant District has existing capacity to serve this projected student increase without implementation of measures identified on page 257 of the Draft EIR.

Oak Grove School District:

According to the Draft EIR there may be additional capacity for students in the District. This statement is based on information from the District; however, despite numerous requests, the District did not furnish the City with capacity data. Table 34 of the Draft EIR identifies that new residential development assumed in Alternative 5 by 2020 will result in an additional 2868 students. This represents an increase of 783 students over the adopted Horizon 2000 General Plan (Alternative 1) The City of San Jose School Site Reuse Plan identifies two school sites that are currently not used by the District. It appears that the reopening of these schools together with other methods to increase capacity identified on page 257 of the Draft EIR would accommodate the additional students.

Orchard School District:

Based on information supplied by the District, the Draft EIR identifies that the Orchard School District is a one school district with a capacity of 375. The District is currently operating over capacity. Table 34 of the Draft EIR identifies that Alternative 5 will result in an additional 442 students from new residential development, an increase of 215 students over the adopted Horizon 2000 General Plan. The preferred alternative under consideration by the City Council would generate approximately 326 students, 116 fewer than under Alternative 5.

Page 257 of the Draft EIR identifies measures that school districts have used in the past to provide additional capacity. Without construction of a new school the District would not be able to accommodate the projected increase in enrollment. If construction of a new school is not possible, the District boundaries could be reconfigured to incorporate portions of the Orchard School District into Berryessa Union School District and Santa Clara Unified School District, districts which appear to have capacity to accommodate the additional students. Alternatively, the entire District could be incorporated into one of the adjacent districts. This would allow for more efficient administration and more flexibility in accommodating changing enrollments.

San Jose Unified School District:

The Draft EIR identifies that San Jose Unified elementary and middle schools are near capacity and that high schools currently have some additional capacity. Enrollment information was provided by the School District for 1993. Elementary schools in the District have an enrollment of 14,778 and a capacity of 15,616. (Williams Elementary

School, opened in the Fall of 1992, was not include in these figures.) There are currently four elementary schools leased for non-public school uses. These schools would add capacity for approximately 1590 students. Based on these figures, the District had an excess elementary school capacity of 2,218 students in 1992.

In addition, the District owns one undeveloped elementary school site. Correspondence from the District indicates that proceeds from a 13-acre administrative office site sold in 1993 are ear-marked for purchase of a new elementary school site and new school facilities in a more centralized location. Presumably, leased elementary schools that are not strategically located could be sold for the same purpose. The City's School Site Reuse Plan indicates that San Jose Unified has sold 7 school sites since 1984.

The District's information shows a middle school enrollment of 6,512 and a capacity of 7,067, resulting in excess capacity of 555 students. High Schools have an enrollment of 7,798 and a capacity of 9,536, resulting in excess capacity for 1,738 students.

Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in a total of 7,995 additional students, 4633 elementary/middle school students and 3362 high school students. The Preferred Alternative under consideration by the City Council would result in an increase of 7,360 additional students. It appears that the additional students resulting from implementation of the proposed General Plan could be accommodated with a combination of current excess capacity and implementation of mechanisms identified on page 257 of the Draft EIR. Please note that a four-track, year-round school program, alone, would increase student capacity by as much as 33 percent, or 10,000 additional students.

Santa Clara Unified School District:

The Draft EIR identifies that the elementary and middle schools in Santa Clara Unified School District currently have additional capacity and that the high schools are currently at capacity. Based on information supplied by the district, additional capacity of approximately 2960 students is available, not including the capacity of the three elementary schools and two middle schools which are currently being leased for non-public school uses. Assuming a capacity of 550 for elementary schools and 1200 for middle schools, opening the leased schools would accommodate approximately 4100 additional students.

Table 34 of the Draft EIR indicates that the adopted Horizon 2000 General Plan (Alternative 1) would add 2,063 new students and Alternative 5 would add 3,815 new students. The preferred alternative under consideration by the City Council, would generate approximately 3020 additional students, 795 fewer than Alternative 5. It appears that the District has adequate capacity to serve the worst case number of students resulting from implementation of the proposed General Plan. If not, mechanisms identified on page 257 of the Draft EIR (including ones that do not require the construction of new schools) could be implemented to increase capacity.

Union School District:

The Draft EIR states that additional student capacity is available in the Union School

District. Information provided by the School District identifies a built capacity of 7462 students. Some unspecified portion of this capacity has been converted to other uses. Current enrollment is 4,657. The City's School Site Reuse Plan indicates that the District has three surplus schools that are leased for non-public school uses and that two additional schools were sold since 1989. Table 34 of the Draft EIR shows that implementation of Alternative 5 would result in an increase of 210 students. It appears that Union school District could accommodate these additional students without implementation of the measures identified on page 257 of the Draft EIR.

The City's contention that "the Draft EIR did not include data on capacity and enrollment because the City was unable to obtain consistent and parallel data from the school districts" does not relieve its responsibility to address these issues under the provisions of CEQA and the CEQA Guidelines.

The CEQA Guidelines requires that the City prepare the EIR with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of the environmental consequences. The CEQA Guidelines further require the DEIR to be prepared by competent individuals. Obviously, it is possible and reasonable to expect that the City employ individuals to prepare the DEIR who understand school issues and who would be able to properly analyze the data provided by the various school districts. The professional staff of Consortium's representative deal with numerous school districts throughout the State on a daily basis and have no trouble obtaining consistent and parallel data regarding capacity and enrollment because of its competency in dealing with such data. This is especially true of enrollment data which is published by the State of California on a regular basis and is available for the asking.

Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools. It is clearly evident that the preparers of the DEIR and the response to comments do not have the required understanding of schools and school issues. Additionally, as stated in the discussion following Section 15142, an EIR must use many disciplines in order to find the interrelationships among the various factors in the environmental effects. The requirement for an interdisciplinary approach is also part of NEPA> Accordingly, this requirement comes from the legislative history of CEQA. This section also makes the <u>essential point</u> that an EIR must consider qualitative factors as well as quantitative, economic, and technical factors. These factors have not been considered in the DEIR or the response to comments.

Section 15142 of the CEQA Guidelines states:

§15142

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or require undertake this evaluation.

The failure of the DEIR to provide data on capacity and enrollment makes the DEIR and its analysis inadequate. Section 15151 of the CEQA Guidelines states:

> **§15151**
>
> An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible, Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The DEIR and the response to comments have not complied with either of these requirements of the CEQA Guidelines and are therefore inadequate.

L.22. Please see response to Comment 21 above.

This comment is part of the larger comment of 1A6(f). The response to comment L.21 still does not provide for an adequate description of the existing setting and the DEIR and response to comments are still inadequate in their response to the issues regarding the impact of increased housing (and students generated by that housing) on schools. Since the Preferred Alternative has never been addressed as part of the DEIR, its impact remain unknown.

L.23. Mr. Krupp's explanation of the various ways of assessing capacity is noted and incorporated into the environmental record for this project.

The response to comment states that the City notes the explanation of capacity and incorporates the comment into the environmental record. As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment. However, the Consortium stills contends that the DEIR must provide quantified Instructional Capacity data for each school district. This still has not been done in the DEIR or the in the response to comments. The City has failed to respond to this comment as required by the CEQA Guidelines.

L.24. The fiscal impacts on the school districts of increasing student enrollment are not expected to result in any significant environmental impacts. Section 21083 of the CEQA legislation appears to be misquoted in this comment.

This response is conclusionary and not supported by fact. As stated in the Consortium's comments, the DEIR is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA

Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.25. See response to Comment L.21-L.24 above.

Responses to Comments L.21-L24 to not provide the analysis necessary to support the conclusion that implementation of the General Plan Update would not result in a significant environmental impact upon school services. The City continues to maintain in its response to comments on the DEIR that the impacts of the Draft General Plan on schools are not significant despite substantial written documentation of the Consortium's contention of physical, financial, and social impact on the districts. As such, the City has not provided any mitigation measures to address the impacts identified by the Consortium. This action by the City is contrary to the intent and requirements of CEQA, the CEQA Guidelines, and case law. Specifically, Section 15064 of the CEQA Guidelines states:

> **§ 15064**
>
> c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected. If the Lead Agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the Lead Agency **shall regard the effect as adverse**.

The City of San Jose has incorrectly made the finding that the impacts of the Draft General Plan on schools are not significant without first defining the meaning of significant or determining the qualitative and quantitative threshold which establishes when an impact becomes significant.

L.26. The Draft EIR addresses the impacts and mitigation of the proposed General Plan alternatives relative to water service on pages 237-238. Impacts and mitigation relative to sanitary sewers are addressed on pages 246-250. Traffic impacts and mitigation are addressed on pages 102-123. Energy is addressed on page 272. These impacts are discussed at a level of specificity that is commensurate with the level of specificity of the project addressed in the Draft EIR. It is not possible at the General Plan stage to analyze site specific impacts associated with future decisions by the school districts to expand facilities. Individual school districts are the Lead Agencies responsible for environmental review for proposed school facility improvements.

When the future decisions by the school districts to expand facilities, necessitated by the implementation of the General Plan, are made, the General Plan will have physically impacted the affected school districts. The DEIR must analyze the capacity of the City's infrastructure to accommodate the expansion necessitated by the Draft General Plan.

When approving projects that are general in nature (e.g., a general plan amendment as opposed to a specific development plan approval), agencies must develop and approve whatever general mitigation measures are feasible to lessen or avoid projects' significant impacts. Agencies cannot defer the obligation to formulate and adopt mitigation until a specific development project is proposed. (Citizens for Quality Growth v. City of Mount Shasta (3d Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727].

Nor can agencies refuse to consider mitigation measures simply because a responsible agency with subsequent permitting responsibility may also have the power to address certain significant impacts. (Citizens for Quality Growth, supra, 198 Cal.App.3d at 443, fn. 7 [243 Cal.Rptr. 727].)

L.27. *See response to Comment L.19. regarding noise. Pages 263-265 of the Draft EIR address parks impacts and mitigation. The proposed General Plan alternatives are not expected to result in a significant environmental impact relative to an "...increased strain on the District's play fields and buildings for neighborhood gatherings and play areas". Please note that the City has agreements with a number of school districts for the joint use of certain school facilities for recreational purposes. Facilities not subject to such an agreement can be closed to the public during non-school hours if public access to these facilities is not desired. If a school district believes that future agreements for joint use of school facilities would result in significant environmental impacts, these impacts would need to be addressed during the CEQA review for those agreements.*

As stated in its critique of Comment L.19 the Consortium concurs with the City's statement that recent revisions to Section 65302(f) of the California Administrative Code deleted the requirement to monitor noise levels at noise sensitive areas and the requirement for a noise exposure inventory. However, the Consortium's comment references the City's Municipal Code, Title 18, Local Planning, Chapter 18.08, Section 18.08.030 which still requires the City to monitor noise levels and to prepare a noise exposure inventory. The City's recent modification to Title 18 occurred after the Draft General Plan and DEIR were prepared and only occurred after the Consortium pointed out to the City that it was in violation of the Ordinance. However, since the revisions were adopted by a regular resolution, they are not applicable to this Draft General Plan and DEIR. The must conform with its Municipal Ordinance as well as State law.

The portion of the comment pertaining to parks is a part of comment 1A6(g) and belongs with response L.28.

(L.27 *Pages 263-265 of the Draft EIR address parks impacts and mitigation. The proposed General Plan alternatives are not expected to result in a significant environmental impact relative to an "...increased strain on the District's play fields and buildings for neighborhood gatherings and play areas". Please note that the City has agreements with a number of school districts for the joint use of certain school facilities for recreational purposes. Facilities not subject to such an agreement can be closed to the public during non-school hours if public access to these facilities is not desired. If a school district believes that future agreements for joint use of school facilities would result in significant*

environmental impacts, these impacts would need to be addressed during the CEQA review for those agreements.) from above, and

L.28. *Page 263 of the Draft EIR identifies that the City's goals for parks have not been achieved in the past. Pages 263-264 identify that implementation of the General Plan alternatives would result in increased demands on park services. Pages 264-265 identify mitigation for parks impacts. The mitigation includes General Plan policy that calls for the use of the parks level of service benchmarks to evaluate major land use or policy changes as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed. The City's program for providing parks services to existing and future residents is not expected to result in a significant environmental impact on school districts or school district lands.*

The response that "The proposed General Plan alternatives are not expected to result in a significant environmental impact relative to an '...increased strain on the District's play fields and buildings for neighborhood gatherings and play areas'" is conclusionary and unsupported by factual analysis. Again, the City is attempting to avoid addressing the impact of the Draft General Plan by passing responsibility until a specific project is proposed. When approving projects that are general in nature (e.g., a general plan amendment as opposed to a specific development plan approval), agencies must develop and approve whatever general mitigation measures are feasible to lessen or avoid projects' significant impacts. Agencies cannot defer the obligation to formulate and adopt mitigation until a specific development project is proposed. (Citizens for Quality Growth v. City of Mount Shasta (3d Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]. Nor can agencies refuse to consider mitigation measures simply because a responsible agency with subsequent permitting responsibility may also have the power to address certain significant impacts. (Citizens for Quality Growth, supra, 198 Cal.App.3d at 443, fn. 7 [243 Cal.Rptr. 727].)

The Consortium understands that the City has agreements with a number of school districts for the joint use of certain school facilities for recreational purposes and generally supports the concept. However, the mere fact that agreements exist does not alleviate the City's responsibility to address the concern over the increased strain on the school playground facilities, particularly when the issue has been identified as part of the scoping process as an issue of significance to the Responsible Agency.

The Consortium acknowledges that the DEIR does make the statement that the City's goals for parks have not been achieved in the past. However, that is the full extent of the discussion in the DEIR relative to existing levels of parkland provided by the City. The Consortium's comment addresses that fact without disclosure of the level of shortfall of City owned parkland, it is not possible to determine the impact of the policy. As such, no analysis of the impact of the General Plan policies on both new and existing development has been made. CEQA Guidelines, Section 15125 requires that a DEIR "must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective. Where a proposed project is an agency decision changing planning or zoning designations, its potential impact should not be compared only with those that would ultimately occur under existing plans. Rather, such an analysis should focus on "existing physical conditions" before comparing the eventual future conditions that would result under either approach (CEQA Guidelines, Section 15125, subd, (c), and Discussion following thereafter).

L.29. This comment misinterprets Level of Service Policy #16. The school districts are not expected to provide 2 acres of play field per 1000 population, or any amount. This policy establishes a benchmark of 3.5 acres of neighborhood and community serving park land per 1000 population and specifies that a minimum of 1.5 acres of the 3.5 acres must be park land and up to two acres may be school playgrounds. There is no minimum for school playfields. If school districts choose not to make school playgrounds available to the public, the 3.5 acres will consist of no school playgrounds. See also response to Comment L.27 above.

To the extent that the City does not have parkland available, which as discussed in the Critique of Response L.28 above has not been disclosed or considered in the DEIR, this policy allows credit for school playfields toward the achievement of level of service benchmarks to used to evaluate major land use or policy changes as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed when in fact these facilities may not, as quantified in the Consortiums comment, do not exist in sufficient amounts to make this a reasonable and implementable policy.

L.30. Proposed General Plan Parks and Recreation Policy #18 is not expected to result in a significant environmental impact. This policy states that the City should "...consider negotiating with property owners and local School Districts in newly developing residential areas for the dedication of playground/recreation portions of future school sites to the City...". Such a policy does not require school districts to dedicate land to the City or even to negotiate with the City.

Regardless of the fact that the policy state the City should "... consider negotiating with property owners and local School Districts in newly developing residential area..." and that such a policy does not require school districts to dedicate land to the City or even to negotiate with the City, the Policy is proposed as a Park and Recreation Mitigation Measure. As such, as stated in the Consortium's comment, it represents a potential adverse, significant impact to the school districts serving San Jose. Response L.30 is conclusionary and unsupported by factual information.

L.31. As indicated in the response to Comment L.29 above, proposed Service Policy #16 does not require school districts to provide school playgrounds for park and open space use and is not expected to result in any significant environmental effect on school districts.

Response L.31 is conclusionary and unsupported by factual information. As stated in the critique of Response L.29 to the extent that the City does not have parkland available, which as discussed in the Critique of Response L.28 above has not been disclosed or considered in the DEIR, this policy allows credit for school playfields toward the achievement of level of service benchmarks to used to evaluate major land use or policy changes as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed when in fact these facilities may not, as quantified in the Consortiums comment, do not exist in sufficient amounts to make this a reasonable and implementable policy.

L.32. See response to Comment L.21 above. Please note that the preferred alternative proposed by the City Council anticipates only 175 new residences in the Morgan Hill Unified school District within the horizon of the proposed San Jose 2020 General Plan.

How is the District to know how may new residences are proposed by the preferred alternative when reviewing the DEIR when the preferred alternative was not addressed in the DEIR and it represents a change of 6,000 dwellings units in undefined locations.

L.33. See response to Comment L.21 above.

The DEIR and the response to comments still do not address the fact that the District identified in its response to the NOP that the Distinct is experiencing growth resulting from the rising student yield from existing homes.

L.34. The East Side Union High School District did not provide a response to the Notice of Preparation for the San Jose 2020 Draft EIR within the 30-day review period. The U.S. Postal Service return receipt shows that the District received the NOP on January 4, 1993. The letter from Rob Corley in response to the NOP was dated February 12, 1993. The City received no request for an extension of the review period. Despite the District's failure to respond within the 30-day review period, the City did consider the response in the preparation of the Draft EIR.

The traffic impacts of the General Plan alternatives are addressed on pages 102-120 of the Draft EIR. Air quality impacts are addressed on pages 130-139 and school impacts are addressed on pages 254-258. Student Generation for East Side Union High School District was based on the 0.20 students per dwelling unit generation figure specified in the NOP response. Since this generation rate was to be applied per unit, regardless of unit type or density, the EIR did not provide numbers of units by General Plan designation. Even the distinction between single family and multiple family units provided in Table 34 of the Draft EIR did not influence total student generation due to the methodology specified by the School District. The best available information regarding the timing of future residential units in the East Side Union High School District is the number of units projected by 2020 as indicated in Table 34. The rate of construction will depend on a set of complex factors that are not addressed in a General Plan, including the decisions of individual property owners and economic conditions over the next twenty-six years.

The City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided in the response to the NOP. Again, just because the data the City received was not in a format that the preparers of the DEIR could readily apply to the analysis, the City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

Section 15142 of the CEQA Guidelines states:

> **§ 15142**
>
> An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be

conducted by competent individuals, but no single discipline shall be designated or require undertake this evaluation.

L.35. *The East Side Unified School specified in its NOP response that the EIR "...should state the expected number of pupils by applying the ratio of 0.20 high school age pupils per home". Given this requested methodology, the purpose of including information regarding the size and configuration of the future housing is unclear. Furthermore, neither the City's General Plan nor the zoning code control the size of residential units. Unit sizes are a function of market forces that are neither governed nor predicted in the General Plan alternatives.*

As in the critique of Response L.35, the City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided in the response to the NOP. Again, just because the data the City received was not in a format that the preparers of the DEIR could readily apply to the analysis, the City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

The District also stated that the unit type could be made by reference to prototype examples in existing development, not just General Plan or zoning category. The response that unit size are not predicted in the General Plan alternatives is exactly part of the comment made. The request of the District was that they be part of the alternative analysis. Therefore, the DEIR has not complied with the Districts request. Without using its best efforts to find out and disclose all that it reasonably can, the City has failed to comply with Section 15144 of the CEQA Guidelines which state:

§ 15144

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

L.36. *Table 24 of the Draft EIR identifies the number of projected students associated with the planned residential growth in the East Side Union High School District in conformance with the District's response to the NOP. See also response to Comment L.21 above.*

The DEIR and the response to comments still have not addressed development fees to be generated, the shortfall in fees, or the net cost to the school districts.

L.37. *Page 252 of the Draft EIR states, based on information provided by the District, that the East Side Union High School District is planning to construct one new high school in the vicinity of Quimby Road. The City has not been provided with information regarding any other sites planned for new schools.*

Nor did the City inquire with the District. As in the critique of Response L.35, the City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided

in the response to the NOP. Just because the District did not seek out the City to provide it with the additional sites, the City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data or thought to contact the District and obtain the information which the District indicated it could make available. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

L.38. See response to Comment L.21 above.

The DEIR and the response to comments do not provide a cumulative number of unhoused students as requested by the District.

L.39. According to CEQA, the economic effects of a project are not to be treated as significant effects on the environment. The Draft EIR concludes that the potential fiscal impacts of providing school facilities to serve the projected increase in student population would not result in any significant environmental impact; consequently, a detailed analysis of the per pupil costs of providing services is not an appropriate element of the environmental analysis and is not included in the Draft EIR.

The DEIR is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.40. Comment noted.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment. The City has not addressed in detail the reasons why specific comments and suggestions were not accepted as required by Section 15088 of the CEQA guidelines.

Section 15088 of the CEQA guidelines states:

§ 15088

a) The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project' to mitigate anticipated impacts or **objections.** In particular, the major environmental **issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusionary statements unsupported by factual information will not suffice.** (emphasis added)

c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the test of the draft EIR, the Lead Agency should either:
   (1) Revise the text in the body or the EIR, or
   (2) Include marginal notes showing that the information is revised in the response to comments.

L.41. The Draft EIR concludes that the General Plan would not result in a significant environmental impact relative to schools; consequently, no mitigation is required. See also response to Comment L.39 above.

This response is conclusionary, unsupported by facts, and incorrect. Again the City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.42. Page 258 of the Draft EIR concludes that implementation of the General Plan will not result in significant environmental impacts relative to school services; consequently, mitigation measures are not required.

Again the City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.43. The Draft EIR does not suggest accommodation of all future students in portable classrooms or by busing students to other campuses. Portable classrooms and busing are two measures included in a list of mechanisms that have been used by school districts in the past to accommodate increased enrollments.

As noted in the above response, the DEIR does identify portable classrooms and busing in a list of mechanisms to accommodate increased enrollments. The District requested that unless evidence is given to establish that such actions are feasible in specific cases, that they not be included.

L.44. See response to Comment L.42 above.

This response is conclusionary and unsupported by factual information. The City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of

physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.45. Mr. Krupp's explanation of Proposition 170 and Senate Bill 1287 is acknowledged and incorporated into the environmental record for this project.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment.

L.46. The Draft EIR concludes that implementation of the proposed General Plan will not result in significant environmental impacts relative to school services. Mr. Krupp's comments regarding Proposition 170, regarding Opinion No. 30455 of the Legislative Council of the State of California and regarding the actions of the Board of Supervisors of Riverside County are noted and incorporated into the environmental record for this project.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment. The County of Riverside Resolution and the Legislative Council Opinion were introduced as a counterproposals to the DEIR and as such require a detailed reason for rejection.

The City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.47. Page 257 of the Draft EIR states that implementation of the General Plan would not result in a significant environmental impact relative to school services; consequently, no mitigation measures are required under Section 21002 of the CEQA Statute.

This response is conclusionary and unsupported by facts. The City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.48. Student generation identified in the Draft EIR takes into account projects which are under construction, projects approved but unbuilt, projects for which approval is pending and projects submitted for review but not yet approved. This information was calculated by applying anticipated dwelling unit yields to the acreage of vacant land by residential General Plan designation, based on the 1992 Vacant Land Inventory and by calculating potential residential yield associated with proposed land use changes on already developed parcels. There are no cumulative projects that are located outside the City's Sphere of Influence, but inside the District's boundaries.

L.49. The NOP response refers to the Mitigation Monitoring Program. This program is not included in the Draft Environmental Impact Report, but will be prepared prior to approval of the San Jose 2020 General Plan in conformance with the requirements of AB 3180. See also response to Comment L.47 above.

The Consortium is concerned that the Mitigation Monitoring Program has not been presented for review and that based on the inadequacy of the DEIR and response to comments, will not properly mitigate school impacts resulting from the Draft General Plan.

The reference to Response L.47 relies on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.50. Please see response to Comment L.18 above regarding pedestrian facilities. See response to Comment L.28 regarding park facilities.

Please see corresponding critiques. The issue of pedestrian and bicycle travel to and from school is not discussed with enough detail to assure the reader that safety of young adults has been considered in the DEIR.

L.51. The potential environmental impacts of the proposed General Plan relative to school facilities are addressed on pages 254-257 of the Draft EIR. The programmatic and fiscal impacts of the proposed project are not expected to result in a significant environmental impact on the Franklin-McKinley School District.

The potential environmental impacts are not adequately addressed on pages 254-256 of the DEIR. This response is conclusionary and unsupported by factual information. The City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

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L.52. School facilities are addressed on pages 250-258 of the Draft EIR. The EIR concludes that implementation of the General Plan will not result in a significant environmental impact relative to schools.

The discussion of schools on pages 250-258 is inadequate. This response is conclusionary and unsupported by factual information. The City is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].)

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

L.53. Table 34 on page 256 of the Draft EIR indicates the number of additional dwelling units within San Jose Unified School District assumed for each of the General Plan Alternatives as request in the District's NOP response. Generation rates provided by the District were applied to these dwelling unit yields to determine the number of additional students associated with each alternative. It is unclear how the additional enrollment figure of 10,208 included in this comment was calculated. See also response to Comment L.21 above.

The DEIR indicates that no generation rates were provided by San Jose Unified School District, but rather, generation rates assumed from other districts were applied. The 10,208 figure was computed using the accepted methodology approved by the State for making enrollment projection forecasts.

L.54. The Draft EIR addresses all of the significant environmental impacts associated with expansions of the Urban Service Area as proposed on the General Plan Alternatives. The Preferred Alternative identified by the City Council does not include development of the

Urban Reserves in the near term and includes only very minor expansions in the Urban Service Area.

Is the Consortium to conclude by this statement that the Almaden Valley Urban Reserve and its 2,000 dwellings is now not included in the Preferred Alternative, in significant contrast to Alternative 5. If this is the case, the Consortium clearly has not been provided with adequate detail regarding the Preferred Alternative and its associated impacts which are not addressed in the DEIR.

L.55. The traffic mitigation section (pages 120-123 of the Draft EIR) and the air quality mitigation section (pages 139-141) include extensive mitigation dealings with alternative modes of transportation, including pedestrian/bicycle uses and connections to mass transit. Policy 39 on page 122 specifically addresses development of a bikeway system that links parks and residences, employment centers, schools and transit facilities.

Parks services are addressed on pages 262-265 of the Draft EIR. The proposed General Plan uses residential population rather than employment as the basis for assessing parks needs. The preference of the County Parks Department for a system that uses both employment and residents in determining parks needs is acknowledged and incorporated into the environmental record for this project.

L.56. The Draft EIR addresses the impacts and mitigations of the General Plan alternatives at a level of specificity that is commensurate with the level of specificity of the General Plan itself. A General Plan is not a budget document, but is the long-range plan that guides future capital improvement programs and the annual budget process. A mitigation monitoring program will be adopted by the City Council prior to approval of the General Plan in conformance with the requirements of AB 3180.

However, implementation responsibilities are a necessary part of a General Plan. In addition, the City has a responsibility to ensure that proposed transportation improvements designed to mitigate traffic impacts exist concurrent with development, hence the need for a schedule of improvements.

L.57. The revisions to the proposed General Plan goals and policies that have occurred since the Draft EIR was circulated for public review do not constitute significant changes in the project and do not result in significant new impacts that were not addressed in the Draft EIR. Most of these revisions consist of minor clarifications and rewordings, or provide additional mitigation. None of the revised policy language warrants recirculation of the Draft EIR.

The critical importance of having the correct, approved major strategies, and goals and policies lies in the fact that they constitute, and are in essence, the "Project" according to the Description of the Proposed Project in the EIR and the Project Description in the Notice of Preparation.

L.58. At the time the General Plan is considered for approval by the City Council it will include updated appendices.

Inclusion of updated appendices after certification of the DEIR does not allow for review or analysis in the DEIR, or for public comment. Since at least one of the appendices, City owned

park lands, is the subject of the comments, the DEIR makes inappropriate and incorrect analysis of the environmental impact of the Draft General Plan because the appendices are incomplete, outdated, and missing. These appendices will constitute "significant" new information being added to the EIR and require recirculation.

L.59. The preferred alternative as identified by the City Council would not result in any additional impacts that have not been addressed in the Draft EIR. The City Council's preferred alternative anticipates less residential growth by 2020 than Alternative 5 (approximately 52,000 residential units as compared to the 58,000 addressed in Alternative 5) and would result in lesser impacts than are identified in the Draft EIR for this alternative. The analysis included in the EIR, therefore, represents a worst case analysis of the impacts of the City Council's Preferred Alternative.

This statement is conclusionary and unsupported by factual information. Since no analysis has been made in the DEIR of the preferred alternative, it cannot be concluded that the impacts are less. While the total number of units may be lower, their location and increased concentration may have an adverse impact on schools. No analysis of the change between Alternative 5 and the Preferred Alternative has been made or presented to the public for review and comment as required in CEQA and the CEQA Guidelines.

L.60. The Planning Commission and the City Council have taken actions to select a preferred alternative. Once the Environmental Impact Report is complete, the Planning Commission will make recommendations to the Council regarding the proposed General Plan and the City Council will take action to approve or deny the proposed San Jose 2020 General Plan. Mr. Krupp's objection to the City's General Plan Update process is noted.

The fact that the Planning Commission and the City Council have taken actions to select a preferred alternative during the public review period, and that the Preferred Alternative is different than any of the alternatives assessed in the DEIR, makes the DEIR inadequate and requires that the DEIR be recirculated.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment.

L.61. Please see response to Comments L.58 and L.59 above.

The fact that the Planning Commission and the City Council have taken actions to select a preferred alternative during the public review period, and that the Preferred Alternative is different than any of the alternatives assessed in the DEIR, makes the DEIR inadequate and requires that the DEIR be recirculated.

L.62. The proposed General Plan is not expected to "...(d)isrupt or divide the physical arrangement of an established community..."; "...(c)onflict with established recreational, educational, religious or scientific uses of the area..."; or "...cause substantial adverse effects on human beings, either directly or indirectly." Please see also response to Comment L.21 above.

The response is conclusionary and unsupported by factual information. The Draft General Plan will disrupt or divide the physical arrangement of established community as a direct result of the need to construct new schools within existing neighborhoods to accommodate student growth from the General Plan. The established educational uses of the area, including school attendance areas and the whole concept of neighborhood schools will be changed, and the existence of inadequate schools resulting from increased enrollments caused by the General Plan will have a substantial adverse effect on human beings, the students who will have to attend the inadequate schools. The City's response is conclusionary and unsupported by factual information.

L.63. Page xxxii of the Summary has been revised in Section III of this Amendment to identify the concern regarding school financing and the choice among alternatives.

L.64. The Planning Commission and City staff have considered all of Mr. Krupp's comments on the General Plan. The Responses to comments on the Draft EIR are contained in this Amendment. The Planning Commission will consider both the comments and responses prior to making a decision on the adequacy of the EIR.

The responses to comments are inadequate and do not represent good faith, reasoned response. The responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15088. The comments are generally conclusionary in nature and unsupported by facts. It appears that the City has merely made a half-hearted attempt to make some sort of general response to the comments without the required good faith analysis effort. The impression of the Consortium is that the City has made a predetermined decision on the environmental impact in order to meet a predetermined, arbitrary adoption schedule for the General Plan Update. Section 15088 of the CEQA guidelines states:

§ 15088

a) The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections. In particular, the major environmental **issues raised when the Lead Agency's position is at variance with recommendations and <u>objections</u> raised in the comments <u>must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusionary statements unsupported by factual information will not suffice.</u>** (emphasis added)

c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the test of the draft EIR, the Lead Agency should either:
(1) Revise the text in the body or the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

L.65. Mr. Krupp's recommendation that the General Plan be denied and his recommended General Plan text changes are acknowledged and incorporated into the environmental record for this project.

The responses to the comments on the DEIR have not been prepared in accordance with the CEQA Guidelines, Section 15088. The comments are generally conclusionary in nature and unsupported by facts. It appears that the City has merely made a half-hearted attempt to make some sort of general response to the comments without the required good faith analysis effort. The impression of the Consortium is that the City has made a predetermined decision on the environmental impact in order to meet a predetermined, arbitrary adoption schedule for the General Plan Update. Section 15088 of the CEQA guidelines states:

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   (1) Revise the text in the body or the EIR, or
   (2) Include marginal notes showing that the information is revised in the response to comments.

In its response to comments, the City has in numerous instances responded with the statement that the comment is acknowledged or the comment is acknowledged and incorporated into the environmental record for this project. When asked at the December 1, 1993 Planning Commission public hearing to clarify the meaning of the response for the public record, Ms. Carol Hamilton, answering on behalf of the City at the request of the Planning Commission, indicated that the statement meant the City did not have to respond to the applicable comment. When further questioned if the same meaning applied specifically to proposed response L.65,

Ms. Hamilton affirmed her statement. This section of the comments (page 57 of the DEIR Comments of the Consortium) stated:

...The Consortium hereby makes the following counterproposals to the DEIR and its mitigation measures:

1) Deny the Draft General Plan because the impacts on schools are not adequately mitigated to a level of insignificance, or

2) Incorporate the following text changes to the Draft General Plan:....

The City's failure to respond to a significant number of the Consortium's comments along with its public statement that its does not have to respond to those comments which were summarily dismissed with the statement that "the comment is acknowledged and incorporated into the environmental record for this project" **CLEARLY IS A DIRECT CONTRADICTION TO THE PROVISION OF CEQA, THE CEQA GUIDELINES, AND CASE LAW. This is especially true when the since the one of the areas of comment was the Consortium's counterproposal to the project and its mitigation measures.**

The discussion following CEQA Guidelines states "The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project." Discussion following CEQA Guidelines, Section 15088; Environmental Protection Information Center v. Johnson ("EPIC") (1st Dist. 1985) 170 Cal.App.3d 604, 627 [216 Cal.Rptr. 502]; and Gallegos v. California State Board of Forestry (1st Dist. 1978) 76 Cal.App.3d 945, 952-955 [142 Cal.Rptr. 86].) Section 15088, subd. (a) of the CEQA Guidelines state the in the final EIR, the lead agency must evaluate and respond to all the comments on the DEIR it receives within the public review period. **THE CITY OF SAN JOSE DOES NOT HAVE THE AUTHORITY TO ARBITRARILY DECIDE WHICH COMMENTS IT WANTS TO EVALUATE AND RESPOND TO, AS IT HAS DONE IN ITS PROPOSED RESPONSE TO COMMENTS. CONTRARY TO THE CITY'S STATEMENTS ON THE PUBLIC RECORD, IT MUST RESPOND TO ALL COMMENTS MADE.**

L.66. *The purpose of all Home-Based-School trips is transportation between residences and school facilities.*

The model does not account for court ordered desegregation, magnet schools or any other of the myriad and everchanging factors that could effect traffic patterns associated with individual land uses assumed in the model. The total of 85 bus routes reported by the San Jose Unified School District, many of which do not involve p.m. peak hour trips, represent a minute portion of the total 500,000 peak hour trips addressed in the model. An increase in the number or length of bus trips for even a very large school district like San Jose Unified would not result in perceptible changes in the modeling results.

The Traffic generation for elementary and middle schools is based on rates used for government offices. This methodology results in worst case traffic conditions since these schools generate less p.m. peak hour traffic than are assumed for government office uses.

The high school portions of the Education Parks are treated as special generators. Traffic generation for the middle school portions is based on the rates assumed for government office uses.

The Coyote Valley Urban Reserve is not proposed for development within the timeframe of the 2020 Plan. Three surplus school sites located in southern Almaden or within the Almaden Urban Reserve continue to be modeled as elementary schools. Even if this were not the case, schools do not generate significant numbers of p.m. peak hour trips.

Additional school sites may be identified in the future that are not currently designated for school uses in the General Plan. The absence of these school uses in the traffic analysis does not result in an underestimation of traffic impacts because schools are not significant p.m. peak hour traffic generators and because traffic generation assumptions made for each parcel of land within the City's Sphere of Influence is based on current General Plan designations. Future changes in the model to reflect new school sites would be expected to result in increases in traffic for some sites and decreases for others, depending on the previous land designation.

If schools are not significant p.m. peak hour traffic generators, when why are high schools modeled as special generators? And, while individual schools may not be significant p.m. peak hour traffic generators, the cumulative impact of the addition of the significant number of schools that will be necessary to accommodate the increased number of students generated by the Draft General Plan may be significant. The DEIR has not analyzed this cumulative impact of future elementary, middle and high schools.

L.67. The Draft EIR addresses the existing setting information for schools at a level of specificity that is appropriate to the level of specificity of a General Plan.

The City has divided the Consortium's comment into sections to which the individual responses do not address the entire comment. The existing setting information for schools is inadequate, inaccurate, and not in compliance with CEQA.

The Existing Setting section on Schools is inadequate and inaccurate and does not comply with the provisions of CEQA and the CEQA Guidelines, Section 15125 which state:

§ 15125

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State

Implementation Plan once adopted), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basion. San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

Subsection (c) reflects the decision in Environmental Information and Planning Council v. County of El Dorado (1982) 131 Cal.App. 3d 350, which held that in comparing an old general plan, the EIR had to address the existing level of actual physical development in the county's the base line for the comparison. The two plans could not be compared with each other without showing how the would relate to the existing level of development.

Where a proposed project is an agency decision changing planning or zoning designations such as the General Plan Update, the project's potential impacts should not be compared only with those that would ultimately occur under existing plans. Rather, such an analysis should focus on "existing physical conditions" before comparing the eventual future conditions that would result under either approach. (CEQA Guidelines, Section 15125, sub. (c), and discussion following thereafter; Environmental Planning and Information Council v. County of El Dorado (3d Dist. 1982) 131 Cal.App.3d 350, 354 [182 Cal. Rptr. 317]; City of Carmel-by-the-Sea v. Board of Supervisors (6th Dist. 1986) 183 Cal.App.3d 229, 246-247 [227 Cal.Rptr. 899]; Christward Ministry v. Superior Court (4th Dist. 1986) 184 Cal.App.3d 180, 190-191 [228 Cal.Rptr. 868]; but compare Schaeffer Land Trust v. City Council (6th dist. 1989) 215 Cal.App.3d 612, 622-627 [263 Cal.Rptr. 813]; and Benton v. Board of Supervisors (1st dist. 1991) 226 Cal.App.3d 1467, 1482-1483 [277 Cal.Rptr. 481].)

L..68. The Draft EIR has been revised in Section III of this amendment to include a ranking of school district size based on enrollment.

This response is part of the above critique.

L.69. The information included in the schools setting section was provided by the School Districts themselves. See also response to Comment L.21 above.

The CEQA Guidelines requires that the City prepare the EIR with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of the environmental consequences. The CEQA Guidelines further require the DEIR to be prepared by competent individuals. Obviously, it is possible and reasonable to expect that the City employ individuals to prepare the DEIR who understand school issues and who would be able to properly analyze the data provided by the various school districts. The professional staff of Consortium's representative deal with numerous school districts throughout the State on a daily basis and have no trouble obtaining consistent and parallel data regarding capacity and enrollment because of its competency in dealing with such data. This is especially true of enrollment data which is published by the State of California on a regular basis and is available for the asking.

Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to

comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools. It is clearly evident that the preparers of the DEIR and the response to comments do not have the required understanding of schools and school issues. Additionally, as stated in the discussion following Section 15142, an EIR must use many disciplines in order to find the interrelationships among the various factors in the environmental effects. The requirement for an interdisciplinary approach is also part of NEPA> Accordingly, this requirement comes from the legislative history of CEQA. This section also makes the essential point that an EIR must consider qualitative factors as well as quantitative, economic, and technical factors. These factors have not been considered in the DEIR or the response to comments.

Section 15142 of the CEQA Guidelines states:

§ **15142**

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or require undertake this evaluation.

The failure of the DEIR to provide data on the existing setting makes the DEIR and its analysis inadequate. Section 15151 of the CEQA Guidelines states:

§ **15151**

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible, Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The DEIR and the response to comments have not complied with either of these requirements of the CEQA Guidelines and are therefore inadequate.

The City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided in the response to the NOP. Just because the data the City received was not in a format that the preparers of the DEIR could readily apply to the analysis, the City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

L.70. Page 250 of the Draft EIR has been revised in Section III of this Amendment to correctly reference Table 34.

L.71. The City does not anticipate an increase in average household size over the timeframe of the proposed General Plan. This is consistent with projections prepared by the Association of Bay Area Governments. Proposed job growth resulting from implementation of the San Jose 2020 General Plan is not expected to generate additional students above and beyond those associated with new residential units.

This response is conclusionary and unsupported by factual information. Job growth resulting from the San Jose 202 General Plan can be expected to generate additional students above the beyond those associated with new residential units.

L.72. Inter-district transfers as a result of the Allen Bill do not appear to have resulted in significant increases in student populations within school districts serving San Jose. Alum Rock School District has indicated that in the 1993-94 school year 21 students transferred into the District and 189 transferred out. East Side Union High School District identified 0 transfers in and 5 out. Oak Grove School District reported 38 transfers in and 144 out. San Jose Unified School District reported 222 transfers in and 168 out in the 1992/93 school year. Data for San Jose Unified was unavailable for the 1992/93 school year.

L.73. It was assumed that the student generation figures provided by the school districts are average generation rates that account for all types of housing.

L.74. See responses to Comments L.71-L.73 above.

L.75. Comment noted.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment.

L.76. Table 34 has been revised in Section III of this Amendment to include the student generation rates provided by the school districts. Student generation rates to be used in preparing the Draft EIR <u>were</u> requested from <u>each</u> school district. None of the school districts that provided generation rates indicated that these rates were inappropriate for the purpose of estimating future student growth associated with the proposed General Plan. For school districts that did not have such rates or did provide them as requested, the rates identified at the bottom of Table 34 were used. Mr. Krupp's recommended methodology for estimating student generation is noted and incorporated into the environmental record for this project.

The City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided in the response to the NOP. Again, just because the data the City received was not in a format that the preparers of the DEIR could readily apply to the analysis, the City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by

competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

L.77. Information included in the schools setting section was based on information provided by the school districts. The text of the Draft EIR has been revised in Section III of this Amendment to reflect new information that has been verified by the school districts.

The existing setting section is still inadequate. The City as Lead Agency has a responsibility to seek to gain further information other than the initial data provided in the response to the NOP. The City is not relieved of its responsibility to address the requested scope and content or to adequately analyze the impact. Had the City employed individuals competent and familiar with school issues and data, they would have been able to obtain the necessary data. Section 15142 of the CEQA Guidelines requires that the EIR, and by inference, the response to comments, be prepared by competent individuals, in the case of addressing school issues, individuals who understand the complex range of issues related to schools.

L.78. See response to Comments L.28 and L.29 above.

The Consortium's comment addresses that fact without disclosure of the level of shortfall of City owned parkland, it is not possible to determine the impact of the policy. As such, no analysis of the impact of the General Plan policies on both new and existing development has been made. CEQA Guidelines, Section 15125 requires that a DEIR "must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective. Where a proposed project is an agency decision changing planning or zoning designations, its potential impact should not be compared only with those that would ultimately occur under existing plans. Rather, such an analysis should focus on "existing physical conditions" before comparing the eventual future conditions that would result under either approach (CEQA Guidelines, Section 15125, subd, (c), and Discussion following thereafter).

To the extent that the City does not have parkland available, which as discussed in the Critique of Response L.28 above has not been disclosed or considered in the DEIR, this policy allows credit for school playfields toward the achievement of level of service benchmarks to used to evaluate major land use or policy changes as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed when in fact these facilities may not, as quantified in the Consortiums comment, do not exist in sufficient amounts to make this a reasonable and implementable policy.

L.79. See response to Comment L.26 above.

L.80. The analysis of potential school impacts is based on a summary of dwelling unit projections proposed in the San Jose 2020 General Plan. Based on an analysis of the potential cumulative effects of implementation of the General Plan, the EIR concludes that the proposed Plan would not result in significant cumulative environmental impacts relative to schools; consequently, no mitigation is required.

The City continues to maintain in its response to comments on the DEIR that the impacts of the Draft General Plan on schools are not significant despite substantial written documentation of the Consortium's contention of physical, financial, and social impact on the districts. As such, the City

has not provided any mitigation measures to address the impacts identified by the Consortium. This action by the City is contrary to the intent and requirements of CEQA, the CEQA Guidelines, and case law. Specifically, Section 15064 of the CEQA Guidelines states:

§ 15064

c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected. If the Lead Agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the Lead Agency **shall regard the effect as adverse**.

The City of San Jose has incorrectly made the finding that the impacts of the Draft General Plan on schools are not significant without first defining the meaning of significant or determining the qualitative and quantitative threshold which establishes when an impact becomes significant.

L.81. The Draft San Jose 2020 General Plan is not entirely consistent with the adopted Horizon 2000 General Plan. The purpose of this General Plan Update is to revise the adopted Horizon 2000 Plan. The proposed changes to the Plan are described in Section I of the Draft EIR. The impacts of implementing the proposed Plan as compared to the existing Plan are described in Section III of the Draft EIR.

CEQA, CEQA Guidelines, and Title 21, Environmental Clearance Ordinance provide that the must be consistency with Federal, State. Local. and Regional Plans, and Goal and Policies of the General Plan. Section 15125 of the CEQA Guidelines states:

§ 15125

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or Sate Implementation Plan once adopted), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains. (emphasis added)

Section II, Consistency with Federal, State, Local, and Regional Plans, Goals and Policies does not provide any discussion on the inconsistencies between the Draft General Plan and the existing Horizon 2000 General Plan of San Jose. Significant portions of the new language proposed by the Draft General Plan directly contradict general plan language found elsewhere in the existing General Plan and proposed to be kept in the Draft General Plan. The Goals and Policies of the existing General Plan and those proposed in the Draft General Plan are inter- and intra-inconsistent with each other. Inconsistencies between the Project and any such plans dictate that its impacts would be considered significant. (CEQA Guidelines, Appendix G, subd. (a).)

Additionally, the DEIR does not provide any assessment of the consistency of the Draft General Plan with adopted School District Master Plans or Deferred Maintenance Plans governing the local and regional jurisdictions of the nineteen school districts serving San Jose.

L.82. The Draft EIR discusses all of the significant land use impacts associated with implementation of the General Plan alternatives.

As commented, the DEIR fails to consider or disclose the potential impacts of the Draft General Plan's Goals and Policies on residential development. As an example, the Land Use section of DEIR does not consider the implication of Community Development, Land Use, Residential Land Use, Policy 1, which states:

> Residential development at urban densities (one dwelling unit per acre or greater) should be located only where adequate services and facilities can be feasibly provided.

As one follows the public services- and school-related goals and policies in the San Jose 2020 Draft General Plan the inclusion of language relative to schools and public facilities are first mentioned in the General Plan in Section A., "City Concept" Sub-Section 1 which states:

A. CITY CONCEPT...

1. Urban Conservation

Goal: Improve the existing quality of life and create a stable, mature community.

Policies:

1. In the development review process and in designing service and capital facility programs, the City should strive to create an environment in which the highest value is placed on people.

2. The City should encourage new development which enhances the desirable qualities of the community and existing neighborhoods.

The Consortium believes that both of these policies reinforce the importance of schools in the development review process, as quality schools are a desirable characteristic of the San Jose community and its existing neighborhoods.

Sub-Section 3 of Section A, "City Concept" states:

3. Neighborhood Identity

Goal: Enhance the sense of neighborhood identity in San Jose

Policies:

3. Public and private development should be designed to improve the character of existing neighborhoods. Factors that cause instability or create urban barriers should be removed.

This policy limits development if it will not improve existing neighborhoods. If new residential development will not improve the characteristics of a neighborhood, such as creating overcrowded

conditions in neighborhood schools which decreases the quality of local education, then the development should be redesigned or eliminated.

Policy 4 of Sub-Section 3, of Section A, "City Concept" states:

4. Neighborhoods should include places for interaction among residents such as parks, community centers, schools, commercial areas, churches, and other gathering points.

This comment emphasizes the importance of quality school facilities in existing and planned neighborhoods.

The next goals relating to schools/public services and facilities is found under Section B., "Community Development," as follows:

B. COMMUNITY DEVELOPMENT

1. Land Use

a. Residential Land Use

There are a wide variety of residential neighborhoods in San Jose, each with its own character defined by setting, housing types, densities, and, in some cases, cultural heritage. The environment and livability of existing residential neighborhoods are an intangible but important community resource to be preserved. Similarly, these qualities should be fostered in future neighborhoods. To this end, the Residential Land Use goals and policies reflect concerns for the protection and neighborhoods from incompatible land uses, the adequacy of public facilities and services, and the protection from hazards.

The Residential Land Use policies also reflect the City's objectives to promote higher density residential development in the future than was typical in the past. This objective recognizes that remaining vacant land resources are finite and should be used as efficiently as possible, that the relative affordability of housing is enhanced by higher densities given the rising price of land, and that higher densities given the rising price of land, and that higher densities make the delivery of public services more cost effective...

Goal: Provide a high quality living environment in residential neighborhoods.

Policies:

1. Residential development at urban densities should be located only where services and facilities can be provided...

9. When changes in residential densities are proposed, the City should consider such factors as neighborhood character and identity, compatibility of land uses and

impact on livability, impacts on services and facilities including schools, and impacts on traffic levels on both neighborhood streets and major thoroughfares... [emphasis added]

To this point in the Goals and Policies, no exclusion of school services and facilities from the terms "services" and "facilities" has been made. Therefore, clearly it is the intent of the Draft General Plan Goals and Policies to include all public services and facilities, including schools, fire, police, libraries, etc., in policies relating to "services" and "policies."

This being the case, under this Policy 1 of the Community Development Section, Land Use, Residential Land Use, unless the impacts of development in overcrowded school districts are mitigated as part of the general plan, residential development of one dwelling unit per acre or greater will not be allowed, especially in the downtown area and in areas of large scale new development.

The DEIR fails to address the need for adequate school facilities when considering new residential development in places where there are currently not sufficient school facilities (i.e., the Coyote and South Almaden Valley Urban Reserves), and when residential densities are increased (i.e., General Plan Amendment, zone change, intensification corridors, redevelopment project areas, specific plans, and special areas such as is covered in the Downtown 2010 Strategy Plan).

Sub-Section 2, of Section B, Community Development states:

2. Economic Development

As outlined in the Background for Planning section of the Plan, San Jose has historically served as a bedroom community for employment located in other cities. The City has continually provided the bulk of the County's housing, particularly its lower cost affordable housing, but it has lagged behind the rest of the County in terms of job growth. This development pattern has contributed to County-wide traffic congestion conditions and has deprived the City of San jose os an adequate tax base for providing desired service levels since residential development by itself cannot generate sufficient revenues to pay for the service needs it generates. The Economic Development goals and policies are necessitated by an existing local government tax structure which requires cities to maximize tax revenue from non-residential development to support the services required by residential land uses...

Sub-Section 3, of Section B, Community Development states:

3. Urban Service Area

The City adopted a set of Urban Development Policies in 1970 to direct development to those areas where services and facilities could be provided. Because these policies deal with the timing and staging of development and are so closely related to other General Plan growth management policies, they were incorporated into the Plan in 1976. The Urban Service Area goals and policies address services provided by the City as well as those provided by other public agencies, such as flood control, public schools, and regional transportation.

This language states that the following goals and policies relating to the Urban Service Area also relate to those services provided by other public agencies including school districts. This connects schools to previous reference to services and facilities. The previously stated opinion that all language relating to "services" and "facilities" includes school services and facilities is reinforced in this section of the "Goals and Policies."

The goal of Sub-Section 3, Urban Service Areas of Section D, Community Development, states:

> **Goal:** Insure that San Jose's future growth will proceed in an orderly, planned manner in order to provide efficient and economical public service, to maximize the utilization of existing and proposed public facilities, <u>and to achieve the equitable sharing of the cost of such services and facilities</u>.

The term "equitable sharing" of the costs of such services and facilities is assumed to mean that the parties to development should pay their fair share of the costs of providing services and facilities, including school services and facilities, which is created by their projects.

The Policies section of Sub-Section 3, of Section B, Community Development state:

Policies:

1. The General Plan designates an Urban Service Area where services and facilities provided by the City <u>and other public agencies</u> are generally available, and where urban development requiring these services should be located.

As seen in the previously shown language in the description under Part 3., "Urban Service Area," it states, "<u>The Urban Service Area goals and policies address services provided by the City as well as those provided by other public agencies, such as flood control, public schools, and regional transportation.</u>" School services are considered in this section of "Goals and Policies" to be included as part of the services rendered in the Urban Service Area. Policy I further reinforces the nexus that school services and facilities "are included under public services and facilities."

Policy 2, Sub-Section 3, Section B states:

2. <u>The Urban Service Area should be expanded only when it can be demonstrated that existing facilities and services are available and adequate to serve the proposed expansion area. If existing facilities are not adequate, alternate consideration may be given to proposed facilities in the adopted Capital Improvements Program or similar programs of other agencies. If existing and/or proposed facilities are not adequate to serve the proposed expansion area, the Urban Service Area may be expanded if it can be demonstrated that all necessary facilities will be provided by the developers</u>...

School services are part of the Urban Service Area, as demonstrated previously. The Draft General Plan specifically calls for the consideration of services and facilities, including schools, in areas outside the City's Urban Service Area, such as the Coyote and South Almaden Valley Urban Reserves. Therefore, if the City opens the Urban Reserve areas to new residential

development pursuant to the Draft General Plan, it can only be done by expanding the City's Urban Service Areas which requires either:

a) Adequate school facilities and services are available to serve the expansion areas, or
b) Parties to development must ensure that they will provide all necessary facilities.

The above sections from the "Goals and Policies" Section reinforce the Draft General Plan's intent of treating school services and facilities in the same manner as other services provided by the City of San Jose in the Urban Service Area. As mentioned, Policy 3 of "Urban Service Area" states, "The Urban Service Area should be expanded only when it can be demonstrated that existing facilities and services are available and adequate to serve the proposed expansion area...If existing and/or proposed facilities are not adequate to serve the proposed expansion area, the Urban Service Area may be expanded if it can be demonstrated that all necessary facilities will be provided by the developers."

In sum, these passages mean that the Draft General Plan's consideration of development in rural areas, such as the Coyote Urban Reserve or the South Almaden Valley Urban Reserve, currently outside of the Urban Service Area, without providing for an adequate level of facilities, including school facilities, to serve this new area(s), then the development should not occur until such a level of facilities is existing or measures to ensure provision of such facilities are provided by the parties to development. The Draft General Plan includes development within the Urban Reserves which are currently outside of the City's Urban Service Area and contain no actual or proposed school facilities with which to house those new students generated from residential development of these areas.

All told, the Preferred Alternative of the Draft General Plan will generate approximately 58,000 additional residential units within the existing and proposed expansion of the Urban Service Areas.

Additionally, the lack of plans for new school facilities, including the planning, financing, or construction of these facilities, is not addressed in the DEIR. **The DEIR is inadequate in its disclosure of impacts.**

L.83. Comment noted.

As entered into the public record by Ms. Carol Hamilton, City of San Jose Planning Department, at the direction of the Planning Commission, on December 1, 1993, this means the City does not have to respond to the Consortium's comment. This response refers to the background information relative to the above comment.

L.84. See response to Comment L.21 above.

Response L.21 does not address this comment which is combines comments parts of 3I, 3J, and 3K together. The comments stand and remain unaddressed with no response.

GENERAL PLAN ALTERNATIVE 5
IMPACT ON SCHOOL DISTRICT CAPACITY

	Existing		Alternative 5			
School District	District Instructional Capacity	Current Enrollment (CBED)	District Estimated Additional Enrollment	Percent Increase Enrollment	Capacity Surplus/ (Deficit)	Percent Capacity Surplus/ (Deficit)
Alum Rock Union	17,465	16,105	932	5.79%	428	2.45%
Berryessa Union	9,378	8,558	1,138	13.30%	(318)	(3.39%)
East Side Union High	22,292	20,722	5,289	25.52%	(3,719)	(16.68%)
Oak Grove	12,951	12,283	3,623	29.50%	(2,955)	(22.82%)
Orchard	375	390	927	237.69%	(942)	(251.20%)
San Jose Unified *	32,489	29,500	10,208	34.60%	(7,219)	(22.22%)
CONSORTIUM TOTAL	94,950	87,558	22,117	25.26%	(14,725)	(15.51%)

NOTES:

* Capacity based on court order

SOURCE: Alum Rock Union, Berryessa Union, East Side Union High, Oak Grove, Orchard, and San Jose Unified School Districts; Draft Environmental Impact Report for the San Jose 2020 General Plan; 1992 Year End CBEDS; Community Systems Associates, Inc.

Community Systems Associates, Inc.

1982 - 1992
10
YEARS OF EXCELLENCE
Community Systems Associates, Inc.

October 30, 1993

Ms. Carol Hamilton
City of San José
Department of City Planning and Building
801 North First Street
San José, California 95110-1795

SUBJECT: Comments on the San José 2020 General Plan
Draft Environmental Impact Report (SCH No. 92123085)

Comments from
Alum Rock Union School District
Berryessa Union School District
East Side Union High School District
Oak Grove School District, and
San Jose Unified School District

Dear Ms. Hamilton:

Community Systems Associates, Inc. ("CSA") has been retained by **Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Oak Grove School District, and San Jose Unified School District** (jointly referred to as the "Consortium") to represent them jointly in reviewing the proposed San José 2020 General Plan Update (referred to herein as "Project"), to provide public hearing testimony before the City of San José Planning commission ("Planning Commission") and City Council ("City Council") in order to protect and preserve the Consortium's administrative and legal remedies, to provide the City of San Jose ("City") with the information supporting the Consortium's contentions of the impact of the Draft General Plan on the Consortium, and to enable the Consortium to consistently and effectively participate in the Draft General Plan amendments adoption and the environmental review process. L.1.

The Consortium represents five of the nineteen school districts serving the City of San José with enrollments totaling 87,000 students, or 48% of the total school enrollment in the City of San José. Ranked by student enrollment, the Consortium represents the three largest School Districts in the City (San Jose Unified, East Side Union High, and Alum Rock Union) along with the seventh and eleventh largest school districts (Oak Grove and

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Berryessa Union, respectfully). Even more importantly, more than 74% of all of the additional residential units proposed by the Draft General Plan (43,259 of 58,300 residential units proposed) will be located within the jurisdictions of the Consortium members. L.1.

The Consortium received the San Jose 2020 General Plan Update Draft Environmental Impact Report ("DEIR"), dated September 13, 1993, on September 24, 1993. The Consortium notes that the City is requesting that written comments be submitted to the Department of City Planning and Building by November 3, 1993 in order to be included in the EIR and to be considered by the Planning Commission at the Public Hearing tentatively set for December 1, 1993. The Consortium also notes that the DEIR was received by the State Clearinghouse on September 17, 1993 and that the mandatory forty-five day public review period for DEIR's submitted to the State Clearinghouse ends November 1, 1993. The Consortium points out that the time available for its review and comment on the DEIR was shortened by seven (7) days due to the delay in delivery to the Consortium of the DEIR. L.2.

The Consortium requested in its certified correspondence to the City of San Jose and the State Clearinghouse of October 21, 1993, that the public review period be extended beyond the 45-day period. This request, made in accordance with the provisions of the cover letter attached to the DEIR, cited the Consortium's two-fold reason for the time extension request. First, the inadequacy of the DEIR, the failure of the DEIR to provide even precursory discussion of schools and the impacts on schools, and the overall inaccuracy of the DEIR as exemplified by data discussing the existing setting of schools, has necessitated extensive and detailed comments from the Consortium. Second, the City of San Jose Planning Commission is still in the process of selecting the preferred alternative, refining the goals and policies, and making other substantial changes to the Draft General Plan that are different than the DEIR contents. The Consortium contends that these changes, modifications, and refinements are in essence changes to the "project" as described in the DEIR. Until a stable, accurate, consistent, and finite project description can be provided by the City, the Consortium asserts that it cannot properly provide detailed comments to the DEIR. L.3.

The Consortium received a response from the State Clearinghouse that it does not have the authority to extend the public review period beyond the November 1, 1993, date. As of Saturday, October 30, 1993, the last day available to the Consortium to make comments and still be assured that they are received by the State Clearinghouse by November 1, 1993 (Monday) in order for the comments to be considered timely and responsive, the Consortium has received only a verbal communication (October 27, 1993) from the City that a letter with a response to the Consortium's request would be sent. The Consortium can only speculate that the City intends to deny the request as the letter has not yet been received. The Consortium alleges that the City has been deliberately L.4.

non-responsive in considering the Consortium's request with the hope of invalidating the Consortium's concerns by limiting the time available for review and comment. Therefore, the Consortium is submitting the enclosed comments based on its review of the incomplete materials received, made within a time period less than the mandatory 45-day public review period. The Consortium reserved the right to make additional comments during the two-day period between November 1, 1993 (the end date of the public review period with the State Clearinghouse) and November 3, 1993 (the comment submission date to the City per the DEIR cover letter) and additional comments beyond those submitted to the State Clearinghouse appear in these comments. L.4.

This letter and the enclosed comment document are submitted to the City of San Jose and the State Clearinghouse to protect and preserve its administrative and legal rights and remedies of the Consortium members, both collectively and individually. The enclosed document presents the comments of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Oak Grove School District, and San Jose Unified School District (jointly referred to as the "Consortium") relative to the Draft Environmental Impact Report for the San Jose 2020 General Plan, SCH No. 92123085.

These comments are made collectively by the Consortium based on their common basis as school districts serving the City of San Jose with mutual concerns; however, these comments should also be considered as the comments of the school districts as individual responsible agencies. Therefore, ten (10) days prior to certification of the final Environmental Impact Report, the City is required and requested to provide "a written proposed response to a public agency on comments made by that agency" in conformance with CEQA standards, to each individual school district of the Consortium. (Public Resources Code Section 21092.5a) L.5.

The comments of the Consortium are made based on the six separate policy grounds justifying the requirement that lead agencies must seek and respond to public comments as articulated by the courts, and restated by the CEQA Guidelines: 1) "sharing expertise"; 2) "disclosing agency analysis"; 3) "checking for accuracy"; 4) "detecting omissions"; 5) "discovering public concerns"; and 6) "soliciting counterproposals." The comments made in this letter are to be part of the public participation process and are made by the Consortium with the intent that they be made an integral part of the (final) EIR as established by case law. (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (3rd Dist. 1981) 122 Cal.App.3d 813, 820 [176 Cal.Rptr.342].)

In reviewing and analyzing the DEIR, the Consortium has used the numbers provided in the DEIR. This does not imply that the Consortium accepts the accuracy and correctness of the DEIR numbers, specifically the allocation of dwelling units among districts and the L.6.

number of students to be generated which the Consortium contends are inaccurate and understated.

The Consortium's responsibility, as indicated in the above paragraph, is to share expertise, check for accuracy, detect omissions, relate public concerns, and provide counterproposals based on the City of San Jose' analysis as disclosed in the DEIR. **It is not the responsibility of the Consortium to rewrite the EIR, provide the analysis, correct inaccuracies in the data, or to provide the omitted data. THOSE TASKS ARE THE RESPONSIBILITY OF THE CITY OF SAN JOSE, AS LEAD AGENCY, AND MUST BE PROVIDED AS PART OF THE (FINAL) EIR.** As the Consortium has previously made known to the City of San Jose, both in writing and through public testimony, it feels that based on the significant amount of new information which needs to be added to the DEIR, recirculation will be required. L.6.

Generally, the Consortium's comments are divided into three broad groups: 1) Procedural inadequacies and errors; 2) The need to recirculate the EIR; and 3) Inadequacies in information, analysis and findings of DEIR. Under each of the three broad groups of comments, sub-groupings are categorized and lettered. Individual comments are then listed under each sub-grouping and numbered for ease of identification and to facilitate verification that each individual comment has received a response.

The Consortium does incorporate herein by reference:

1) The Draft San Jose 2020 General Plan dated October, 1993, as proposed by the San Jose 2020 General Plan Update Task Force; L.7.

2) The Horizon 2000 General Plan for the City of San Jose adopted by the San Jose City Council on November 7, 1984, and amended on December 10, 1992;

3) Title 18 and Title 21 of the City of San Jose Municipal Code;

4) All of the technical reports, letters, and memorandums prepared by the departments of the City of San Jose, including but not limited to the Department of Planning and Building and the Office of the City Attorney as presented to the San Jose 2020 General Plan Update Task Force during their deliberations on the preparation of the Draft San Jose General Plan;

5) September 13, 1993 Memorandum of the City Attorney to the San Jose 2020 General Plan Task Force regarding School Mitigation Policy;

6) May 29, 1992 Memorandum of the City Attorney to the School Impact Task Force regarding Legal Analysis;

7) October 6, 1993 Memorandum of the Co-Chairs of the San Jose 2020 General Plan Update Task Force to the Mayor and Members of the City Council regarding the Draft San Jose 2020 General Plan;

8) Opinion No. 30455 of the Legislative Counsel of the State of California dated December 4, 1992 regarding School Facility Fees;

9) October 21, 1993, certified correspondence to Ms. Carol Hamilton, City of San Jose, requesting an extension of time to prepare comments;

10) October 21, 1993, certified correspondence to Mr. Mark Goss, State Clearinghouse, requesting an extension of time to prepare comments;

11) October 18, 1993, correspondence to Ms. Carol Hamilton, City of San Jose, notice of timing of submission on comments;

12) October 18, 1993, correspondence to Ms. Carol Hamilton, City of San Jose, notice of opinion that the DEIR will need to be recirculated; and L.7.

13) October 13, 1993 written testimony of the Consortium to the Planning Commission.

These written comments are presented to the City of San José and the State Clearinghouse for the purpose of establishing the public record for the Consortium, and to protect and preserve the individual and collective administrative and legal remedies of the school districts within the Consortium. Attached, you will find the detailed comments of the Consortium which are to be considered and addressed in the EIR. Thank you for your consideration of our concerns.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President

MBK:dmd:mg
1182deir2020.dmd

cc: Mr. Mark Goss
State Clearinghouse
(under separated cover)

Ms. Linda Latasa
Alum Rock Union School District

Mr. Patrick Allen
Berryessa Union School District

Mr. Paul Fettig
East Side Union High School District

Mr. Hardy Childers
Oak Grove School District

Ms. Cathy Masters
San Jose Unified School District

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Memorandum to Mayor and City Council from Co-Chairs, San Jose 2020 General Plan Update Task Force

A.B. 1287

A.C.A. 6

COMMENTS ON THE SAN JOSE 2020 GENERAL PLAN DRAFT ENVIRONMENTAL IMPACT REPORT SCH NO. 92123085

Basis and Standing for Making Comments

The Consortium does hereby make the following comments regarding the San Jose 2020 General Plan Update Draft Environmental Impact Report (SCH # 921230885) as proposed by the City of San José. The Consortium's standing for making comments lies in the fact that the five school districts which jointly comprise the "Consortium" are "responsible agencies" as defined by CEQA. The school districts, Alum Rock Union, Berryessa Union, East Side Union High, Oak Grove, and San Jose Unified are also public agencies having jurisdiction by law with respect to the project, and local agencies which exercise authority over resources which may be affected by the project.

These comments are made based on the six separate policy grounds justifying the requirement that lead agencies must seek and respond to public comments as articulated by the courts, and restated by the CEQA Guidelines: 1) "sharing expertise"; 2) "disclosing agency analysis"; 3) "checking for accuracy"; 4) "detecting omissions"; 5) "discovering public concerns"; and 6) "soliciting counterproposals." The comments made in this letter are to be part of the public participation process and are made by the Consortium with the intent that they be made an integral part of the (final) EIR as established by case law. (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (3rd Dist. 1981) 122 Cal.App.3d 813, 820 [176 Cal.Rptr.342].)

L.9.

Comments

Description of the Comment Identification System

This document presents the comments of Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Oak Grove School District, and San Jose Unified School District (jointly referred to as the "Consortium") relative to the Draft Environmental Impact Report for the San Jose 2020 General Plan, SCH No. 92123085. These comments are made collectively by the Consortium based on their common basis as school districts serving the City of San Jose with mutual concerns; however, these comments should also be considered as the comments of the school districts as individual responsible agencies. Therefore, ten (10) days prior to certification of the final Environmental Impact Report, the City is required to provide "a written proposed response to a public agency on comments made by that agency" in conformance with CEQA standards to each individual school district. (Public Resources Code Section 21092.5a)

The Consortium's comments are divided into three broad groups:

Group One: Procedural inadequacies and errors;
Group Two: The need to recirculate the EIR; and
Group Three: Inadequacies in information, analysis and findings of DEIR

Under each of the three broad groups of comments, sub-groupings are categorized and lettered. For example, under Group One, the first sub-grouping is identified as:

1A. The DEIR has not been prepared in accordance with CEQA, CEQA Guidelines, or Title 21, Environmental Clearance Ordinance.

Individual comments are then listed under each sub-grouping and numbered. The first individual comment for sub-group 1A is shown as:

1A1. The Notice of Preparation was not written so as to provide the Consortium with sufficient information to enable them to make meaningful responses to all of the alternatives proposed.

When an individual comment has multiple, specific parts, with each specific part requiring a separate response, the specific part comment is identified with a sub-letter. An example of a list of a multiple, specific part comment is:

1A6(a). The DEIR does not address traffic impacts resulting from growth, roadway changes, and changes in transit facilities affecting the District's schools. L.10.

This system has been used for ease of identification of the vast number and range of comments necessitated by the inadequacies, inaccuracies, and omissions of data in the DEIR, and to facilitate verification that each individual comment, or separate part of the individual comments, has received a response. The listing of the three broad groups is not intended to be construed as the limit of the Consortium's comments. The groupings are merely general classifications to ease the understanding and organization of the Consortium's comments to the Draft Environmental Impact Report. Under each of the three broad groups of comments, sub-groupings are categorized and lettered. Like the broad comment groups, the sub-groups are not intended to be interpreted as the limit of the Consortium's response.

Responses to comments which merely address the three broad comment groups or sub-groups and do not respond separately to the individual comments, and where identified, the specific parts of individual comments, will be non-responsive and inadequate. The written responses must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. (CEQA Guidelines, Section 15088, subd. (b).)

Group One: Procedural Inadequacies and Errors

1A. The DEIR has not been prepared in accordance with CEQA, CEQA Guidelines, or Title 21, Environmental Clearance Ordinance.

The DEIR has not been prepared in accordance with the California Environmental Quality Act, Public Resources Code 21000 et seq., the Guidelines for Implementation of the California Environmental Quality Act, and Title 21, Environmental Clearance Ordinance (Ordinance 22344, adopted September 16, 1986) of the City of San Jose.

1A1. The Notice of Preparation was not written so as to provide the Consortium with sufficient information to enable then to make meaningful responses to all of the alternatives proposed. Section 15082 of the CEQA Guidelines states:

§ **15082** L.11

(a)(1) The Notice of Preparation shall provide the Responsible Agencies with sufficient information describing the project and the potential environmental effects to enable the Responsible Agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project.

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

The DEIR is based on a Project Description which differs substantially from the Project Description used on the Notice of Preparation. The Project Description cited in the Notice of Preparation of an Environmental Impact Report for the proposed San Jose 2020 General Plan Update, December 1992, is as follows:

PROJECT DESCRIPTION

The City of San Jose is currently updating its Horizon 2000 General Plan (planning area shown on the attached map). This involves an update and refinement of the major strategies, goals and policies contained in the Horizon 2000. Additional strategies related to housing and/or a sustainable city concept (promoting resource conservation such as wastewater reclamation, encouraging solar power use, promote efficient use of urban services, "in-fill housing," and preserving housing stock, etc.) may also be introduced into the General Plan. L.12

The city is proposing three growth alternatives for the General Plan Update. The first alternative is an extension of the existing General Plan to 2010, with no significant changes to policies or land use. The second alternative allows for residential development within the City's Urban Reserves prior to meeting the prerequisite establishment of 25,000 jobs in the Coyote Industrial Area. This second alternative adds 18,000 dwelling units to the City's existing 52,000 unit residential holding capacity for a total of 70,000 units. The third alternative assumes that no urban development occurs in the Urban Reserves by 2010. This third alternative also adds 18,000 dwelling units (as in the second alternative) and relocates 11,000 dwelling units designated within the Urban Reserves to elsewhere within the City's Urban Service Area. Potential land use changes could include the conversion of land designated for non-residential use to residential use, and the allowance of substantial intensification along major transportation corridors.

However, the Project Description in the DEIR proposes more than an update and refinement of the major strategies, goals and policies contained in the Horizon 2000 and the addition of strategies related to housing, a sustainable city concept, and the allowance of substantial intensification along major transportation corridors based on three (3) specific growth alternatives. The DEIR describes the project as also including changes to the Land Use/Transportation Diagram, changes to the text of the General Plan under the categories for: Urban Services, Economic Development, Jobs/Housing Balance, Open Space, Air Quality, Transportation/Congestion Management, Housing, Water Quality and Water Supply, Land Use, and Natural Resources. The Project Description goes on to further identify two additional growth alternatives Alternative 4 and Alternative 5 which are described as follows: L.12.

Alternative 4 would allow for the development of about 64,000 new residential units in San Jose. This total includes the 52,000 residential units currently allowed for within the existing General Plan plus an additional 12,000 units. Alternative 4 would add about 11,000 units to the North Coyote Valley Urban Reserve allowing for the development of 20,000 units within the Urban Reserve. Alternative 4 would also add 1,000 units by converting two non-residential or lower density residential sites to high density residential uses.

Alternative 5 would allow for the development of about 58,300 new residential units in San Jose. This total includes 43,000 residential units currently allowed for within the existing General Plan plus an additional 15,300 units within the City's Urban Service Area. These 15,300 units would be accommodated by adding residential uses or increasing the density of residential uses along existing corridors of development and by converting lands designated for non-residential or lower density residential uses to high density residential uses. Alternative 5 would also eliminate the development criteria established for the South Almaden Valley Urban Reserve set forth in the existing General Plan, allowing the 2,000 units in this Urban Reserve to be planned for and subsequently developed at any

time. Alternative 5 also includes three transportation improvements in the North San Jose area. These improvements are 1) widening of Tasman Drive, 2) widening and extension of Charcot Avenue, and 3) extension of Orchard Parkway.

The Consortium finds that these additional changes not previously identified as part of the Project Description along with the inclusion of two additional alternatives, Alternatives 4 and 5, represents a significant change from the Project Description identified in the Notice of Preparation to which the individual Consortium members responded as part of the scoping process. The impacts of Alternatives 4 and 5 on the Consortium as associated with the provision of adequate schools to house the students, in the locations proposed under Alternative 4 and 5, are significant and would have resulted in additional responses regarding the scope and content of the DEIR based on the Consortium agencies' areas of expertise and are required to be carried out by or approved by the Consortium agencies. Alternative 5 also calls for transportation improvements not identified as part of the project in the Notice of Preparation. The omission of Alternative 5 is particularly important because Alternative 5 is identified under the text of "The Planning Process" section of the DEIR as the growth alternative that the Task Force selected to form the basis of the San Jose 2020 General Plan. L.12.

1A2. The DEIR is inadequate and not legally sufficient because the Project Description is unstable, inaccurate, not consistent, and not finite as established by case law.

The project description must be accurate and consistent. Case law has found that "an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (3d Dist. 1977) 71 Cal. App.3d 185, 193 [139 Cal.Rptr. 396]; Santiago County Water district v. County of Orange (4th Dist. 1981) 118 Cal.App.3d 818, 830 [173 Cal.Rptr. 602].

L.13.

In the discussion following Section 15124, the CEQA Guidelines state:

> This section requires the EIR to describe the proposed project in a way that will be meaningful to the public, to the other reviewing agencies, and to the decision-makers.... the statutory points of analysis need to be supplemented with a project description for the analysis to make sense.

Because the City of San Jose Planning Commission has continued to modify, refine, and change the project at public hearings during the 45-day public review period, the project description in the DEIR is not the final project to be approved by the Lead Agency, making review of the DEIR meaningless.

1A3. The DEIR's required statement describing the intended uses of the EIR is inadequate and incomplete. L.14.

Section 15124 of the CEQA Guidelines states:

§ 15124

Project Description

... (d) A statement briefly describing the intended uses of the EIR.
(1) This statement shall include, to the extent that the information is known to the Lead Agency,
(A) A list of the agencies that are expected to use the EIR in their decision-making, and
(B) A list of the approvals for which the EIR will be used.
(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project. (emphasis added)

The DEIR is inadequate and vague in describing the intended uses of the EIR. First, the DEIR has not provided a list of agencies that are expected to use the EIR in their decision-making. The DEIR merely states that the EIR will be used by the City of San Jose, LAFCO, and surrounding jurisdictions and responsible agencies. Instead, the DEIR should at a minimum identify those surrounding jurisdictions which immediately border the City and those responsible agencies having jurisdiction within the City, which the City knows, as evidenced through its mailing of the Notice of Preparation. L.14.

Second, the DEIR does not provide a clear list of the approvals for which the EIR will be used. No information is provided regarding the adoption and approval process of the General Plan, or related text amendments and changes to the General Plan Land Use/Transportation Diagram. The DEIR should provide a detailed list of the various approvals and decisions, in the order in which they will occur, and by which body, (i.e., Planning Commission, or City Council, LAFCO, etc.), for the San Jose 2020 General Plan Update Process. Additionally, the DEIR should provide a list of all subsequent approvals required for implementation of the General Plan.

This listing is important to the reviewer in order to have a full understanding of the approval process and its timing. Since the process being used by the City has, as stated by City Staff and the City Attorney at the October 13, 1993 Planning Commission public hearing in response to a question from the Planning Commission, "never been done this way before," it should be outlined. L.15.

1A4. The inadequacies of the list of approvals in the project description fails to provide a clear understanding of the adoption and approval process for which the DEIR is to be used.

The Consortium questions how the public is supposed to understand the process when the City has demonstrated that even it fails to understand the General Plan adoption and review process. Had such a listing been made, the Consortium feels that the City clearly would not have inappropriately held public hearings during the 45-day public comment period to approve changes to the Draft General Plan without the benefit of the required environmental documentation. A list of actions, in order, by decision making body, must be identified in the EIR. L.15.

1A5. The DEIR fails to address requested scope and content as required by law.

The DEIR fails to address the scope and content of the environmental information related to the Consortium's and other Responsible Agencies' area of statutory responsibility as identified in the Responses to the Notice of Preparation submitted to the City of San Jose within the 30 day response period. Section 15082 of the CEQA Guidelines states:

§ 15082

(b) Response to Notice of Preparation. Within 30 days after receiving the Notice of Preparation under subsection (a), each Responsible Agency shall provide the Lead Agency with specific detail about the scope and content of the environmental information related to the Responsible Agency's area of statutory responsibility **which must be included in the draft EIR.** (emphasis added) L.16.

As evidenced by Appendix A of the DEIR, the City of San Jose received responses from twenty-one (21) agencies. For the most part, the City of San Jose ignored the scope and content requests of these agencies. The comments which follow provide specific examples of the City's failure to include these areas in the DEIR, making the DEIR inadequate and not in compliance with Section 15082 of the CEQA Guidelines.

1A6. The DEIR fails to address the requested scope and content of Alum Rock Union School District.

In its response to the Notice of Preparation, dated January 25, 1993, (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) the **Alum Rock Union School District** made the following scope and content requests:

1) Traffic impacts resulting from growth, roadway changes, and changes in transit facilities affecting the District's schools. L.17.

1A6(a). The DEIR does not address traffic impacts resulting from growth, roadway changes, and changes in transit facilities affecting the District's schools.

2) Pedestrian safety for children walking to their neighborhood schools which presently range up to two miles. L.18.

1A6(b). The DEIR does not address pedestrian safety for children walking to their neighborhood schools. L.18.

3) Noise impact on schools. Where noise becomes an issue, the District would expect mitigation measures for the protection for the learning environment.

1A6(c). The Noise impact analysis portion of the DEIR does not respond to the District's requested scope and content relative to noise.

The Noise impact analysis portion of the DEIR does not respond to the District's requested scope and content relative to noise and is inadequate because it is based on a noise analysis prepared for the San Jose 2020 General Plan Update which was not prepared in accordance with The City of San Jose Municipal Code, Title 18, Local Planning, Chapter 18.08, Section 18.08.030, Mandatory Elements Designated (G) which states:

> **§ 18.08.030**
>
> **(G)(4)**
>
> The contours shall be shown in minimum increments of 5db and shall continue down to 60db. For areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction, the noise exposure shall be determined by monitoring. L.19
>
> **(G)(5)**
>
> A part of the noise element shall also include the preparation of a community noise exposure inventory, current and projected, which identifies the number of persons exposed to various levels of noise throughout the community.

Appendix G, Noise Analysis, prepared by Illingworh & Rodkin, Inc., did not involve any monitoring of noise levels. Instead existing noise levels along the major roadways in San Jose were calculated using methods outlined in Federal Highway Administration (FHWA) Report FHWA RD-77-108. According to the description in the Noise Impact Assessment, this model calculates roadside traffic noise levels based on average vehicle noise emission levels for three classes of vehicles: automobiles, medium trucks, and heavy trucks. Traffic noise levels were computed for roadways which have a peak hour volume of 1,000 trips or greater. The requirement that determination of noise exposure for areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction by monitoring has not been complied with as required by The City of San Jose Municipal Code for inclusion into the General Plan.

In addition, a community noise exposure inventory, showing current and projected conditions, identifying the number of persons exposed to various levels of noise throughout the community has not prepared as required by the Municipal Code. L.19.

4) Air quality impacts on the District's schools.

1A6(d). The DEIR fails to address air quality impacts on the District's schools. L.20.

5) The impact of students being exposed to hazardous materials either through their proximity to school sites or by walking through contaminated areas to get to school.

1A6(e). The DEIR fails to address the impact of students being exposed to hazardous materials either through their proximity to school sites or by walking through contaminated areas to get to school.

6) The impact of increase housing which has a direct impact on schools.

1A6(f). The DEIR is inadequate in its response to the issues regarding the impact of increased housing (and students generated by that housing) on schools.

The DEIR is inadequate in its response to the issues regarding the impact of increased housing (and students generated by that housing) on schools. The DEIR assumes that merely identifying the proposed increases in residential units and estimating the number of new students generated in each affected school district for the General Plan Update alternatives provides a complete analysis of the impacts of the General Plan Update on the school districts. This is equivalent to assuming that just identifying the volumes of traffic and the streets where those volumes will occur provides a complete traffic analysis of the impacts of the General Plan Update. Clearly, this is not the case with traffic, and it is not the case with school impacts. L.21.

The DEIR fails to identify the total instructional capacity of the school districts, the current enrollments within the school districts, the amount of additional instructional capacity (surplus or deficit) available in the schools districts, development fees to be generated, the shortfall in fees, or the net cost to the school districts. Instead, the following non-quantified, general statements are made in the DEIR on pages 250 through 254, regarding the capacity of the school districts:

> Alum Rock Elementary School District: The District is presently operating below its maximum capacity, although two elementary schools, Linda Vista and Shields, are at or slightly above capacity.

Berryessa Union School District: The schools in the Berryessa District are currently at capacity.

Cambrian Elementary School District: District studies have found that the District will exceed its facility capacity during the 1994-1995 school year.

Campbell Union Elementary School District: The District anticipates that schools serving San Jose will be at or exceed their capacities by 1996-1997.

Campbell Union High School District: The District is presently operating below capacity.

Cupertino Union High School District: According to the district, enrollment growth resulting from new residential development would require additional classroom space beyond current capacity.

East Side Union High School District: According to the district's study *Overview of Residential Development Impacts*, short term growth may be accommodated in additional portable classrooms, but maximum school capacity with portable would be exceed in the long term. L.21

Evergreen School District: Limited capacity is available at existing schools in the Evergreen District by adding portables, etc.

Franklin-McKinley School District: The District is currently at capacity and is on year-round education.

Fremont Union High School District: Additional school capacity is currently available.

Luther Burbank School District: This school has come excess capacity.

Moreland School District: Schools in this district currently have additional capacity.

Morgan Hill Unified School District: Additional capacity is available in the elementary schools. The middle schools are currently near capacity, and the high schools are projected to be at capacity by 1997.

Mt. Pleasant Elementary School District: Currently, capacity exceeds enrollment.

Oak Grove School District: Schools in this District may have additional capacity.

Orchard School District: This school is currently over capacity.

San Jose Unified School District: District-wide capacity is approximately 31,800 students. The elementary and middle schools in this District are currently near capacity; high schools currently have some additional capacity.

Santa Clara Unified School District: The elementary and middle schools in this District currently have additional capacity; high schools are at capacity.

Union School District: Additional capacity is available at schools in this District.

L.21.

This analysis of the Existing Setting clearly does not allow for an understanding of the capacity, excess or deficit, of the 19 school districts. A quantitative figure of district capacity is only given in one instance, for San Jose Unified School District, and that figure is inaccurate. The Court recognized instructional capacity, under the District's Desegregation Order, for San Jose Unified School District, is 32,489. Without District instructional capacity figures and corresponding enrollment figures, it is impossible to understand the existing setting or to make any assessment of the impact of the General Plan Update's impact on schools.

Clearly, even the writers of the DEIR did not have enough information to make a determination if any of the school districts had sufficient capacity to serve additional students generated by the General Plan Update alternatives. The DEIR states on page 254:

IMPACTS

Five of the 19 affected school districts **may** have capacity to serve additional students generated by the General Plan alternatives. These districts are Alum Rock, Campbell Union High School, Luther Burbank, Moreland, and Mt. Pleasant. All other districts do not currently have sufficient capacity to accommodate projected growth under the General Plan alternative. School capacities are determined by the districts using State guidelines based on a complete inventory of all space available at a school site. (emphasis added)

L.22.

What was the DEIR's basis for making the claim that five school districts may have capacity to serve additional students generated by the General Plan alternatives? What magnitude of capacity is available within the District; capacity for one (1) student or the total students projected? Is this accretion made solely based on the relatively low numbers of students estimated to be generated within the school districts? The basis for the DEIR's determination that the identified districts may have capacity is unsubstantiated and not readily identified in the DEIR. Table 34, "Estimated Student Generation within School Districts From New Residential Development," only shows projections for the five districts which the DEIR states may have additional capacity. Without knowing the amount of the districts instructional capacity, current enrollment, and instructional capacity available, the DEIR's claim cannot be substantiated or verified.

Additionally, the statement on how school capacities are determined is inaccurate in that it is incomplete. There are distinctions among the way capacity is determined depending on the type of capacity to be used: the instructional capacity, the physical capacity, or the maximum physical capacity of a school site.

L.23.

Maximum Physical Capacity is the most students that a site can accommodate in accordance with the Bureau of School Planning recommendations when there are **no special instructional program requirements and the maximum building are on the site**.

Physical Capacity is the number of students a site can accommodate **given a specified instructional program** and the maximum buildings the site will hold.

Instructional Capacity is the number of students a site can accommodate **given a specified instructional program** and the **buildings on that site at a given time**.

To accurately reflect the existing setting, the DEIR must provide quantified Instructional Capacity data for each school district.

The DEIR states on page 254:

> Although implementation of the General Plan Update would increase the number of students served by school districts in San Jose, this is not considered a significant *environmental* impact to the provision of adequate school services.

The DEIR is relying on the notion that impacts that are solely economic in nature are not considered "significant" effects of the environment. However, "CEQA does not focus exclusively on physical changes, and it is not exclusively physical in its concern." (Discussion following CEQA Guidelines, § 15131.) Thus, if a physical change will cause economic impact, then the impact should be considered. In addition, "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, § 15131, subd. (b); *see also Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 169-171 [217 Cal.Rptr. 893]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 445-446 9243 Cal.Rptr. 727].) L.24.

The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." This focus on physical changes is further reinforced by Sections 21100 and 21151.

Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly

or indirectly. This section was added to CEQA by AB 889, chapter 1154 of the Statutes of 1972.

> **§ 21083 (c)**
>
> While effects on facilities or services are not automatically regarded as significant effects of a project; **if the project causes physical changes that affect the use of the facility, the effects on use may be considered a significant effect in the same way as increases in traffic are often treated as significant effects.** (emphasis added)

L.24.

The DEIR falsely make the conclusion and states on the page 258:

> **Implementation of the General Plan Update would not result in a significant environmental impact upon school services.**

The analysis in the DEIR cannot support this conclusion. School facilities will be severely and adversely impacted by the number of new students that will be generated as a result of the General Plan Update. The DEIR fails to make any estimate of the level of impact on school districts. It suggests that the only acceptable method of offsetting a project's effect on the adequacy of school facilities is the collection of school impact fees. However, the DEIR does not estimate the amount of fees that would be raised or calculate the adequacy or shortfall of these fees to mitigate the impact of new students. Using the estimated number of students to be generated from new residential development shown on Table 34, the significance of the impact, as a percentage of increase from existing enrollment, can be demonstrated. The table on the following page shows this impact. Under each of the five Growth Alternatives, between nine (9) and eleven (11) of the 19 school districts will experience a growth in students in excess of 10% of the district's current enrollment. Growth Alternatives 3 and 5 have two (2) districts experiencing student generation in excess of 40% over existing enrollments while Growth Alternatives 1, 2, and 4 have three (3) school districts experiencing this level of increased students. Undeniable significant impacts associated with the General Plan Update of increases of greater than 25% of the District's current enrollments are found in all categories. Growth Alternative 2 shows Evergreen School District impacted by a 56.74 % increase, Orchard School District impacted by a 58.96% increase, and Morgan Hill Unified School District impacted by a 81.82% increase over current student enrollment levels. Growth Alternative 3 projects even higher impacts on Evergreen School District and Orchard School District of 59.92 % and 89.35 % respectively. The projection for Growth Alternative 4 shows Morgan Hill Unified School District being impacted by students 24.81% greater than the current enrollment of the District. Growth Alternative 5 has six (6) Districts experiencing growth greater than 25% of their present enrollments.

L.25.

GENERAL PLAN GROWTH ALTERNATIVES IMPACT ON SCHOOL DISTRICT CAPACITY

		Alternative 1		Alternative 2		Alternative 3		Alternative 4		Alternative 5	
School District	Current Enrollment (CBEDS)	Additional Enrollment	Percent Increase	Additional Enrollment	Percent Increase	Additional Enrollment	Percent Increase	Additional Enrollment	Percent Increase	Additional Enrollment	Percent Increase
Alum Rock Elementary	16,105	430	2.67%	828	5.14%	895	5.56%	430	2.67%	590	3.66%
Berryessa Union	8,558	1,095	12.80%	1,369	16.00%	1,149	13.43%	1,095	12.80%	1,095	12.80%
Cambrian Elementary	2,621	290	11.06%	290	11.06%	290	11.06%	290	11.06%	290	11.06%
Campbell Union Elementary	6,647	153	2.30%	474	7.13%	838	12.61%	153	2.30%	333	5.01%
Campbell Union High	6,403	335	5.23%	736	11.49%	1,084	16.93%	335	5.23%	586	9.15%
Cupertion Union	12,906	55	0.43%	87	0.67%	798	6.18%	55	0.43%	615	4.77%
East Side Union High	20,722	4,499	21.71%	5,848	28.22%	6,930	33.44%	4,517	21.80%	5,289	25.52%
Evergreen	9,924	3,987	40.18%	5,631	56.74%	5,946	59.92%	5,946	59.92%	3,987	40.18%
Franklin-McKinley	9,919	2,965	29.89%	2,965	29.89%	2,965	29.89%	2,965	29.89%	2,965	29.89%
Fremont Union High	13,000	47	0.36%	75	0.58%	705	5.42%	47	0.36%	542	4.17%
Luther Burbank	325	1	0.31%	1	0.31%	1	0.31%	1	0.31%	1	0.31%
Morland	3,872	10	0.26%	16	0.41%	17	0.44%	10	0.26%	17	0.44%
Morgan Hill Unified	9,052	5,138	56.76%	7,406	81.82%	98	1.08%	11,298	124.81%	98	1.08%
Mr. Pleasant Elementary	2,556	113	4.42%	113	4.42%	113	4.42%	113	4.42%	113	4.42%
Oak Grove	12,283	2,085	16.97%	2,452	19.96%	3,072	25.01%	2,085	16.97%	2,868	23.35%
Orchard	385	227	58.96%	227	58.96%	344	89.35%	227	58.96%	442	114.81%
San Jose Unified	29,500	6,381	21.63%	7,972	27.02%	7,090	24.03%	6,381	21.63%	7,996	27.11%
Santa Clara Unified	13,159	2,063	15.68%	2,432	18.48%	4,307	32.73%	2,063	15.68%	3,815	28.99%
Union	4,679	133	2.84%	228	4.87%	228	4.87%	133	2.84%	210	4.49%
DISTRICTS TOTAL	182,616	30,007	16.43%	39,150	21.44%	36,870	20.19%	38,144	20.89%	31,852	17.44%
COALITION TOTAL	87,168	14,490	16.62%	18,469	21.19%	19,136	21.95%	14,508	16.64%	17,838	20.46%

L.25.

GPIMPACT.XLS

03552

The General Plan Update's increases in residential densities will have environmental impacts on infrastructure (sewer, water, telephone, power, etc.), traffic, and noise related to existing schools and their sites. No consideration or provisions are made in the General Plan Update to assure that the proposed increases in residential densities, specifically the 58,000 additional residential units, will not diminish the ability of the Consortium to provide adequate school services and facilities based upon their present conditions. For example, increases in enrollments as a result of new residential development provided for by the Draft General Plan, may require site improvements at existing school facilities in order to accommodate the new students. However, the DEIR has not made any assessment of the adequacy of the existing infrastructure (sewers, water, telephone, power, traffic system, etc.) serving existing schools to accommodate the necessary expansion. L.26.

Additionally, the DEIR is inadequate and fails to substantiate the finding that there will not be significant noise impacts on the District. The noise analysis prepared for the San Jose 2020 General Plan Update was not prepared in accordance with criteria The City of San Jose Municipal Code, Title 18, Local Planning, Chapter 18.08, Section 18.08.030, Mandatory Elements Designated (G) which states:

§ 18.08.030

(G)(4) L.27.

The contours shall be shown in minimum increments of 5db and shall continue down to 60db. For areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction, the noise exposure shall be determined by monitoring.

(G)(5)

A part of the noise element shall also include the preparation of a community noise exposure inventory, current and projected, which identifies the number of persons exposed to various levels of noise throughout the community.

Appendix G, Noise Analysis, prepared by Illingworh & Rodkin, Inc., did not involve any monitoring of noise levels. Instead existing noise levels along the major roadways in San Jose were calculated using methods outlined in Federal Highway Administration (FHWA) Report FHWA RD-77-108. According to the description in the Noise Impact Assessment, this model calculates roadside traffic noise levels based on average vehicle noise emission levels for three classes of vehicles: automobiles, medium trucks, and heavy trucks. Traffic noise levels were computed for roadway which have a peak hour volume of 1,000 trips or greater. The for determination of noise exposure for areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes

long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction by monitoring have not been complied with as required by The City of San Jose Municipal Code for inclusion into the General Plan.

In addition, a community noise exposure inventory, showing current and projected conditions, identifying the number of persons exposed to various levels of noise throughout the community has not prepared as required by the Municipal Code. L.27.

7) The lack of other public services such as parks and park facility meeting centers which puts increased strain on the District's play fields and buildings for neighborhood gatherings and play areas.

1A6(g). The DEIR fails to address the lack of other public services such as parks and park facility meeting centers which puts increased strain on the District's play fields and buildings for neighborhood gatherings and play areas.

The DEIR fails to quantify the magnitude of the shortfall of park land to meet the service criteria. The DEIR not only fails to address the lack of parks and park facilities putting increased strain on the District's play fields and buildings, but it proposes General Plan goals and policies as mitigation measures to reduce potential park service impacts on the City which only serve to exacerbate the problem for the school districts. Specifically, Policy 16, Level of Service Policy for Services and Facilities states:

SERVICES AND FACILITIES
Level of Service Policy L.28.

Policy 16

Utilize the following Citywide level of service measures as benchmark to be used to evaluate major General Plan land use and policy changes, such as expansions of the Urban Service Area or land use changes from non-residential to residential:

- For parks and recreation: 3.5 acres of neighborhood and community serving recreational lands per 1,000 population of which a minimum is 1,5 acres of neighborhood, community or locally serving regional/City-wide park lands and up to 2 acres of school playgrounds, all of which is located within reasonable walking distance.

Table 36, Summary of Park Service Requirements, page 263, purports to show the entire need for substantial additional neighborhood and regional park land, and center space based on the City's level of service measures. However, the table bases its analysis assuming that the City presently meets its level of service measure for existing

development and that all the need for additional park land and center space will be associated with new development. However, in the same paragraph, the DEIR states that according to the City Department of Streets and Parks, the City does not presently meet the recommended level of service criteria for parks. So the extent of the additional park land and center space required to meet the General Plan level of service measures for parks has not be identified.

While no information is provided in the DEIR as to the existing amount of City-owned park land, the Consortium estimates that the City currently provides City-owned park land at a ratio of 1.3 acres per 1,000 population based on information cited in Final Report, San Jose 2020 General Plan Update Fiscal Impact Analysis, April 1993, page B-8. Using the City's 1990 U.S.. Census population of 825,411 and applying the 1.3 acres/1,000 population ratio, it is estimated that the current City-owned park land equals approximately 1,073 acres. To provide the level of service measure of 1.5 acres/1,000 population for the existing population would require the City to provide 1,238 acres of City-owned park iand. The City therefore, has an apparent existing shortfall of 165 acres just to provide City-owned park land for existing development at the proposed 1.5 acre/1,000 population ratio.

Table 36 should reflect the following information and then show the amount of surplus or deficit park land is available to meet the existing and new total park needs. (based on actual City-owned park land acreages which must to be provided in the EIR):

TABLE 36 (REVISED) L.28.

	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
LOS (3.5 ac/1,000)					
Existing	2,888.9 acres	2,888.9 acres	2,888.9 acres	2,888.9 acres	2,888.9 acres
Proposed	560.6 acres	754.6 acres	754. acres	689.8 acres	628.5 acres
TOTAL	3,449.5 acres	3,643.5 acres	3,643.5 acres	3,578.7 acres	3,517.4 acres
City Portion (1.5 ac/1000)					
Existing	1,238.1 acres	1,238.1 acres	1,238.1 acres	1,238.1 acres	1,238.1 acres
Proposed	240.2 acres	323.4 acres	323.4 acres	295.6 acres	269.3 acres
TOTAL	1,478.3 acres	1,561.5 acres	1,561.4 acres	1,533.7 acres	1,507.4 acres
School District Portion (2 ac/1000)					
Existing	1,650.8 acres	1,650.8 acres	1,650.8 acres	1,650.8 acres	1,650.8 acres
Proposed	320.4 acres	431.2 acres	431.2 acres	394.2 acres	359.2 acres
TOTAL	1,971.2 acres	2,082.0 acres	2,082.0 acres	2,045.0 acres	2,010.0 acres

Table 36 has underestimated the total acreage needed in the City-owned category to serve both existing development and new development proposed under the General Plan at the proposed level of service by approximately 165 acres for each alternative, or between 151.05% and 168.73%, depending on the Alternative. **The DEIR must identify and quantify the level of impact (in acres/square feet) on parks and center space for both new and existing development under the General Plan so that the full extent of the shortfall can be evaluated.** L.28.

Table 36 also shows that under this policy, school districts are expected to provide between 320- and 431-acres of school play fields at a ratio up to 25% greater than the ratio required of the City in order to meet the park level of service requirements for new development under the General Plan Update. Combined with the same ratio expectation for existing development, school districts are to provide between 1971- and 2082- acres of play fields.

Assuming that three elementary schools feed into each middle school and that two middle schools feed into each high school, an average school size in acres can be determined. Using the OLA site standards of 10 acres for elementary schools, 20 acres for middle schools, and 40 acres for high schools, the weighted average school size per grouping is 15.55 acres. [(10 + 10 + 10 + 10 + 10 + 10 + 20 + 20 + 40) / 9 = 15.55] It is important to note that many of the schools located within the City of San Jose do not meet the OLA site minimum requirements. The 320 to 430 acres identified as needed in the DEIR in school playgrounds to meet the General Plan Update level of service for parks would require the equivalent of 20 to 27 entire weighted average school sites. As identified above, to meet the total school district portion for both existing and new development at the standard proposed by General Plan Update would require between 1,971 and 2,082 acres of play fields. Using the same 15.55 acres per school, satisfaction of this level of service would require between 127 and 134 total average school sites.

From another perspective, the 19 school districts have a total of 241 schools within their jurisdictions, not all of which are located within the City of San Jose. Applying the following outdoor activity site criteria factors by school grade configuration, an estimation of the amount of play area available through the school districts can be developed. L.29.

ELEMENTARY

Facility	Acreage
Kindergarten: Paved, apparatus, turf area, sand pit, outdoor storage	0.15 acres
Hard Court: Volleyball, basketball courts, handball courts, apparatus area	1.5 acres

Field: Softball diamond, soccer, touch football	2.5 acres
TOTAL	4.15 acres per Elementary School

MIDDLE SCHOOL

Facility	Acreage
Hard Court: Volleyball, basketball courts, tennis courts, handball courts, conditioning bars	1.5 acres
Field: Softball diamond, baseball diamond, football field, running track, soccer field	6.5 acres
TOTAL	8.0 acres per Middle School

HIGH SCHOOL

Facility	Acreage
Hard Court: Volleyball, basketball courts, tennis courts, handball courts, conditioning bars	2.5 acres
Field: Stadium, softball diamond, baseball diamond, football field, running track, soccer field	12.0 acres
TOTAL	14.5 acres

L.29.

Using same elementary:middle school:high school ratio as above, the average outdoor site area available is 6.15 acres per school. [(4.15 + 4.15 + 4.15 + 4.15 + 4.15 + 4.15 + 8.0 + 8.0 + 14.5) / 9 = 6.15 acres] The 19 school districts have a total of 241 school sites within their jurisdiction. This includes schools within the schools districts, not located within the City (i.e., Cupertino Union School District which has 22 schools of which only four are located within the City of San Jose). Applying the weighted average outdoor site area of 6.15 acres per school to all 241 schools, the total of all existing land from all of the existing schools within all 19 school districts, regardless of whether the school is located in San Jose or not, available for use toward the General Plan parks level of

service is 1,483.5 acres to serve both existing and proposed new development within the City as proposed by the General Plan Update. As the revised Table 36 (above) shows, the amount of land available through the school districts is between 487.7 and 598.5 acres short of the amount needed to meet the level of service standard set by the General Plan Update and used as a mitigation measure in the DEIR. To meet the level of service measure would require between 320 and 338 school sites to provide enough play fields based on the weighted average play field size. This is between 80 and 97 more schools than 241 schools which currently exist in the combined 19 school districts serving San Jose.

More importantly, the lack of parks and park facility meeting centers which puts increased strain on the District's play fields and buildings for neighborhood gatherings and play areas **has not been addressed in the DEIR** as request by the District. Clearly, no one has bothered to even calculate or determine the level of impact.

The DEIR states on page 264:

> Implementation of the General Plan Update alternatives could further exacerbate the City's inability to meet these goals unless new strategies beyond existing funding mechanisms can be developed.

Assuming an average cost of land of $700,000 per acre (source: Final Report, San Jose 2020 General Plan Update Fiscal Impact Analysis, April 1993, page V-8) based on what the City has recently paid, on average, for land outside the Downtown area, the financial implications to the school districts for land alone to satisfy the General Plans level of service is: L.29.

ALTERNATIVE	LAND VALUE FOR NEW DEVELOPMENT	LAND VALUE FOR EXISTING DEVELOPMENT	LAND VALUE TOTAL
Alternative 1	$ 224,280,000	$ 1,155,575,400	$ 1,379,855,400
Alternative 2	$ 301,840,000	$ 1,155,575,400	$ 1,457,415,400
Alternative 3	$ 301,840,000	$ 1,155,575,400	$ 1,457,415,400
Alternative 4	$ 275,940,000	$ 1,155,575,400	$ 1,431,515,400
Alternative 5	$ 251,440,000	$ 1,155,575,400	$ 1,407,015,400

In addition, this policy implies that the school districts be responsible for maintenance of the these play fields. Using the City's current Budget figure which targets expenditure of $ 6,700 per park acre for maintenance costs (source: Final Report, San Jose 2020 General Plan Update Fiscal Impact Analysis, April 1993, Appendix B, page B-8) the districts are also expected to subsidize annual maintenance that would normally be required of the City for City-owned park land by the following annual amounts:

ALTERNATIVE	ANNUAL MAINTENANCE NEW DEVELOPMENT	ANNUAL MAINTENANCE EXISTING DEVELOPMENT	ANNUAL MAINTENANCE TOTAL
Alternative 1	$ 2,146,680	$ 11,060,507	$ 13,207,187
Alternative 2	$ 2,889,040	$ 11,060,507	$ 13,949,547
Alternative 3	$ 2,889,040	$ 11,060,507	$ 13,949,547
Alternative 4	$ 2,641,140	$ 11,060,507	$ 13,701,647
Alternative 5	$ 2,406,640	$ 11,060,507	$ 13,467,147

L.29.

The DEIR fails to disclose or discuss the legal ramifications and effects of its General Plan Update Policies on school districts. As a prime example, under mitigation in the Parks section, the DEIR makes the statements:

> **MITIGATION**
>
> The following General Plan goals and policies would reduce potential park service impacts.
>
> **AESTHETIC, CULTURAL AND RECREATIONAL RESOURCES**
> **Parks and Recreation**
>
> **Policy 18**
>
> The City should consider negotiating with property owners and local School districts in newly developing residential areas for the dedication of playground/recreation portions of future school sites to the City, providing for long term low cost leasing of these future school sites to the School Districts. Under this arrangement, when a School District declared a site as surplus the playground portions of it would automatically revert back to the City, ensuring its public use in perpetuity.

L.30.

This General Plan Update policy and mitigation measure represents a potential adverse, significant impact to the school districts serving San Jose. The implications associated with dedication of school playground areas to the City obviously are not understood by the City or the preparer of the EIR, and certainly the impacts of this mitigation measure have not been identified. For those school districts participating in the State School Construction Program, this policy severely complicates and may even preclude the Districts from gaining State Department of Education approval of new sites under the Leroy F. Greene Lease/Purchase Act. The State Department of Education is charged with approving sites following standards set forth in the California Education Code and School Site Analysis and Development guide of the Californian State Department of Education.

Additionally, because the school playgrounds would be leased and mandated for playground use, this policy would limit the school districts' options to manage their assets, expand or add additional facilities beyond initial construction, reconfigure the site utilization, or add portable classrooms.

From a practical standpoint, the School Site Analysis and Development guide states:

> Usually it is not possible to lay out required facilities such as play fields which have critical dimensioning and also critical relationships to other elements of the Master Plan in such a way that all elements fit together as pieces in a jigsaw puzzle. Even if this were possible, it would not be desirable. rectangular elements would require a rectangular site of exactly the right dimensions. Any natural attribute of the site, such as trees or knolls, would be sacrificed. There would be no space between various play areas for safety lanes and buffer areas to permit large groups of children to move freely on the site. Also, every site should have free sauce for the small undefined activities which invariably become necessary as the school is used.... L.30.

The guide further states:

> The table for determining site requirements includes a percentage factor which accounts for these various requirements and permits the layout of the programmed facilities. This factor varies from 30 percent for very small schools to 10 percent for large schools. This percentage factor varies because schools tend to grow and also because the more elements which are to be planned on a site, the greater the efficiency possible in placing these elements within the frame of the site boundaries.
>
> Some sites will require more land then recommended by the tables even though the acreage is defined as usable acres. Land in cuts, steep hills, gullies, creeds, scrub, marshlands, or in flooding areas is not considered usable land, although such land can contribute to the school plant. An excess of 30 percent of the site in such land is considered a serious liability in terms of site maintenance.

As can been seen from these excepts from the State guide, there is no practical way to determine the extent of land that would be required under this policy.

The DEIR states on the page 265:

> **Implementation of the General Plan Update would result in potentially significant impacts upon park services. (Alternatives 1,2,3,4,5)**

The Consortium finds that if implementation of the General Plan Update would result in potentially significant impacts upon park services as identified in the DEIR, and that if L.31.

school districts are expected to provide school play fields at a ratio 25% greater than the City is required to provide City-owned park land (at a magnitude of 487.7 to 598.5 acres more than currently even exists within all of the schools in all 19 school districts) in order for the City to meet its General Plan park level of service measures as proposed as a mitigation measure, then **Implementation of the General Plan Update would result in significant impacts upon schools. (Alternatives 1,2,3,4,5)** L.31.

1A7. The DEIR fails to address the requested scope and content of the City of Morgan Hill.

City of Morgan Hill, in its January 25, 1993, response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) made three specific comments, second of which stated:

2) The public services section of the EIR should address specific impacts upon schools within the Morgan Hill Unified School District. The School District boundary includes all of the Coyote Valley.

1A7(a). The public services section of the EIR fails to address specific impacts upon schools within the Morgan Hill Unified School District. L.32.

Consistent with the DEIR failure in addressing specific impacts upon schools in other districts, the DEIR provides no estimate of impact other than as estimated number of students to be generated. The DEIR is inadequate and fails to identify the total instructional capacity of the school districts, the current enrollments within the school districts, the amount of additional instructional capacity (surplus or deficit) available in the schools districts, development fees to be generated, the shortfall in fees, or the net cost to the school districts.

1A8. The DEIR fails to address the requested scope and content of Cupertino Union School District.

Cupertino Union School District requested in the District's response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) that the DEIR note the implications for schools within the community. The District identified the four (of 18) District schools located within the City of San Jose, three elementary and one middle school. The District stated that any change in the General Plan that would increase residential density within District boundaries could significantly impact the District. The District's response also stated that the District has classrooms to accommodate anticipated growth resulting from the rising student yield form existing homes. However, enrollment growth from new housing development will require additional classroom space beyond current capacity. Finally, the District noted that it receives additional state funding for instruction program costs (e.g., teachers and books), but that the state does not fund facility costs arising from enrollment growth. L.33

1A9. The DEIR fails to address the requested scope and content of East Side Union High School District. L.33.

East Side Union High School District's response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) made nine specific scope and content of analysis requests and identified two related issues for inclusion in the DEIR. The response noted that the proposed project may have a significant adverse impact on the environment as high school facilities are not available and must be constructed (a physical impact), additional school bus miles may be driven (a potentially significant impact on air quality and traffic) and the absence of adequate school facilities potentially may cause a hardship on the human environment. The District requested the following: L.34.

1) Project description should clearly indicate the potential number of housing units by type (e.g., by General Plan or zoning category or by reference to prototype examples in existing developments). Text should include best available information on expected development timeline (i.e., number of units by type by year or time period).

1A9(a) The DEIR fails to clearly indicate the potential number of housing units by type (e.g., by General Plan or zoning category or by reference to prototype examples in existing developments).

The DEIR identifies single-family and multi-family units based on zoning density. However, no distinction is made as to the characteristics of multi-family or single-family, important information to know when determining student generation. The DEIR makes the following definition of single- and multi-family units as note 2 to Table 34:

> **Single Family Dwelling Units** are dwellings proposed in land use designations of 8 D.U./acre or less *and* two-thirds of the dwelling units in the 8-16 D.U./acre designation. **Multiple Family Dwelling Units** are dwellings proposed with land use designations of 12 D.U./acre or more and one-third of the dwelling units in the 8-16 D.U./acre designation. L.35.

This characterization of single versus multi-family does not accurately assist in the identification of student generation characteristics and therefore is meaningless to the analysis and definition of unit type. The relevant distinction between the dwelling unit types is based on size and configuration. As an example, it is incorrect to assume that a 2,500 square foot townhouse type dwelling unit developed at a density of 12 D.U./acre will generate fewer students than a 1,000 square foot detached dwelling unit developed at 6 D.U./acre. Yet that is exactly the analysis the DEIR has made. Under its classification the 2,500 s.f. townhouse is multiple family and the 1,000 s.f. dwelling is single family with a generation factor of .34 greater than the much larger unit. This is

totally incorrect and presents a distorted and understated picture of the number of the number of students to be generated.

L.35.

1A9(b) The DEIR does not include best available information on expected development timeline (i.e., number of units by type by year or time period).

No information relative to timing of development is made in the DEIR.

2) Text should state the expected number of pupils by applying the ratio of 0.20 high school age pupils per home.

1A9(c) The DEIR is inadequate despite applying the ratio of 0.20 per estimated dwelling unit.

The DEIR is inadequate because it assumes that the simple application of a student generation factor to determine generated students presents the full impact of the Draft General Plan on schools. The DEIR fails to identify the total instructional capacity of the school districts, the current enrollments within the school districts, the amount of additional instructional capacity (surplus or deficit) available in the schools districts, development fees to be generated, the shortfall in fees, or the net cost to the school districts. L.36.

3) Availability of sites for new schools and classrooms should be based on current information from the East Side Union High School District.

1A9(d) The DEIR fails to address the availability of sites for new schools and classrooms should be based on current information from the East Side Union High School District.

The DEIR's is inadequate in that it provided no discussion of the availability of sites for new schools and classrooms as requested by the District. Additionally, the DEIR fails to disclose that the Land Use Element of the General Plan Update has not been prepared in accordance with the City of San Jose Municipal Code provision for the contents of a land use element.

§ 18.08.030 L.37.

(A)

A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business industry, open space (including agriculture, natural resources, recreation, and enjoyment of scenic beauty), education, public buildings and grounds, solid and liquid waste disposal, and other categories of public and private uses of land. The land use

element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.... L.37.

4) The report should indicate the number of unhoused students from the proposed project and cumulative number of unhoused students.

1A9(e). The DEIR fails to indicate the number of unhoused students from the proposed project and cumulative number of unhoused students. L.38.

This requested scope and content item asks for an analysis of the capacity deficit, both by individual school district and cumulatively. No such analysis is provided in the DEIR.

5) The report should indicate the expected cost impact of accommodating the unhoused students, using the multiplier of $25,955 per pupil times the number of unhoused pupils. L.39.

1A9(f). The DEIR fails to indicate the expected cost impact of accommodating the unhoused students, using the multiplier of $25,955 per pupil times the number of unhoused pupils.

The DEIR identifies that an estimated 5,289 students will be generated within the jurisdiction of East Side Union High School District. Using the identified cost impact multiplier of $25,955.00 per pupil the following tables show the expected cost impact on the District.

.ESTIMATED COST IMPACTS, DEVELOPMENT FEE REVENUES, AND REVENUE SHORTFALL L.40.

PROPOSITION 170 FAILS

Generated Students	Cost Factor	District Cost Impact
5,289	$25,995	$137,487.555

PROPOSITION 170 PASSES

Generated Students	Cost Factor	District Cost Impact
5,289	$25,995	$137,487.555

6) Expected fees paid under Government Code Section 53080 may partly mitigate the cost impact. Detail on how expected fees are computed should be discussed, including expected number of units and average square foot size of the expected units. Fees currently are $2.65 per square foot of residential development (except for limited types of senior housing) and $0.27 per square foot for commercial, industrial and qualifying senior housing projects. The high school district receives one-third of this amount, currently $0.883 per square foot for residential projects and $0.09 per square foot for commercial, industrial and qualifying senior housing projects. EIR text should discuss the amount of shortfall, if any.

ESTIMATED COST IMPACTS, DEVELOPMENT FEE REVENUES, AND REVENUE SHORTFALL

PROPOSITION 170 FAILS

Estimated DU's	Estimated Development Fee Generated per DU	Estimated Fee Revenue
26,446	$816.75	$21,599,770.50

Note: The estimated development fee generated per dwelling unit is based the District receiving 33% of the $ 1.65 per square foot development fee. For the purposes of this estimate it is assumed that the average dwelling units is 1,500 s.f. L.40.

District Cost Impact	Estimated Fee Revenue	Revenue Deficit
$137,487,555.00	$21,599,770.50	($115,887,784.50)

PROPOSITION 170 PASSES

Estimated DU's	Estimated Development Fee Generated per DU	Estimated Fee Revenue
26,446	$2,316.75	$61,268,770.50

Note: The estimated development fee generated per dwelling unit is based the District receiving 33% of the $ 1.65 per square foot development fee plus the additional $ 1.00. For the purposes of this estimate it is assumed that the average dwelling units is 1,500 s.f. Recent legislative analysis appears to indicate that the District may not receive the full $1.00 in the future as it may have to be split between feeder districts and the high school district. L.40.

District Cost Impact	Estimated Fee Revenue	Revenue Deficit
$137,487,555.00	$61,268,770.50	($76,218,784.50)

1A9(g). The DEIR fails to provide detail of how expected development fees paid under Government Code Section 53080 are computed, including expected number of units and average square foot size of the expected units.

The DEIR is inadequate and fails to address the issue of development fees paid under Government Code Section 53080, or to discuss the potential impacts of new legislation and the impending election. The recent history of mitigating the environmental impacts of "development projects" upon school districts has its basis in the Mira, Hart, and Murrieta precedent-setting legal decisions, and the interpretations made relative to the authority to impose development fees or other requirements pursuant to the provisions of S.B.1287, with specific applicability to Sections 65995 and 65996 of the Government Code. These three (3) legal actions are all important because they interpreted Section 65995 and 65996 of the Government Code, and the responsibility of a city to comply with the California Environmental Quality Act when considering an "administrative" act (i.e. subdivision map, parcel map, tract map, conditional use permit, etc.) or a "legislative" act (i.e. general plan, zone change, redevelopment plan, specific plan, development agreement, etc.) L.41.

At the time of the Mira decision, Government Code 65996 provided the exclusive methods of mitigating environmental impacts related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a "development project," as defined in Government Code Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, as follows:

1) Chapter 22 (commencing with Section 17000) of Part 10 of the Education Code) sets forth the provisions of the State School Building Aid Law of 1962, which includes funding through State General Obligation Bonds and the State's General Fund;

2) Chapter 25 (commencing with section 17785) of Part 10 of the Education Code sets forth provisions with regard to the Emergency Classroom Law of 1979 which includes the provisions for the lease of State portable facilities to address emergency overcrowding conditions;

3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code sets forth provisions with regard to the California School Finance Authority;

4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code sets forth the provision for leases and agreements with non-profit corporations in order to provide school facilities;

5) Section 53080 of the Government Code sets forth the statutory provision relative to development fees;

6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code sets forth the provisions of the Mello-Roos Community Facilities Act of 1982 and allows for the issuance of Mello-Roos bonds and financing programs for "the purchase, construction, expansion, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer which is necessary to meet increased demands placed upon local agencies as the result of a development or rehabilitation occurring within the district. For example, a community facilities district may provide facilities, including, but not limited to, the following....

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(b) Elementary and secondary school sites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board....

(c) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to construct, own, or operate.

7) Chapter 4.7 (commencing with Section 65970) of Division 1, Title 7 of the Government Code provides for the denial of rezoning property to residential use, granting a discretionary permit for residential use, or approval of a tentative subdivision maps for residential purposes within one or more attendance areas which have conditions of overcrowding, and where all reasonable methods of mitigation where conditions of overcrowding have been evaluated and no feasible method of reducing these conditions exist. This chapter further provides for specific findings and the provision of dedications of land, payment of fees, or a combination of both for interim classrooms and relocatable facilities for elementary and high schools as a

condition of approval of a residential development, if certain conditions occur.

Once again, these were the exclusive methods of mitigating environmental impacts related to the adequacy of school facilities when considering the establishment of conditions for the approval of a "development project." The statutes did not provide any requirements with regard to a "legislative act," such as a general plan amendment or a zone change.

As a result of legal challenges as to the interpretations of Section 65995 and 65996 of the Government Code, and the applicability of the California Environmental Quality Act, issues in the Mira, Hart, and Murrieta cases become notably significant.

In Mira Development Corp. v. City of San Diego (1988), a rezone was **denied** because of its impact on school facilities. The developer sued claiming that Section 65996 said the city **could not** deny on the grounds of inadequate school facilities. The court refused relief on the basis that a rezone was a **"legislative" action** (general plans, specific plans, zone changes, development agreements, etc.), and Section 65996 applied only to **"administrative" actions** (tentative tract map, parcel maps, subdivision maps, conditional use permits, etc.).

Mira was followed, in the case of a requested general plan amendment, in the William S. Hart Union High School District v. Regional Planning Commission County of Los Angeles (1991). Note that neither case reached the question of what **conditions** could have been imposed if the actions had been **administrative,** rather than **legislative** -- that is, if 65596 L.41.
had applied.

More recently, the case of Murrieta Valley Unified School District v. County of Riverside (1991) held that a school district could sue a County for violation of CEQA in adopting a community plan which did not mitigate the impacts on school facilities (or adopt an adequate statement of overriding considerations in not doing so); and for adopting an internally inconsistent general plan which called for the mitigation of the impact on school facilities and concurrently failed to provide mechanisms for doing so. The court reaffirmed Mira and Hart, and rejected the argument that the legislative statutes had acted to overrule them. In Murrieta, the court discussed Sections 65995 and 65996 in a slightly different context. It noted:

> County . . . contends that the state also has preempted the field of mitigation measures which may be imposed to ameliorate such adverse effects of development on school facilities

The court followed Mira in holding Sections 65995 and 65996 did not apply to a general plan amendment:

> Therefore, under the holding of Mira, the [Community Plan] is not a "development project" and, as a result, not subject to the exclusive mitigation measures stated in Section 65996.

Following the Mira, Hart, and Murrieta cases, S.B.1287 was adopted by the Legislature and took effect January 1, 1993. S.B. 1287 has been interpreted by some parties to preclude a) the denial of a "legislative" act, such as a general plan amendment on the grounds of inadequate school facilities; or b) the incorporation of policies in the general plan which provide mitigation to the extent permitted by law. However, the provisions of Sections 65995 and 65996 apply only to a "development project," not the adoption of a general plan amendment.

In Murrieta, the Court described a general plan as a "basic land use charter governing the direction of future land use in the local jurisdiction," and held that the amendment of a general plan is a legislative act that does not involve approval of a "development project" for the purposes of Section 65996. Further, the preemption in subdivision (e) of Section 65995 was held by the court to relate only to the financing of school facilities with development fees, "a far cry from stating that a public agency cannot include in a general plan amendment land use and development objectives and standards to mitigate the amendment's potential negative effects on adequacy of school facilities"

The court concluded, consequently, that neither subdivision (e) of Section 65995 nor Section 65996 preempts a city or county, when considering general plan amendments that may adversely affect the existing conditions of inadequate school facilities in a school district, from "considering and providing feasible land use and development mitigation measures" as required by CEQA. The court suggested that these measures could include for example, the reduction of residential densities or the controlled phasing of residential development within the attendance areas of school districts having inadequate school facilities. L.41

The restrictions established in development statutes have been construed by the courts to apply to local imposition of conditions of approval of individual development projects, but not to local adoption or amendment of general land use policies. In summary, Section 65995 precludes local agencies from adopting any legislative requirement, except to the extent authorized by Section 53080 and Chapter 4.7, that imposes fees as a condition to approval of a "development project" in order to reduce the project's negative impact on school facilities. However, the statutes do not prohibit a local agency from considering the adequacy of school facilities in the course of adopting or implementing legislative land use policy in the form, for example, of a general plan or zoning ordinance.

S.B. 1287 amended Section 65995 and 65996, and adds and repeals those sections, with the effect that additional language is added to those sections, effective January 1, 1993, but if Proposition 170 (A.C.A. 6) fails on the November ballot, Sections 65995 and 65996

will revert to the revisions of those Sections in effect under existing law prior to the adoption of S.B. 1287.

S.B. 1287, although it placed limitations and constraints on how a city could address the mitigation of environmental effects related to the adequacy of school facilities when considering the approval or establishment of conditions of approval of a "development project," both prior to or after the failure or success of Proposition 170, S.B.1287 did not constrain the City's "police power" authority when considering the adoption or amendment of a general plan amendment.

The Consortium would suggest that the City does not have the authority to incorporate into the General Plan a requirement that a "development project" shall be denied on the basis of inadequate school facilities, or that the General Plan require that a "development project" be conditioned on the requirement of payment of facility fees or compliance with other requirements in excess of any amounts as stated in the statutes.

However, the statutes do not preclude the City from incorporating policies in the General Plan which manage and control growth, to establish level of service standards, and to provide that all "development projects" approved in accordance with the goals and policies of the General Plan shall mitigate the impacts of development on the school districts "to the fullest extent permitted by law." In particular, this could include the requirement of all development subject to a "legislative" act joining Mello-Roos Community Facilities Districts, or the structuring of a relationship between the City and the school districts whereby financing vehicles, such as a General Obligation Bond, a Capital Facilities Financing Agreement between the school districts and the San Jose Redevelopment Agency, and/or the designation of portions of sales tax or other tax revenues of the City to school capital facilities, etc., are put in place prior to the City allowing the increase in density or intensity of development contemplated through the General Plan Amendments. L.41

Similarly, there are no provisions in the statutes which preclude the City from considering the adequacy of school facilities in the course of adopting or implementing the General Plan, in denying its own Draft General Plan on the grounds that the General Plan does not conform to the Horizon 2000 General Plan, in reducing the development intensities proposed under the Draft General Plan to address the impacts on school facilities, to establish growth management policies under which the General Plan would be implemented, or to establish policies which provide for the provisions of school facilities concurrent with growth, through vehicles other than the imposition of development fees or other requirements applied to development in excess of those statutorily limited.

As an example, the Riverside County Board of Supervisors adopted Resolution No. 93-131, which allowed for school districts with territory within the County jurisdiction to

prepare a "mitigation plan" calling for any level of financial mitigation desired and justified by a district, up to 100% mitigation, for the impacts of new residential developments upon school facilities. Several Riverside school districts have already begun to collect such fees. The reason the County of Riverside has implemented this procedure, is because under the statutes, the use of a Mello-Roos Community Facility District is an authorized measure for mitigating the impact of development on schools.

In Opinion No. 30455 of the Legislative Council of the State of California, dated December 4, 1992, it was concluded that Chapter 4.9, established by Chapter 1354 of the Statutes of 1992 (S.B. 1287) does not prohibit a city or county from considering the adequacy of school facilities in the course of adopting or implementing legislative land use policies such as general plans, zoning ordinances, or other legislative land use policies. Therefore, in addition to the City having the option to impose upon new development the mitigation measures as set forth in Section 65996, the City can deny the approval of the Draft General Plan Amendments or other "legislative" acts, or can provide through its "police power," growth management policies that ensure that school facilities are made available concurrent with the growth of the community.

The issue of insuring the adequacy of school facilities is further complicated by Proposition 170 (ACA 6). Proposition 170 will allow school districts to pass a General Obligation Bond measure with a simple majority (51%) vote, rather than the current standard of a two-thirds (66.7%) majority. If Proposition 170 fails to pass, many of the changes instituted through S.B. 1287 would be reversed back to the scenario previously facing school districts under Mira, Hart, and Murrieta. If Proposition 170 passes, none of the changes to the current developer fee structure would change, and the additional $1.00 per square foot fee on residential development would remain enacted. Also, the Leroy F. Greene Lease/Purchase Act program would be phased out of existence by January 1, 1996. This would serve to place all of the burden of school facilities financing back on the school districts and the local community, and away from the State. .41.

Therefore, if the City desires to maintain a balance between the availability of school facilities and the growth of the community, in order to protect and preserve the quality of life, the environment, and the educational opportunities in the community, the City has a responsibility through it's General Plan to formulate goals and policies which address the changing social, physical, and financial environment faced by the school community.

A copy of the Legislative Counsel's opinion and Resolution No. 93-131, which established the Riverside County program are enclosed.

1A9(h). The DEIR fails to discuss the amount of shortfall, if any, in development fees to be expected to be paid under Government Code Section 53080.

The tables on the following six (6) pages present information on the development fees expected to be paid. The first table shows data relative to the estimated cost impact,

ESTIMATED COST IMPACT - DEVELOPMENT FEE REVENUES - AND REVENUE SURPLUS/DEFICIT

DEIR ESTIMATED STUDENTS AND DWELLING UNITS

PROPOSITION 170 FAILS

School District	DEIR Students Alt 5	Weighted Cost/Student	District Cost Impact	Estimated DU's	Development Fee (Prop 170 Fails)	Fee Revenue	Percent Fee of Cost	Revenue Surplus/(Deficit)
Alum Rock Union	590	$19,966.31	$11,780,125.00	1,863	$1,658.25	$3,089,319.75	26.22%	($8,690,805.25)
Berryessa Union	1,095	$19,962.01	$21,858,399.00	2,820	$1,658.25	$4,676,265.00	21.39%	($17,182,134.00)
East Side Union High	5,289	$25,995.00	$137,487,555.00	26,446	$816.75	$21,599,770.50	15.71%	($115,887,784.50)
Oak Grove	2,868	$19,962.87	$57,253,518.00	7,275	$1,658.25	$12,063,768.75	21.07%	($45,189,749.25)
San Jose Unified	7,996	$25,186.42	$201,390,580.00	16,813	$2,475.00	$41,612,175.00	20.66%	($159,778,405.00)
TOTAL	17,838	$24,092.96	$429,770,177.00	N/A	$8,266.50	$83,041,299.00	19.32%	($346,728,878.00)

PROPOSITION 170 PASSES

School District	DEIR Students Alt 5	Weighted Cost/Student	District Cost Impact	Estimated DU's	Maximum Development Fee (Prop 170 Passes)	Fee Revenue	Percent Fee of Cost	Revenue Surplus/(Deficit)
Alum Rock Union	590	$19,966.31	$11,780,125.00	1,863	$3,158.25	$5,883,819.75	49.95%	($5,896,305.25)
Berryessa Union	1,095	$19,962.01	$21,858,399.00	2,820	$3,158.25	$8,906,265.00	40.75%	($12,952,134.00)
East Side Union High	5,289	$25,995.00	$137,487,555.00	26,446	$2,316.75	$61,268,770.50	44.56%	($76,218,784.50)
Oak Grove	2,868	$19,962.87	$57,253,518.00	7,275	$3,158.25	$22,976,268.75	40.13%	($34,277,249.25)
San Jose Unified	7,996	$25,186.42	$201,390,580.00	16,813	$3,975.00	$66,831,675.00	33.19%	($134,558,905.00)
TOTAL	17,838	$24,092.96	$429,770,177.00	N/A	$15,766.50	$165,866,799.00	38.59%	($263,903,378.00)

Notes:

1) Cost per student for Alum Rock Union, Berryessa Union, and Oak Grove based on: elementary = $18,248 and middle = $23,447

2) Cost per student for East Side Union High based on: high = $25,995

3) Cost per student for San Jose Unified based on: elementary = $18,248 suburban, $41,217 downtown; middle = $23,447 suburban, $53,490 downtown; high = $25,226

4) Weighted Average Cost/Student for Alum Rock Union, Berryessa Union, and Oak Grove factored by .67 elementary, .33 middle school

5) San Jose Unified Weighted Average Cost/Student factored by .48 elementary, .23 middle, and .29 high school

6) Total of estimated units exceeds actual number of units generating fees because Alum Rock Union, Berryessa Union and Oak Grove are feeders to East Side Union High

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FACILITY COSTS PER STUDENT
ELEMENTARY SCHOOL
SUBURBAN SCHOOL CONFIGURATION

BASED UPON LAND COST PER SQUARE FOOT OF: $17.22
BASED UPON LAND COST PER ACRE OF: $700,000

1993 DISTRICT COSTS

				K-5 PER SQ. FT.	TOTAL COSTS
ACRES				7.00	
LAND SQ. FT.				304,920	
STUDENTS				720	
NET SQ. FT. PER STUDENT				59	
GROSS SQ. FT. PER STUDENT				62	
NET BUILDING SQ. FT.				42,480	42,480
GROSS BUILDING SQ. FT.				44,640	44,640
COST INFLATOR				100.00%	
STRUCTURES - STORIES				1	
	FACTORS				
BUILDING COSTS		FIXED		$100.00	$4,248,000
GENERAL SITE	8.00%	OF BUILDING COSTS		$8.00	$339,840
GENERAL SITE	$15,000	PER ACRE		$2.47	$105,000
SERVICE SITE	15.00%	OF BUILDING COSTS		$15.00	$637,200
UTILITIES	2.50%	OF BUILDING COSTS		$2.50	$106,200
OFF SITE IMPROVEMENTS	15.00%	OF BUILDING COSTS		$15.00	$637,200
HARD COST SUB-TOTAL				$142.97	$6,073,440
ARCH./ENG. FEES	7.50%	OF HARD COSTS		$10.72	$455,508
INSPECTION/TESTS	2.50%	OF HARD COSTS		$3.57	$151,836
PLAN CHECK FEES	0.75%	OF HARD COSTS		$1.07	$45,551
EIR	$30,000	PER SITE		$0.71	$30,000
SOILS REPORT	$20,000	PER SITE		$0.47	$20,000
SITE SURVEY	$20,000	PER SITE		$0.47	$20,000
SOFT COST SUB-TOTAL				$17.02	$722,895
FURNITURE & EQUIPMENT (FF&E)	$5.00	PER BLDG. SQ. FT.		$5.00	$212,400
TECHNOLOGY & MEDIA	$5.00	PER BLDG. SQ. FT.		$5.00	$212,400
FF&E & TECHNOLOGY SUB-TOTAL					$424,800
HARD/SOFT & FF&E COST SUB-TOTAL				**$164.99**	**$7,221,135**
LAND	$750,000	PER ACRE	7.0 ACRES	$123.59	$5,250,000
APPRAISAL & CLOSING COSTS	$50,000	PER SITE		$1.18	$50,000
LAND SUB-TOTAL				$124.76	$5,300,000
TOTAL IMPROVEMENT/LAND COST PER SQ. FT.				**$289.75**	**$12,521,135**
STATE CONTINGENCY	1.50%	OF SUB-TOTAL		$4.35	$184,631
STATE CONTINGENCY	$2,000	PER SCHOOL		$0.05	$2,000
DISTRICT CONTINGENCY	3.50%	OF SUB-TOTAL		$10.14	$430,806
CONTINGENCY SUB-TOTAL				$14.53	$617,437
GRAND TOTAL IMPROVEMENT/LAND/CONTINGENCY/OTHER FACILITIES COST PER SQ. FT.				**$304.29**	**$13,138,571**
TOTAL COST PER STUDENT				$18,248	
TOTAL COST PER SCHOOL				$13,138,571	

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FACILITY COSTS PER STUDENT
ELEMENTARY SCHOOL
DOWNTOWN SCHOOL CONFIGURATION

BASED UPON LAND COST PER SQUARE FOOT OF:		$68.87		1993 DISTRICT COSTS	
BASED UPON LAND COST PER ACRE OF:		$3,000,000			
				K-5 PER SQ. FT.	TOTAL COSTS
ACRES				7.00	
LAND SQ. FT.				304,920	
STUDENTS				720	
NET SQ. FT. PER STUDENT				59	
GROSS SQ. FT. PER STUDENT				62	
NET BUILDING SQ. FT.				42,480	42,480
GROSS BUILDING SQ. FT.				44,640	44,640
COST INFLATOR				100.00%	
STRUCTURES - STORIES				1	
	FACTORS				
BUILDING COSTS		FIXED		$100.00	$4,248,000
GENERAL SITE	8.00%	OF BUILDING COSTS		$8.00	$339,840
GENERAL SITE	$15,000	PER ACRE		$2.47	$105,000
SERVICE SITE	15.00%	OF BUILDING COSTS		$15.00	$637,200
UTILITIES	2.50%	OF BUILDING COSTS		$2.50	$106,200
OFF SITE IMPROVEMENTS	15.00%	OF BUILDING COSTS		$15.00	$637,200
HARD COST SUB-TOTAL				$142.97	$6,073,440
ARCH./ENG. FEES	7.50%	OF HARD COSTS		$10.72	$455,508
INSPECTION/TESTS	2.50%	OF HARD COSTS		$3.57	$151,836
PLAN CHECK FEES	0.75%	OF HARD COSTS		$1.07	$45,551
EIR	$30,000	PER SITE		$0.71	$30,000
SOILS REPORT	$20,000	PER SITE		$0.47	$20,000
SITE SURVEY	$20,000	PER SITE		$0.47	$20,000
SOFT COST SUB-TOTAL				$17.02	$722,895
FURNITURE & EQUIPMENT (FF&E)	$5.00	PER BLDG. SQ. FT.		$5.00	$212,400
TECHNOLOGY & MEDIA	$5.00	PER BLDG. SQ. FT.		$5.00	$212,400
FF&E & TECHNOLOGY SUB-TOTAL					$424,800
HARD/SOFT & FF&E COST SUB-TOTAL				**$164.99**	**$7,221,135**
LAND	$3,000,000	PER ACRE	7.0 ACRES	$494.35	$21,000,000
APPRAISAL & CLOSING COSTS	$50,000	PER SITE		$1.18	$50,000
LAND SUB-TOTAL				$495.53	$21,050,000
TOTAL IMPROVEMENT/LAND COST PER SQ. FT.				**$660.52**	**$28,271,135**
STATE CONTINGENCY	1.50%	OF SUB-TOTAL		$9.91	$420,881
STATE CONTINGENCY	$2,000	PER SCHOOL		$0.05	$2,000
DISTRICT CONTINGENCY	3.50%	OF SUB-TOTAL		$23.12	$982,056
CONTINGENCY SUB-TOTAL				$33.07	$1,404,937
GRAND TOTAL IMPROVEMENT/LAND/CONTINGENCY/OTHER FACILITIES COST PER SQ. FT.				**$693.59**	**$29,676,072**
TOTAL COST PER STUDENT				$41,217	
TOTAL COST PER SCHOOL				$29,676,072	

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FACILITY COSTS PER STUDENT
MIDDLE SCHOOL
SUBURBAN SCHOOL CONFIGURATION

BASED UPON LAND COST PER SQUARE FOOT OF: $16.07
BASED UPON LAND COST PER ACRE OF: $700,000

1993 DISTRICT COSTS

				6-8 PER SQ. FT.	TOTAL COSTS
ACRES				15.00	
LAND SQ. FT.				653,400	
STUDENTS				1,200	
NET SQ. FT. PER STUDENT				81	
GROSS SQ. FT. PER STUDENT				83	
NET BUILDING SQ. FT.				97,200	97,200
GROSS BUILDING SQ. FT.				99,600	99,600
COST INFLATOR				100.00%	
STRUCTURES - STORIES				1	
	FACTORS				
BUILDING COSTS		FIXED		$100.00	$9,720,000
GENERAL SITE	8.00%	OF BUILDING COSTS		$8.00	$777,600
GENERAL SITE	$15,000	PER ACRE		$2.31	$225,000
SERVICE SITE	15.00%	OF BUILDING COSTS		$15.00	$1,458,000
UTILITIES	2.50%	OF BUILDING COSTS		$2.50	$243,000
OFF SITE IMPROVEMENTS	15.00%	OF BUILDING COSTS		$15.00	$1,458,000
HARD COST SUB-TOTAL				$142.81	$13,881,600
ARCH./ENG. FEES	6.50%	OF HARD COSTS		$9.28	$902,304
INSPECTION/TESTS	2.00%	OF HARD COSTS		$2.86	$277,632
PLAN CHECK FEES	0.75%	OF HARD COSTS		$1.07	$104,112
EIR	$50,000	PER SITE		$0.51	$50,000
SOILS REPORT	$30,000	PER SITE		$0.31	$30,000
SITE SURVEY	$30,000	PER SITE		$0.31	$30,000
SOFT COST SUB-TOTAL				$14.34	$1,394,048
FURNITURE & EQUIPMENT (FF&E)	$6.50	PER BLDG. SQ. FT.		$6.50	$631,800
TECHNOLOGY & MEDIA	$5.00	PER BLDG. SQ. FT.		$5.00	$486,000
FF&E & TECHNOLOGY SUB-TOTAL					$1,117,800
HARD/SOFT & FF&E COST SUB-TOTAL				**$163.66**	**$16,393,448**
LAND	$700,000	PER ACRE	15.0 ACRES	$108.02	$10,500,000
APPRAISAL & CLOSING COSTS	$50,000	PER SITE		$0.51	$50,000
LAND SUB-TOTAL				$108.54	$10,550,000
TOTAL IMPROVEMENT/LAND COST PER SQ. FT.				**$272.20**	**$26,943,448**
STATE CONTINGENCY	1.50%	OF SUB-TOTAL		$4.08	$396,862
STATE CONTINGENCY	$2,000	PER SCHOOL		$0.02	$2,000
DISTRICT CONTINGENCY	3.00%	OF SUB-TOTAL		$8.17	$793,723
CONTINGENCY SUB-TOTAL				$12.27	$1,192,585
GRAND TOTAL IMPROVEMENT/LAND/CONTINGENCY/OTHER FACILITIES COST PER SQ. FT.				**$284.47**	**$28,136,033**
TOTAL COST PER STUDENT				$23,447	
TOTAL COST PER SCHOOL				$28,136,033	

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FACILITY COSTS PER STUDENT
MIDDLE SCHOOL
DOWNTOWN SCHOOL CONFIGURATION

BASED UPON LAND COST PER SQUARE FOOT OF: $68.87
BASED UPON LAND COST PER ACRE OF: $3,000,000

1993 DISTRICT COSTS

				6-8 PER SQ. FT.	TOTAL COSTS
ACRES				15.00	
LAND SQ. FT.				653,400	
STUDENTS				1,200	
NET SQ. FT. PER STUDENT				81	
GROSS SQ. FT. PER STUDENT				83	
NET BUILDING SQ. FT.				97,200	97,200
GROSS BUILDING SQ. FT.				99,600	99,600
COST INFLATOR				100.00%	
STRUCTURES - STORIES				1	
	FACTORS				
BUILDING COSTS		FIXED		$100.00	$9,720,000
GENERAL SITE	8.00%	OF BUILDING COSTS		$8.00	$777,600
GENERAL SITE	$15,000	PER ACRE		$2.31	$225,000
SERVICE SITE	15.00%	OF BUILDING COSTS		$15.00	$1,458,000
UTILITIES	2.50%	OF BUILDING COSTS		$2.50	$243,000
OFF SITE IMPROVEMENTS	15.00%	OF BUILDING COSTS		$15.00	$1,458,000
HARD COST SUB-TOTAL				$142.81	$13,881,600
ARCH./ENG. FEES	6.50%	OF HARD COSTS		$9.28	$902,304
INSPECTION/TESTS	2.00%	OF HARD COSTS		$2.86	$277,632
PLAN CHECK FEES	0.75%	OF HARD COSTS		$1.07	$104,112
EIR	$50,000	PER SITE		$0.51	$50,000
SOILS REPORT	$30,000	PER SITE		$0.31	$30,000
SITE SURVEY	$30,000	PER SITE		$0.31	$30,000
SOFT COST SUB-TOTAL				$14.34	$1,394,048
FURNITURE & EQUIPMENT (FF&E)	$6.50	PER BLDG. SQ. FT.		$6.50	$631,800
TECHNOLOGY & MEDIA	$5.00	PER BLDG. SQ. FT.		$5.00	$486,000
FF&E & TECHNOLOGY SUB-TOTAL					$1,117,800
HARD/SOFT & FF&E COST SUB-TOTAL				$163.66	$16,393,448
LAND	$3,000,000	PER ACRE	15.0 ACRES	$462.96	$45,000,000
APPRAISAL & CLOSING COSTS	$50,000	PER SITE		$0.51	$50,000
LAND SUB-TOTAL				$463.48	$45,050,000
TOTAL IMPROVEMENT/LAND COST PER SQ. FT.				$627.13	$61,443,448
STATE CONTINGENCY	1.50%	OF SUB-TOTAL		$9.41	$914,362
STATE CONTINGENCY	$2,000	PER SCHOOL		$0.02	$2,000
DISTRICT CONTINGENCY	3.00%	OF SUB-TOTAL		$18.81	$1,828,723
CONTINGENCY SUB-TOTAL				$28.24	$2,745,085
GRAND TOTAL IMPROVEMENT/LAND/CONTINGENCY/OTHER FACILITIES COST PER SQ. FT.				$655.38	$64,188,533
TOTAL COST PER STUDENT				$53,490	
TOTAL COST PER SCHOOL				$64,188,533	

L.41.

0376

MIDOWN$.XLS

FACILITY COSTS PER STUDENT
HIGH SCHOOL
SUBURBAN SCHOOL CONFIGURATION

BASED UPON LAND COST PER SQUARE FOOT OF: $16.07
BASED UPON LAND COST PER ACRE OF: $700,000

1993 DISTRICT COSTS

				9-12 PER SQ. FT.	TOTAL COSTS
ACRES				40.00	
LAND SQ. FT.				1,742,400	
STUDENTS				2,400	
NET SQ. FT. PER STUDENT				91	
GROSS SQ. FT. PER STUDENT				94	
NET BUILDING SQ. FT.				218,400	218,400
GROSS BUILDING SQ. FT.				225,600	225,600
COST INFLATOR				100.00%	
STRUCTURES - STORIES				1	
	FACTORS				
BUILDING COSTS		FIXED		$93.00	$20,311,200
GENERAL SITE	5.00%	OF BUILDING COSTS		$4.65	$1,015,560
GENERAL SITE	$15,000	PER ACRE		$2.75	$600,000
SERVICE SITE	7.50%	OF BUILDING COSTS		$6.98	$1,523,340
UTILITIES	2.50%	OF BUILDING COSTS		$2.33	$507,780
OFF SITE IMPROVEMENTS	7.50%	OF BUILDING COSTS		$6.98	$1,523,340
HARD COST SUB-TOTAL				$116.67	$25,481,220
ARCH./ENG. FEES	5.50%	OF HARD COSTS		$6.42	$1,401,467
INSPECTION/TESTS	1.50%	OF HARD COSTS		$1.75	$382,218
PLAN CHECK FEES	0.75%	OF HARD COSTS		$0.88	$191,109
EIR	$50,000	PER SITE		$0.23	$50,000
SOILS REPORT	$30,000	PER SITE		$0.14	$30,000
SITE SURVEY	$30,000	PER SITE		$0.14	$30,000
SOFT COST SUB-TOTAL				$9.55	$2,084,795
FURNITURE & EQUIPMENT (FF&E)	$7.50	PER BLDG. SQ. FT.		$7.50	$1,638,000
TECHNOLOGY & MEDIA	$5.00	PER BLDG. SQ. FT.		$5.00	$1,092,000
FF&E & TECHNOLOGY SUB-TOTAL					$2,730,000
HARD/SOFT & FF&E COST SUB-TOTAL				$133.72	$30,296,015
LAND	$700,000	PER ACRE	40.0 ACRES	$128.21	$28,000,000
APPRAISAL & CLOSING COSTS	$50,000	PER SITE		$0.23	$50,000
LAND SUB-TOTAL				$128.43	$28,050,000
TOTAL IMPROVEMENT/LAND COST PER SQ. FT.				$262.15	$58,346,015
STATE CONTINGENCY	1.50%	OF SUB-TOTAL		$3.93	$858,810
STATE CONTINGENCY	$2,000	PER SCHOOL		$0.01	$2,000
DISTRICT CONTINGENCY	2.50%	OF SUB-TOTAL		$6.55	$1,431,350
CONTINGENCY SUB-TOTAL				$10.50	$2,292,161
GRAND TOTAL IMPROVEMENT/LAND/CONTINGENCY/OTHER FACILITIES COST PER SQ. FT.				$272.65	$60,638,175
TOTAL COST PER STUDENT				$25,266	
TOTAL COST PER SCHOOL				$60,638,175	

L.41.

0377

development fee revenues, and revenue surplus/deficit. This analysis takes into consideration the passage or failure of Proposition 170. The remaining tables detail how the cost per student was calculated. The Consortium has used the numbers as presented in the DEIR for this analysis. Additionally, the Consortium has used acreage figures of $700,000 for land outside of the Downtown area and $3,000,000 for land within the Downtown area. These numbers were obtained from the City's Final Fiscal Impact Analysis on the Draft General Plan. The Consortium feels that these numbers are understated in that they assume raw, vacant land and make no provision for relocation, clearing or other activities necessary to develop previously developed land. L.41.

Depending on outcome of Proposition 170, the estimated revenue shortfall for the Consortium is collectively between $263,903,000 and $346,728,800. The development fees to be generated represent only 19% to 39% of the cost of housing the new students to be generated.

7) Discuss possible school facility mitigation measures including but not limited to:
- Mello-Roos Community Facilities Districts. Show feasibility for full amount and amount less fees.
- Supplemental fee payment to cover shortfall after fees.
- School development jointly funded by the city or other public agency.
- Dedication of sites or site improvements to lessen cost impact.
- Project alternatives including reduced density or numbers of homes.
- Other measures.

1A9(i). The DEIR fails to discuss possible school facility mitigation measures including Mello-Roos Community Facilities Districts or show feasibility for full amount and amount less fees.

1A9(j). The DEIR fails to discuss supplemental fee payment to cover shortfall after fees.

1A9(k). The DEIR fails to discuss possible school facility mitigation measures including school development jointly funded by the city or other public agency. L.42.

1A9(l). The DEIR fails to discuss possible school facility mitigation measures including dedication of sites or site improvements to lessen cost impact.

1A9(m). The DEIR fails to discuss possible school facility mitigation measures including project alternatives including reduced density or numbers of homes.

1A9(n). The DEIR fails to discuss other possible school facility mitigation measures.

Requested scope and content item 7 goes on to state:

> General references to potential state funding or discussion which does not address mitigation of shortfall is incomplete and non-responsive. Proposed mitigation measures should be discussed in the context of adequacy, feasibility and relationship to other measures.

1A9(o). The DEIR makes references to potential state funding but does not address mitigation or revenue shortfall.

The DEIR is inadequate and fails to provide a discussion of the implications of Proposition 170's passage or failure or to provide any meaningful mitigation measures to address the projected $263,903,000 to $346,728,800 shortfall. L.42.

1A9(p). The DEIR does not address mitigation of shortfall.

Information on the amount of expected shortfall in development fees is provided previously in this document.

1A9(q). Proposed mitigation measures are not discussed in the context of adequacy, feasibility and relationship to other measures.

East Side Union High School District also stated that:

> Accommodation of all future students in portable classrooms or by busing students to other campuses is not feasible and should not be discussed unless evidence is given to establish that such actions are feasible in a specific case.

1A9(r). The DEIR suggests accommodation of all future students in portable classrooms or by busing students to other campuses without providing evidence to establish that such actions are feasible in a specific case. L.43.

The DEIR inadequately addresses and/or ignores the requested scope and content concerns of the East Side Union High School District referenced above. The DEIR indicates, beginning on page 254, that:

> **IMPACTS**
>
> The increased demands on school districts resulting from growth allowed for in the General Plan Update can be offset by the following mechanisms: L.44.
>
> - Construction of new schools or expansion of existing facilities

- Government Code Section 65996 specifies the acceptable method of offsetting a project's effect on the adequacy of school facilities. A school impact fee of $1.65 per square foot of residential development and $0.27 per square foot for non-residential development would be required, prior to issuance of a building permit. The school districts are responsible for implementing the specific methods for mitigation school impacts under the Government Code. The school impact fees and the school district's method of implementing measures specified by Government Code 65996 would partially offset increases in student enrollment resulting from growth associated with the General Plan Update. [According to some of the school districts, the collection of developer fees does not fully offset the need for school facilities resulting from project development. Other possible methods for offsetting school impacts are available, as described below.]

- The school districts could establish year-round schools to increase capacity. In addition, the school districts could increase school capacities somewhat by dividing lunches and recesses into double shifts. L.44.

- The school districts could provide portable classrooms to increase capacity.

- The school districts could increase capacity by adjusting district boundaries and/or bussing to less crowded schools

- Required school facility improvements could also be financed by utilizing Mello-Roos funding.

These items are presented as mechanisms to offset the impacts of growth allowed for in the General Plan in the Impacts portion of the "School" section, not as mitigation measures. The DEIR is incorrect in that it is incomplete and misleading in its discussion of Government Code Section 65996 and 65995. The DEIR should present a thorough and accurate discussion of the legally creative ways the City can, under the California Environmental Quality Act, see that all significant environmental impacts are mitigated to a level of insignificance.

The discussion of Government Code Section 65996 and 65995 in the DEIR fails to make note of two important features of the provision cited. First, the text of this section varies depending on the outcome of the Election on Proposition 170. Second, the Draft General Plan is not a development project as defined by the Government Code. Section 53080 defines a "development project" and states:

§ **53080** L.45.

(2) ..."development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for

construction or reconstruction, but not a permit to operate.

S.B. 1287 is an act to add and repeal Article 5 (commencing with Section 17760) of Chapter 22 of Part 10 of the Education Code, to amend Sections 65995 and 65996 of, and to add and repeal Sections 65995, 65995.3, and 65996 of the Government Code, and to repeal Section 34 of Chapter 1209 of the Statutes of 1989, relating to school facilities. Under S.B. 1287, Section 65996 has provisions which address both the passage or failure of Proposition 170. This section of the Bill states:

SEC. 6. Section 65996 of the Government Code is amended to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of condition for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.
(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.
(3) Chapter 28 (commencing with Section 17870) of Par 10 of the Education Code.
(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.
(5) Section 53080 of the Government Code. L.45
(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.
(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.
(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.
(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

SEC. 7. Section 65996 is added to the Government Code, to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when

considering the approval or the establishment of condition for the approval of a development project *by administrative or legislative* action pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.
(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.
(3) Chapter 28 (commencing with Section 17870) of Par 10 of the Education Code.
(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.
(5) Section 53080 of the Government Code.
(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.
(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.
(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Title 7 (commencing with Section 65000), deny approval of a project on the basis of the adequacy of school facilities, or impose conditions on the approval of a project for the purpose of providing school facilities that exceed the amounts authorized pursuant to this chapter. L.45.
(c) This section shall have prospective application only, and shall not affect any action taken by a local agency prior to the effective date of this section.
(d) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

The provisions of Sections 65995 and 65996 apply only to a "development project," which is an "administrative" act, not the adoption of a general plan amendment, which is a "legislative" act.

The discussion of Government Code Section 65996 also fails to consider the impacts of both the passage or failure of Proposition 170 (A.C.A. 6) on the ability of school districts to provide adequate school facilities. Proposition 170 will allow school districts to pass a General Obligation Bond measure with a simple majority (51%) vote, rather than the current standard of a two-thirds (66.7%) majority. If Proposition 170 fails to pass, many of the changes instituted through S.B. 1287 would be reversed back to the scenario L.46. previously facing school districts under Mira, Hart, and Murrieta. If Proposition 170 passes, none of the changes to the current developer fee structure would change, and the additional $1.00 per square foot fee on residential development would remain

enacted. Also, the Leroy F. Greene State School Construction Lease/Purchase Program would be phased out of existence by January 1, 1996. This would serve to place all of the burden of school facilities financing back on the school districts and the local community, and away from the State.

The DEIR fails to note that In Opinion No. 30455 of the Legislative Council of the State of California, dated December 4, 1992, it was concluded that Chapter 4.9, established by Chapter 1354 of the Statutes of 1992 (S.B. 1287) does not prohibit a city or county from considering the adequacy of school facilities in the course of adopting or implementing legislative land use policies such as general plans, zoning ordinances, or other legislative land use policies. Therefore, in addition to the City having the option to impose upon new development the mitigation measures as set forth in Section 65996, the City can deny the approval of the Draft General Plan or other "legislative" acts, or can provide through its "police power", growth management policies that ensure that school facilities are made available concurrent with the growth of the community.

In April, 1993, the Board of Supervisors of Riverside County adopted Resolution No. 93-131. Through this resolution, the County of Riverside has established a comprehensive mitigation program whereby school facilities impacts from new development are mitigated to a level of insignificance. This resolution was modified and adopted in light of, not despite, the enactment of Senate Bill 1287. The mitigation measures which are imposed by the County fall within those measures specifically listed in Government Code Section 65996(a). The Riverside County Counsel and many other California City Attorneys believe that it is a serious misstatement of law to say that the imposition of development fees is the only mitigation measure available to cities when Government Code Section 65996(a) provides a variety of measures which may be used to mitigate school facilities impacts under CEQA, regardless of the outcome of the election on Proposition 170. The DEIR must provide a discussion of all mitigation measures available and an explanation why certain measures have been selected over others. The DEIR currently fails to do this. L.46.

The courts have ruled and continue to rule against cities claiming to have their hands tied with regard to mitigation of school facilities impacts. The Legislative Counsel of the State of California considered this issue at length and determined that SB 1287 "does not prohibit a city ... from considering the adequacy of school facilities in the course of adopting or implementing a general plan, zoning ordinance, or other legislative land use policy." A copy of that opinion is attached and incorporated into these comments by reference.

The mitigation measures proposed by the DEIR regarding school services are:

SERVICES AND FACILITIES
Schools

Policy 20

The City supports a system of open communications between the City, the public school districts and the development community in order to coordinate the activities of each to achieve the highest quality of education for all public school students.

Policy 21

The City encourages school districts and developers to engage in early discussions regarding the nature and scope of the project and possible impacts and mitigation requirements. These discussions should occur as early as possible in the project planning stage preferably immediately preceding or following land acquisition.

Policy 22

The City should cooperate with school districts in identifying and evaluating the impacts of population and demographic changes which may affect the need for new schools, may lead to school closures, may require the re-opening of closed schools or may lead to the decision that existing school sites should be preserved for meeting future needs. L.47.

Policy 23

The City should encourage the Legislature to enact legislation to finance the construction of new schools necessary for a growing population.

Under the California Environmental Quality Act (Public Resources Code Section 21000 et seq., the City must adopt feasible mitigation measures to substantially lessen or avoid otherwise significant adverse environmental impact. (CEQA, Section 21002) To be legally adequate, such measures must be capable of "rectifying the impact by repairing, rehabilitation, or restoring the impacted environment." (Title 14, California Code of Regulations, Section 15730) Where several potential mitigation measures are available, each should be discussed separately and the reasons for choosing one over the other should be stated. The EIR fails to provide an adequate discussion of possible mitigation measures and thus fails to mitigate project impact on school facilities.

8) Discussion of Cumulative Impacts should address projects which are under construction, projects approved but unbuilt, projects for which approval is pending, projects submitted for review but not yet approved, projects which may reasonably be expected to apply for development approval, and any parcels which may develop pursuant to approved general plan land use designations which may reasonably submit development approvals within the time frame of the proposed project. Projects outside of the city's jurisdiction but within the District should also be identified and included in the discussion. L.48.

1A9(s). The DEIR fails to identify and discuss projects outside of the city's jurisdiction, but within the District.

9) The Mitigation Monitoring Program should include reference to all school-related conditions and mitigation measures. L.49.

1A9(t). The DEIR fails to reference all school-related conditions and mitigation measures.

Related issues identified as germane to the District's concerns include:

1) Pedestrian and bicycle travel to and from school should be discussed with enough detail to assure the reader that safety of young adults has been considered in the project's design.

1A9(u). The DEIR fails to address and discuss with enough detail pedestrian and bicycle travel to and from school to assure the reader that safety of young adults has been considered. L.50.

2) Text should include direct references to how schools, parks and recreational opportunities will be available and accessible to young people.

1A9(v). The DEIR fails to include direct references to how schools, parks and recreational opportunities will be available and accessible to young people.

1A10. The DEIR fails to address the requested scope and content of Franklin-McKinley School District.

Franklin-McKinley School District requested as part of their response to the Notice of Preparation (January 22, 1993, refer to Appendix A, Responses to Notice of Preparation, of the DEIR) that the scope and content of the Draft Environmental Impact Report: L.51.

1) Identify impacts of development projects on the District.

1A10(a). The DEIR fails to identify impacts on the District.

2) The District stated that the programmatic and fiscal impacts generated by the construction of additional dwelling units within the district be calculated and measures undertaken to mitigate these impacts.

1A10(b). The DEIR fails to calculate the programmatic and fiscal impacts of the additional 58,000 homes to be developed under the Draft General Plan on the District or to provide measures to mitigate these impacts.

L.51.

The District stated that the second and third scenarios identified in the subject Notice of Preparation (18,000 new dwelling units) will have a significant and adverse impact on the District. The District identified its current student yield rate as 0.56 students per dwelling unit. The District further stated that it is currently at capacity and is on year-round education. Any additional dwelling units within the District will result in a significant impact.

The DEIR is inadequate and fails to provide either scope or content sufficient to comply with the request of the Franklin-McKinley School District response to the Notice of Preparation.

1A11. The DEIR fails to address the requested scope and content of Oak Grove School District.

In its response to the Notice of Preparation dated January 4, 1993, (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) **Oak Grove School District** stated that certain of the proposed growth alternative indicate the potential for profound impacts on school districts within the planning area. As a result, the District requested that: L.52.

1) The very significant environmental impacts relating to the schools be addressed fully. The District emphasized that school issues and impacts should be discussed in a separate section of the DEIR noting that school impacts are often not given the attention they clearly deserve in such reports.

1A11(a). The DEIR fails to address the very significant environmental impacts relating to the schools.

1A12. The DEIR fails to address the requested scope and content of San Jose Unified School District.

San Jose Unified School District, in its response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR), noted that in Section No. 11, Public Service and Utilities of the Initial Study, that implementation of the General L.53.

Plan Update could result in increased demands for public services. The District commented that depending on the alternative selected, the impact on the District's ability to provide educational services the families within our boundaries would be impacted. The District remarked that all three alternatives would be of special concern to the District and that the District was particularly concerned about the impacts of Alternative 3 because of housing development being encouraged along the Light Rail, the District would be the major educational provider to those families. In order to be more specific, the District requested information on how many of the 29,000 dwelling units would fall within its Boundaries.

1A12(a). The DEIR fails to address the ability of SJUSD to provide educational services.

The District has requested that its ability to serve students be addressed. The DEIR is inadequate and fails to provide any analysis of the impact on the District or its ability to meet the increased demand on services and facilities. The following table shows the projected capacity deficit caused by the Draft General Plan. L.53.

DRAFT GENERAL PLAN IMPACT ON SAN JOSE UNIFIED SCHOOL DISTRICT

	Capacity	Enrollment (CBEDS)	Additional Enrollment	Percent Increase	Capacity Surplus /Deficit	Percent Surplus /Deficit
San Jose Unified (DEIR #)	32,489	29,500	7,996	27.11%	(5,007)	(15.41%)
District # Based on District Master Plan	32,489	29,500	10,208	34.60%	(7,219)	(22.22%)

1A13. The DEIR fails to address the requested scope and content of the County of Santa Clara Local Agency Formation Commission ("LAFCO").

The **County of Santa Clara Local Agency Formation Commission** ("LAFCO") noted two areas of concern in its response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR). The first area of concern dealt with the second growth alternative of allowing residential development within the City's Urban Reserves prior to meeting established "trigger mechanisms." L.54.

1A13(a). The DEIR does not address LAFCO's concern of allowing residential development within the City's Urban Reserves prior to meeting established "trigger mechanisms."

LAFCO's second area of comment was in regard to the third growth alternative. LAFCO stated that if expansion of the present urban service area is included in the scenario to add new residences, LAFCO approval would be needed. Therefore, a key LAFCO policy is important to note: LAFCO discourages expansion of the urban service area if a city already has a substantial supply of vacant developable land in the Urban Service Area, unless explanation of why the expansion is necessary, and how orderly development will be maintained. By definition, the Urban Reserve Area should only include land which the city is capable of providing urban services to in a short range (5-year) period. L.54.

1A13(b). The DEIR fails to provide an explanation of why the expansion is necessary, and how orderly development will be attained as required by LAFCO, which discourages expansion of the urban service area if a city already has a substantial supply of vacant developable land in the Urban Service Area.

1A13(c). The DEIR fails to address that LAFCO's policy, which by definition, provides that the Urban Reserve Area should only include land which the city is capable of providing urban services to in a short range (5-year) period.

1A14. The DEIR fails to address the requested scope and content of County of Santa Clara, Public Services Agency, Parks and Recreation Department.

The **County of Santa Clara, Public Services Agency, Parks and Recreation Department** asked in their response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) that the EIR transportation plan address alternative modes of transportation including pedestrian/bicycle uses and connections to mass transit. The County stated that alternative transportation routes should be directed to all activity nodes including parks, not just business related commutes.

1A14(a). The DEIR fails to address alternative modes of transportation including pedestrian/bicycle uses and connections to mass transit and to direct alternative transportation routes to all activity nodes including parks, not just business related commutes. L.55.

Under Public Services and Utilities, the County requested that the EIR address the acquisition and provision of adequate neighborhood serving park facilities that do not depend on County park land to meet these needs. The EIR, and the plans developed as a result of this General Plan change, need to consider work/recreation relationships as well as residence/recreation relationships when developing use/demand ratios and Quimby implementation requirements.

The DEIR is inadequate in addressing the requested scope and content of the County of Santa Clara, Public Services Agency, Parks and Recreation Department. In addition to failing to address alternative modes of transportation for pedestrian/bicycle uses and connections to mass transit, the DEIR fails to consider transportation of school students via school bus and linkages between mass transit (bus and light rail) and schools.

1A14(b). The DEIR fails to address the acquisition and provision of adequate neighborhood serving park facilities that do not depend on County park land to meet these needs. L.55.

1A14(c). The DEIR fails to consider work/recreation relationships as well as residence/recreation relationships when developing use/demand rations and Quimby implementation requirements.

1A15. The DEIR fails to address the requested scope and content of California Department of Transportation ("Caltrans").

The **California Department of Transportation** ("Caltrans") commented in its response to the Notice of Preparation (refer to Appendix A, Responses to Notice of Preparation, of the DEIR) that the General Plan, as a concept document, must provide a framework upon which the impacts of future proposals can be measured and evaluated. It provides the City an opportunity to explore relationships between alternative growth scenarios.... The discussion of potential mitigation measures to address the impact of these growth scenarios should include but not be limited to the following areas: Financing, scheduling, implementation responsibilities, lead agency monitoring. L.56.

1A15(a). The DEIR fails to provide a discussion of potential mitigation measures to address the impact of the growth scenarios including but not be limited to the following areas: Financing, scheduling, implementation responsibilities, lead agency monitoring.

Group Two: The Need to Recirculate the EIR

2A. The Goals and Policies in the DEIR are not those approved by the Citizen Committee or those proposed for adoption as the project.

The EIR is inadequate and should be recirculated because the Goals and Policies presented in the DEIR are not the current Goals and Policies approved by the Citizen Committee (which did not complete their review and revisions until October 4, 1993, well after the September 17, 1993, submittal to the State Clearinghouse for Public Review) and that sufficient "significant" changes in the Goals and Policies exist that adding them to the DEIR will result in the lead agency adding "significant new information" to the DEIR subsequent to public review and inter-agency consultation but prior to final certification. The critical importance of having the correct, approved major strategies, and goals and policies lies in the fact that they constitute, and are in essence, the "Project" according to the Description of the Proposed Project in the EIR and the Project Description in the Notice of Preparation. L.57.

2B. Significant background information of the Draft General Plan is incomplete, outdated, and missing.

Significant background information of the Draft General Plan, namely the open space, noise, and housing appendices, is incomplete, outdated, and missing. Without consideration of these appendices, which the Draft General Plan cites as necessary "to facilitate an understanding of the context in which the goals and policies were developed...," the DEIR makes inappropriate and incorrect analysis of the environmental impact of the Draft General Plan. Since, according to City Staff as of October 8, 1993, the open space appendix has not been updated since 1984, its addition and the analysis and consideration of its implications in the DEIR will constitute "significant" new information being added to the EIR. L.58.

2C. The City has taken action to select a modified Preferred Growth Alternative and approve with revisions the Draft General Plan during the Public Review Period, thereby changing the project.

The Planning Commission, at its October 18, 1993 meeting, took actions to review and approve with revisions the recommendations of the General Plan Task Force. These actions, taken 30 days into the 45-day Public Review Period included review and approve with revisions on: The Vision Statement, Chapter I Introduction, Chapter II Background for Planning, Chapter III Major Strategies, Chapter IV Goals and Policies, Chapter V Land Use/Transportation Diagram, and Chapter VI Implementation. Additionally, the Planning Commission reviewed Growth Alternatives with the intent of selecting the Preferred Growth Alternative and approved in concept Growth Alternative V with modifications as the Preferred Growth Alternative. L.59.

This action was taken over the objections of the Consortium and despite the Consortium pointing out to the City, City Staff, and the Planning Commission that it is inappropriate for the Planning Commission to hold a public hearing on the Draft General Plan, dated October, 1993, while the 45-day public comment period on the Draft Environmental Impact Report is still incomplete, and that the Planning Commission does not have a full and complete disclosure by the public and all public and quasi-public agencies of information and data relative to the social, financial, and environmental implications of the adoption and implementation of the recommendations contained in the Draft General Plan.

The Planning Commission of the City of San Jose should not be holding public hearings on the Draft General Plan for consideration of "tentative" actions or "final adoption" of recommendations (as identified in the agenda for the public hearing), as these actions are inappropriate at this stage of the planning process, in light of the fact that the City has not completed the processing of the Draft Environmental Impact Report in accordance with Title 21 of the City of San Jose Municipal Code, the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. These actions were done without the benefit of appropriate environmental documentation, namely a Draft Environmental Impact Report with public comments and responses, and served to change the project as described in the DEIR. L.60.

2D. The DEIR is inadequate and should be recirculated.

These actions would necessitate that San Jose as the lead agency, issue new notice and recirculate the EIR for additional commentary and consultation, as required by Public Resources Code, § 21092.1, which states:

> **§ 21092.1**
>
> When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21004 and 21153 before certifying the environmental impact report. L.61.

Additionally, Title 21, Environmental Clearance Ordinance of the City of San Jose states in Section 21.20.070:

> **§ 21.20.070**
>
> **Evaluation of and Response to Comments**
>
> D. The Draft EIR shall be recirculated where substantial changes are made to it after the original circulation.

This same memorandum identified a series of issues identified by the Task Force for follow-up. These issues were identified under three major headings: housing, school facility mitigation policies, and the treatment of pending PD Zoning in the East Foothills. None of these issues remaining to be resolved are identified in the Summary Section of the DEIR as required by CEQA Guidelines. A copy of the October 1, 1993, Memorandum to the City Council is enclosed. L.63.

During the 45-day public review period, the Consortium provided the City of San Jose and the San Jose Planning Commission written testimony which included recommended General Plan Amendment text which provide adequate mitigation measures under CEQA. The Planning Commission and City Staff failed to consider these proposals. The Consortium hereby makes the following counterproposals to the DEIR and its mitigation measures: L.64.

1) Deny the Draft General Plan because the impacts on schools are not adequately mitigated to a level of insignificance, or

2) Incorporate the following text changes to the Draft General Plan:

The Consortium has reviewed the Draft 2020 General Plan, and recommends that the Planning Commission consider and incorporate into their recommendations to the City Council the following modifications to the language text as originally proposed by the San Jose 2020 General Plan Task Force:

1) It is recommended that Chapter II - "Background For Planning" should be revised to include a sub-chapter on the existing conditions of enrollments, facilities, financing, and other relevant information regarding the nineteen (19) school districts within the City and the availability and future planning of school facilities and support services to accommodate the implementation of the General Plan. L.65.

2) It is recommended that Chapter III - "Major Strategies," Sub-Chapter B - "Growth Management" should be revised to incorporate language that insure that school facilities and school facility level of service standards are a part of the growth management strategy of the General Plan, and are considered consistent with other infrastructure and public facilities in the City.

3) It is recommended that Chapter III - "Major Strategies," Sub-Chapter G - "Sustainable City" should be revised to incorporate language that insure that school facility assets and resources are a part of the sustainable city strategy of the General Plan, and are considered consistent with public resources of the City.

4) Page 48, Chapter IV - "Goals and Policies," Sub-Chapter A - "City Concept," Section entitles "Urban Conservation" is recommended to be revised to add a policy which states:

(w) Conflict with established recreational, educational, religious or scientific uses of the area.

The City's Environmental Clearance Ordinance states is Section 21.12.050 "Mandatory Findings of Significance" that:

§ 21.12.050

L.62.

Mandatory Findings of Significance

D. The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

The DEIR is inadequate and, based on the environmental comments contained herein, cannot substantial or justify its contention that the impacts of the Draft General Plan on schools are not significant.

3B. The Summary of Impacts and Mitigation is inadequate and not in compliance with the provisions of CEQA Guidelines.

Section 15123 of CEQA Guidelines identifies the regulatory requirements for the statutorily required Summary Section. Section 15123 states:

§ 15123

(b) The summary shall identify:
  (2) Area of controversy known to the Lead Agency including issues raised by agencies and the public; and
  (3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

L.63.

The DEIR's Summary of Impacts and Mitigation is inadequate and not in compliance with the provisions of the CEQA Guidelines because the section fails to identify any areas of controversy or to identify any issues to be resolved.

The controversy over the issues of schools, the impact of the General Plan on schools, and the responsibility of the City to provide for mitigation of impacts resulting from the adoption and implementation of the Draft General Plan on schools is clearly known to the City of San Jose. In fact, the October 1, 1993, Memorandum to the Mayor and City Council from the Co-Chairs, San Jose 2020 General Plan update Task Force, specifically "highlight(ed) those issues that the Task Force found were difficult to resolve, or, that could not be resolved by the Task Force or appropriately addressed in the General Plan."

Group Three: Inadequacies in Information, Analysis and Findings of DEIR

3A. The impacts of the Draft General Plan on schools are improperly dismissed as non-significant impacts contrary to the provisions CEQA, CEQA Guidelines, and Title 21, Environmental Clearance Ordinance.

The Summary of Impacts and Mitigation section of the DEIR (pages ix, xvi, xxi, xxvi, and xxxii) states an improper conclusion that the impacts on schools are not significantly impacted, and wrongfully concludes that no mitigation is required. This is contrary to the provisions of CEQA, CEQA Guidelines, Title 21, Environmental Clearance Ordinance of the City of San Jose, and of Government Code Sections 65970, 65995, and 65996. Section 65970 of the Government Code states:

§ 65970

Legislative findings and declaration

The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.
(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.
(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools. .62.
(d) New housing developments frequently cause condition of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.
(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

Clearly, the Legislature of the state of California finds that adequate school facilities should be available for children and that residential developments may require the expansion of existing schools and construction of new school facilities. Appendix G to CEQA Guidelines: Impacts Normally Deemed Significant states that:

Appendix G

Significant Impacts

A project will normally have a significant effect on the environment if it will:...

(u) Disrupt or divide the physical arrangement of an established community; ...

Section 21.20.080 goes on to state:

> **§ 21.20.080**
>
> **Addition of New Information; notice and consultation**
>
> When significant new information is added to an EIR after notice has been given pursuant to Section 21.20.050 and consultation has occurred pursuant to Section 21.20.040, the City shall give notice again and consult again pursuant to those sections before certifying the EIR. L.61.

All of the inadequacies and/or actions to modify the project during the public review period will result in the inclusion of new information into the Draft General Plan. **Therefore, under the provisions of CEQA, the CEQA Guidelines, and the City of San Jose Title 21, Environmental Clearance Ordinance, the DEIR must be recirculated.**

4. The City should encourage and promote the highest level of public services and facilities by other public agencies, including school districts, insuring that the growth of the community occurs concurrent with the availability and adequacy of facilities or revenues sources to provide such facilities.

5) Page 50, Chapter IV - "Goals and Policies," Sub-Chapter B - "Community Development," Section entitled "Residential Land Use" is recommended to be revised as follows:

4. Due to the limited supply of land available for multiple family housing, public/quasi-public uses, except public schools, should be discouraged in areas designated for residential densities exceeding twelve units per acre on the Land Use/Transportation Diagram, except in the Downtown Core Area.

6) Page 70, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Level of Service" is recommended to be revised as follows:

The services and facilities most directly related to growth and development are sewage treatment, sanitary and storm sewers, transportation, flood protection, and school and support facilities. These services are essential to the successful development of individual projects and to the City's and other public agencies ability to accommodate economic development citywide.... L.65

7) Page 71, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Level of Service - Goals" is recommended to be revised as follows:

1. Provide a full range of services to the community through the City and other public agencies at service levels consistent with a safe, convenient, and pleasant place to live and work.

2. Achieve the following level of public services for these and other public agency services:....

- For public schools and support facilities, to adequately and effectively accommodate the enrollment of students in a manner which is consistent with State law, and the policies and programs of the school district, without creating an enrollment condition at peak annual enrollment dates in excess of 90% of the

facility "instructional educational capacity" of the school district.

8) Page 73, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Other Services" is recommended to be revised as follows:

16. Utilize the following Citywide level of service measures as benchmarks to be used to evaluate major General Plan land use and policy changes, such as expansion of Urban Service Areas or land use changes from non-residential to residential:....

- For parks and recreation: 3.5 acres of neighborhood and community serving recreational lands per 1,000 population, of which a minimum of 1.5 acres of neighborhood, community or locally serving regional/City-wide park lands, and all of which is located within a reasonable walking distance; 7.5 acres of regional/Citywide park lands per 1,000 population; and 500 square feet of community center floor area per 1,000 population....

9) Page 73, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Other Services" is recommended to be revised to add the following: L.65.

16. Utilize the following Citywide level of service measures as benchmarks to be used to evaluate major General plan land use and policy changes, such as expansion of Urban Service Areas or land use changes from non-residential to residential:....

- For parks and recreation: up to 2 acres of school playgrounds, provided however that the school district shall in no way be restricted or prevented by the City to develop or redevelop such acreage for public or private use....

10) Page 74, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Schools" is recommended to be revised as follows:

23. The City should support legislative efforts to create suitable and adequate means of financing the construction, reconstruction, and modernization of school facilities needed for a growing population, and should enact, as legally authorized, measures of financing as may be available to the City for such improvement programs on behalf of the community's school districts.

11) Page 74, Chapter IV - "Goals and Policies," Sub-Chapter D - "Services and Facilities," Section entitled "Schools" is recommended to be revised to add the following:

26. The City shall insure that development pursued under the authority of the General Plan occurs concurrent with the availability of school facilities and/or the availability of revenues to finance school facilities impacted by development.

27. The City shall pursue and implement any and all remedies and measures to eliminate and alleviate the impacts of development and the implementation of the General Plan on the school districts of the community, to the fullest extent permitted by law.

12) Page 86, Chapter IV - "Goals and Policies," Sub-Chapter E - "Aesthetic, Cultural and Recreational Resources," Section entitled "Parks and Recreation" is recommended to be revised as follows:

7. The City encourages the Santa Clara Valley Water District, school districts, the Pacific Gas and Electric Company and other public agencies and utilities to provide for appropriate recreational uses of their respective properties and rights-of-way. Consideration should be given to cooperation efforts between these entities and the City to develop parks, other open spaces and recreational facilities and programs. School districts shall in no way be restricted or prevented by the City to develop or redevelop such school district owned open space and recreational areas for public or private use. The City shall participate in the financing of the improvements, operations and maintenance of such open space, parks, and recreational facilities made available to the public. L.65.

9. The City should continue to work cooperatively with local school districts in identifying and evaluating surplus school sites for potential park land acquisition. In the furtherance of this policy, the City should maintain and periodically update the School Site Re-Use Plan and the Surplus School Property Plan. However, school districts shall in no way be restricted or prevented by the City to develop or redevelop such school properties for public or private uses as determined by the school district, consistent with the surrounding land uses of the area.

18. The City should consider negotiating with property owners and local School Districts in newly developing residential areas for the

dedication of joint use school facility and playground/recreation sites in the City. The City should encourage the negotiation of agreements between the City and the School District to provide for the improvement, maintenance and operation of the joint use properties, and to provide that if the School District declares a site as surplus, the playground portions of it would revert back to the City pursuant to the agreement, ensuring its public use in perpetuity.

13) Page 157, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter B - "Land Use Diagram," Section entitled "Urban Reserve" is recommended to be revised as follows:

....The specific plan for the SAVUR should incorporate the following:....

4. Short-term analysis of physical and environmental conditions, traffic capacity, infrastructure and service needs including school facilities, financing requirements and other issues that could affect the conditions of development....

5. Fiscal analysis showing that new development will not result in the deterioration of urban services to the remainder of the City, including the facilities and services of the school districts.... L.65.

6. Conditions that new development be required to provide all capital improvements necessary to serve it, including school facilities (on-site or off-site)....

12. A financing plan ensuring needed infrastructure and facilities, including school facilities, can be built at the appropriate time.

14) Page 160, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter B - "Land Use Diagram," Section entitled "Urban Reserve" is recommended to be revised as follows:

....The preparation of the specific plan should include the following analyses:....

1. Short-term analysis of regarding physical and environmental conditions, traffic capacity, infrastructure and service needs including school facilities, financing requirements and other issues that could affect the conditions of development....

2. Fiscal analysis showing that new development will not result in the deterioration of urban services to the remainder of the City, including the facilities and services of the school districts....

15) Page 160, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter B - "Land Use Diagram," Section entitled "Urban Reserve" is recommended to be revised as follows:

> ....The overall development concept and character of future development established in the specific plan for North and Mid-Coyote should conform to and include the following:....
>
> 5. Conditions that new development be required to provide all capital improvements necessary to serve it, including school facilities (on-site or off-site)....
>
> 7. A financing plan ensuring needed infrastructure and facilities, including school facilities, can be built at the appropriate time.

16) Page 169, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter B - "Land Use Diagram," Section entitled "Public/Quasi Public" is recommended to be revised as follows: L.65.

> This category is used to designate public land uses, including schools....The City shall cooperate with school districts in the development of private land uses for properties designated public in conjunction with mixed public/private land uses or as an alternative use on surplus school properties.

17) Page 175, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter C - "Discretionary Alternative Use Policies," Section entitled "Surplus Public/Quasi Public and Public Parks/Open Space Land" is recommended to be revised as follows:

> An alternate use of property designated for Public/Quasi-Public or Public Parks and Open Space use may be approved under the Planned Development Zoning without an amendment to the Land Use/Transportation Diagram if such alternative use is compatible with existing and planned uses on neighboring properties and is consistent with applicable General Plan policies. The determination of such compatibility and consistency includes consideration of

whether the site, in light of the overall planning for the surrounding area, would be more appropriately designated for uses of a public, quasi-public or recreational nature, provided however, that the public, quasi-public or recreational nature will not reduce the economic value of the property below the economic value of the property if it were developed for an alternative use which is compatible with existing and planned uses on neighboring properties.

18) Page 177, Chapter V - "Land Use/Transportation Diagram," Sub-Chapter C - "Discretionary Alternative Use Policies," Section entitled "New Public/Quasi Uses" is recommended to be revised as follows:

L.65.

The Land Use/Transportation Diagram does not specify sites for all future public or quasi-public development. For sites without the Public/Quasi-Public land use designation, the determination of conformance with the General Plan of proposed public or quasi-public development will be made on the basis of the applicable General Plan goals and policies and a demonstrated need for the public/quasi-public facility being proposed, not on the basis of the land use designation applicable to the property. However, because of a limited supply of land available for multi-family housing, public/quasi-public uses are discouraged in areas designated for residential densities exceeding twelve units per acre except in the Downtown Core Area. Public school facilities shall be permitted in any land use designation of the General Plan.

3C. The Transportation sub-section of Section III, Environmental Setting, Impacts and Mitigation is inadequate, fails to properly consider the Draft General Plan's impacts on schools, and is based on a traffic model does not accurately represent existing school conditions.

Transportation impacts on schools and students traveling to schools. Appendix A - The City of San Jose's Traffic Forecast Model Description, page A-2, lists Special Generators which include Colleges and Universities, Junior Colleges, and High Schools. However, Middle Schools and Elementary Schools are not identified as special generators. The methodology then defines six trip purposes, of which Home-Based-School is one of the six trip purposes defined. L.66.

- How are trip purposes for Home-Based-School determined?
- Does the Model factor court ordered desegregation and magnet school?

- How are Elementary and Middle Schools treated? Why are they not special generators?

- How are Educational Parks such as Willow Glen Educational Park North and South Treated?

- No provision or assessment of the impacts of new schools, particularly in the Urban Reserve Areas, has been made. L.66.

The DEIR is inadequate in its determination of traffic impacts and schools. The Consortium questions how the traffic model can accurately assess traffic impacts if neither the location or number of new high schools which will be necessary to accomodate the additional students projected by the Draft General Plan are not know and have not been considered in the traffic modeling, particularly since high schools are traffic generators.

3D. The Existing Setting section on Schools of the DEIR is inadequate, inaccurate, and not in compliance with CEQA.

The Existing Setting section on Schools is inadequate and inaccurate and does not comply with the provisions of CEQA and the CEQA Guidelines, Section 15125 which state:

§ 15125

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. L.67.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State Implementation Plan once adopted), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basion. San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

Subsection (c) reflects the decision in Environmental Information and Planning Council v. County of El Dorado (1982) 131 Cal.App. 3d 350, which held that in comparing an old general plan, the EIR had to address the existing level of actual physical development in the county's the base line for the comparison. The two plans could not be compared with each other without showing how the would relate to the existing level of development.

Where a proposed project is an agency decision changing planning or zoning designations such as the General Plan Update, the project's potential impacts should not be compared only with those that would ultimately occur under existing plans. Rather, such an analysis should focus on "existing physical conditions" before comparing the eventual future conditions that would result under either approach. (CEQA Guidelines, Section 15125, sub. (c), and discussion following thereafter; Environmental Planning and Information Council v. County of El Dorado (3d Dist. 1982) 131 Cal.App.3d 350, 354 [182 Cal. Rptr. 317]; City of Carmel-by-the-Sea v. Board of Supervisors (6th Dist. 1986) 183 Cal.App.3d 229, 246-247 [227 Cal.Rptr. 899]; Christward Ministry v. Superior Court (4th Dist. 1986) 184 Cal.App.3d 180, 190-191 [228 Cal.Rptr. 868]; but compare Schaeffer Land Trust v. City Council (6th dist. 1989) 215 Cal.App.3d 612, 622-627 [263 Cal.Rptr. 813]; and Benton v. Board of Supervisors (1st dist. 1991) 226 Cal.App.3d 1467, 1482-1483 [277 Cal.Rptr. 481].) L.67.

The Existing Setting section on schools as presented in the DEIR fails to provide even basic information regarding existing physical conditions. The first paragraph of the Existing Setting states:

> The City of San Jose is served by a total of 19 school districts, serving elementary, middle, and high school students. Thirteen of these districts are elementary/middle school districts, three are high school districts, and three accommodate elementary through high school students. A list of the districts serving the San Jose area is provided on Table 33. The five largest school districts are San Jose Unified, East Side Union High School District, Oak Grove elementary, and Campbell Union High School District. L.68.

The description is correct in the fact the City of San Jose is served by 19 school districts and that thirteen (13) are elementary school districts, three (3) are high school districts, and three (3) are unified school districts. However, the basis for the statement regarding the five largest school districts is unclear, including the fact that only four (4) districts are named.

The Consortium speculates that the size ranking in the DEIR is based on the total number of schools within each district. However, that is a meaningless figure as the

number of students served by each school varies depending on grade configuration. For example, a typical elementary school, grades K-6, may have an enrollment 300 to 350 students, while a middle school, grades 7-8, may have 1,000 to 1,500 students in attendance, and a high school, grades 9-12, may have an enrollment of 2,000 to 3,000 students. Obviously, a high school district with 10 schools will have a larger enrollment that an elementary school district with 25 schools (East Side Union High School District, enrollment of 20,722 students in 10 high schools compared to Alum Rock Union School District with an enrollment of 16,038 students in nineteen elementary and six middle schools.)

The more appropriate and meaningful way to categorize school districts by size is to consider the total enrollment of the districts. The California Department of Education tracks enrollment for all of the school districts in the State and publishes school enrollment information as part of its California Basic Educational Data System ("CBEDS"). This data is necessary for part of the calculation to determine available capacity surplus or deficit within a school district. The total number of schools is irrelevant to the understanding of the existing setting relative to schools. L.68.

Based on the most recent year end enrollment data, 1992 CBEDS, a sampling of school districts, ranked by size are:

School District	CBEDS Enrollment	Size Ranking
San Jose Unified	29,500	1
East Side Union High	20,722	2
Alum Rock Union	16,038	3
Santa Clara Unified	13,159	4
Fremont Union High	13,000	5
Oak Grove	12,283	7
Berryessa Union	8,463	11
Campbell Union High	6,403	13

Note: School Districts listed in **Bold Type** are part of Consortium.

The number of schools within the school districts and their general location is important when considering if schools are located where they will be needed. The DEIR is inadequate because it fails to even identify how may and where the schools are located within the City of San Jose. Interpolating from the number of total schools located in each school district as identified in the DEIR, there are 241 schools within the nineteen (19) school districts. The description of Campbell Union School District states that only six (6) of the District's eleven (11) schools serve students within San Jose, thereby L.69.

reducing the number of schools in San Jose to 236. While not acknowledged in the DEIR, Cupertino Union School District advised the City in its response to the Notice of Preparation that only four of its 22 schools serve the City. This would reduce the number of schools in San Jose further to 218 schools. The number of schools stated for San Jose Unified School District is wrong, the correct number is 42, not 44; reducing the number of schools to 216. Other Districts, including Santa Clara Unified, Cambrian Union, Campbell Union High, Fremont Union High, and Morgan Hill Unified serve large areas outside of San Jose. A significant number of their facilities do not serve students from the City of San Jose. Yet the DEIR fails to identify the number of schools actually serving the City. Additionally, the DEIR fails to provide any indication of the general location of schools. **Without knowing the number, location, or individual capacity of the existing schools serving the City of San Jose, how can an assessment of impact be made? The DEIR must identify the number, location, and instructional capacity of existing schools serving the City and their ability to accommodate projected increases in students.** L.69.

The second paragraph of the Existing Setting states in part:

> Implementation of the General Plan Update would allow for additional residential development within a total of 19 school districts, as listed in Table 28. L.70.

Referring to Table 28, pages 187-190, the Consortium finds no relevance in the content of the table, "Potential Impacts to Biotic Resources." The Consortium makes the assumption that the correct reference should be to Table 34, "Estimated Student Generation within School Districts from New Residential Development," located on pages 255-256. The applicable portions of Table 34 are shown on the following page.

Table 34 is inaccurate, incomplete, and inadequate. The table, as presented, presents four (4) sets of information, each of which needs to be closely examined. These sets of information include:

1) Estimated Student Generation for New Residential Development;
2) Estimated Dwelling Units;
3) The Basis for Calculating Single Family Dwelling Units vs. Multiple Family Dwelling Units based on Density; and L.71.
4) Student Generation Factors.

The first, and most obvious, set of data presented is an estimation of the number of students expected to be generated within the school districts from new residential development. The underlying premise of Table 34, and for the entire discussion of impacts of the General Plan on the school districts is that all of the students to be generated by the General Plan will be the result of additional (i.e., new) residential development. This supposition, however, is incomplete because, while new residential development may be the primary source for additional students, it is not the only source.

The creation of new jobs has an indirect relationship with the generation of students. Not all of the new primary wage earners who move to San Jose to fill the estimated 126,000 new jobs generated by the General Plan will move their families into new housing. A significant percentage will relocate into existing housing within the community. Many of these new primary wage earners will have families with more children than the existing families presently living in the existing housing. This will result in increased student generation from existing residential development. The DEIR must identify and address students to be generated from existing development. L.71.

The finding was reaffirmed only this month when the State Appeals Court rejected the adequacy of an EIR on legislative act by the City of Sacramento. The court struck down the City's proposed redevelopment plan (a legislative act like a general plan) on the basis that the City failed to perform adequate reviews before approving the plan. In the three-year court battle, brought by four local school districts and the Sacramento County Superintendent of Schools, it was argued that the environmental review did not address the need for new schools that might arise when new jobs and housing were created as a result of the plan. **Like the Sacramento EIR, the DEIR fails to address the need for new schools arising from new jobs and housing created as a result of the plan.**

In areas where large shell commercial or industrial jobs will be located under the Draft General Plan, additional students can be expected to be generated based on the provisions of the Ganns Bill which allows children to attend school within the school district in which their parents work. Within San Jose, recent trends indicate that a large shell commercial use, such as a Price Club, will generate an additional 25 students per use within the District where the use is located. L.72.

The DEIR also fails to address the issue of affordable housing and its impact on the school districts. This is significant as the number of students generated in affordable housing has been documented to be greater than housing of a similar size. Affordable housing generates a greater number of students while providing the school districts with less development fee per house. L.73.

Table 34 (Applicable Portions)

ESTIMATED STUDENT GENERATION[1] WITHIN SCHOOL DISTRICTS FROM NEW RESIDENTIAL DEVELOPMENT

School District	Alternative 1		Alternative 2		Alternative 3		Alternative 4		Alternative 5	
	Dwelling Units	Student Generation	Dwelling Units	Student Generation	Dwelling Units	Student Generation	Dwelling Units	Student Generation	Dwelling Units	Student Generation
Alum Rock (Single Family/Multi-Family)[2]	1,104 583/521	430 321/109	2,998 583/2,415	828 321/507	3,317 583/2,734	895 321/574	1,104 583/521	430 321/109	1,863 583/1,280	590 321/269
Berryessa (Single Family/Multi-Family)	2,820 1,480/1,340	430 321/109	4,124 1,480/2644	1,369 814/555	4,502 1,480/3,022	1,149 814/335	2,820 1,480/1,340	1,095 814/281	2,820 1,480/1,340	1,095 814/281
East Side Union High (Single Family/Multi-Family)	22,491 13,413/ 9,078	4,499 2,683/1,816	29,240 13,974/ 15,266	5,848 2,985/3,053	34,650 14,655/ 19,995	6,930 2,931/3,999	22,585 13,413/ 9,172	4,517 2,683/1,834	26,446 14,376/ 12,070	5,289 2,875/2,414
Oak Grove (Single Family/Multi-Family)	4,985 3,052/1,933	2,085 1,679/406	5,827 3,613/2,214	2,452 1,987/465	9,129 4,294/4,835	3,072 2,362/710	4,985 3,052/1,933	2,085 1,679/406	7,247 4,105/3,142	2,868 2,208/660
San Jose Unified (Single Family/Multi-Family)	13,441 2,558/ 10,883	6,381 1,919/4,462	17,322 2,558/ 14,764	7,972 1,919/6,053	16,276 1,225/ 15,051	7,090 919/6,171	13,441 919/6,171	6,381 1,919/4,462	16,813 3,242/ 13,571	7,996 2,432/5,564
TOTAL Student Generation		30,007		39,150		36,870		38,144		31,852

[1]Student Generation was calculated for the Cambrian, Cupertino, East Side Union, Evergreen, Franklin-McKinley, and Morgan Hill Unified School Districts using Student Generation Factors provided by the respective districts. Where specific generation factors were not available, the following rates were used:

	Student Generation per Single Family Dwelling	Student Generation per Multi-Family Dwelling
K-8 District	0.55	0.21
High School District	0.2	0.2
K-12 District	0.75	0.41

[2]Single Family Dwelling Units are dwellings proposed in land use designations of 8 D.U./acre or less *and* two-thirds of the dwelling units in the 8-16 D.U./acre designation. Multiple Family Dwelling Units are dwellings proposed with land use designations of 12 D.U./acre or more and one-third of the dwelling units in the 8-16 D.U./acre designation.

0402

Therefore, the estimate of student generation based on Table 34 is inadequate, inaccurate, and understated and represents only those expected from new residential development and fails to provide for generation of additional students in existing dwelling or from increased commercial and industrial development under the Ganns Bill. L.74.

The second data area presented in Table 34 is dwelling units expected to be generated under the Draft General Plan.

The third type of information presented in Table 34 is the note concerning the basis for calculating single family dwelling units vs. multiple family dwelling units based on density. This note states that Single Family Dwelling Units are dwellings proposed in land use designations of 8 D.U./acre or less *and* two-thirds of the dwelling units in the 8-16 D.U./acre designation. The note further states that Multiple Family Dwelling Units are dwellings proposed with land use designations of 12 D.U./acre or more and one-third of the dwelling units in the 8-16 D.U./acre designation. However, no information is provided in the DEIR or Draft General Plan which allows for verification of the number of acres in each category. L.75.

The fourth and final group of data presented in Table 34 is student generation factors. Note 1 for Table 34 states that Student Generation was calculated for the Cambrian, Cupertino, East Side Union, Evergreen, Franklin-McKinley, and Morgan Hill Unified School Districts using Student Generation Factors provided by the respective districts. Where specific generation factors were not available, the following rates were used:

	Student Generation per Single Family Dwelling	Student Generation per Multi-Family Dwelling
K-8 District	0.55	0.21
High School District	0.2	0.2
K-12 District	0.75	0.41

L.76.

The Consortium questions why specific generation factors were not available. Current generation factors for each school district are readily available, and had the City, as they could reasonably have been expected, asked the school districts, they would have been supplied.

More importantly, the DEIR fails to recognize that these generation factors represent student capture rates based on a static point in time. They are not intended to be used to determine the number of total students to be generated within any given district, as represented in the DEIR. The rates used do not account for those school aged children who do not attend public schools but reside within the districts. In many of the districts, the current capture rate is artificially low due to a variety of factors. As an example, San Jose Unified School District currently has an enrollment of 29,550 attending District schools. However, this is the capture rate, not the total number of students residing in

the District who could attend the District. The total number of students who reside in the District, and could attend the district's schools is currently estimated to be 37,000 students. The remaining students attend private or religious schools, or other school districts.

The generation factors used are appropriate only for estimating student generation based on current capture rates of students within the districts. They do not allow for any change in capture rates in the future. The District's however, are required to provide educational facilities for these students should they choose to attend public schools. It is therefore important to know the total number of students estimated to be generated for each district, not just those expected to attend district schools based on current capture rates. L.76

The preparers of the DEIR should have determined the student generation factor for each school district by dividing the number of school aged children (updated to current numbers from the 1990 Census) by the number of existing residential units (1990 Census plus new construction minus demolition). The methodology used in the DEIR seriously understates the total number of students to be generated with each school district. **The student generation factors used in the DEIR are not appropriate for use in estimating total students to be generated within the jurisdictional boundaries of each school district.**

The remaining portion of the second paragraph of the Existing Setting, Schools, states:

> A brief description of the school districts affected by the General Plan Update is provided below.

The descriptions provided are inadequate, inaccurate, and do not provide the information required under CEQA and the CEQA Guidelines to present an understanding of the environmental setting. The complete descriptions presented in the DEIR and comments regarding their inadequacies and inaccuracies are found below:

Alum Rock Elementary School District

L.77.

The Alum Rock Elementary School District is comprised of 25 schools, consisting of nineteen elementary schools and six middle schools. The District also provides four child development centers. The District is presently operating below its maximum capacity, although two elementary schools, Linda Vista and Shields, are at or slightly above capacity.

The information as presented is incorrect, inadequate and not representative of the current setting of the District. The statement regarding capacity and the two schools identified as at or slightly above capacity was correct some years ago, but has not been correct for at least two school years.

The District's current instructional capacity is 17,465; the current student enrollment according to the most recent year end CBEDS is 16,105, with a resultant capacity surplus of 1,360. However, while the District's schools, as a collective whole, have additional instructional capacity, individual schools have deficit capacity problems. This is a direct result of shifts in population location, or in simple terms, the District's schools not being located where the students now reside. In an effort to address this imbalance between the schools and students, the District adjusts attendance boundaries when capacities at individual schools are exceeded. The District has also been forced to load its classes at a student/teacher ratio which exceeds the State Department of Education penalty levels for loading.

Berryessa Union School District

The Berryessa Union School District is comprised of 13 schools, consisting of 10 elementary schools and three middle schools. The schools in the Berryessa District are currently at capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Cambrian Elementary School District

The Cambrian Elementary School District is comprised of five schools, consisting of four elementary and one middle school. District studies have found that the District will exceed its facility capacity during the 1994-1995 school year. L.77.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Campbell Union Elementary School District

The Campbell Union Elementary School District consists of 11 schools, including eight elementary schools and three middle schools. Four of the elementary schools and two of the middle schools currently serve students within San Jose. The District anticipates that schools serving San Jose will be at or exceed their capacities by 1996-1997.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Campbell Union High School District

The Campbell Union High School District consists of six high schools, including one leased site. The District is presently operating below capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Cupertino Union High School District

The Cupertino Union High School District is comprised of 22 schools, consisting of 18 elementary schools and four junior high schools. According to the district, enrollment growth resulting from new residential development would require additional classroom space beyond current capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

East Side Union High School District

The East Side Union High School District (ESUHSD) is comprised of 10 high schools. The district is planning to construct one new high school located in the vicinity of Quimby Road (Buck, 1991). According to the district's study *Overview of Residential Development Impacts*, short term growth may be accommodated in additional portable classrooms, but maximum school capacity with portable would be exceed in the long term.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Evergreen School District L.77.

The Evergreen School District is comprised of 15 schools, consisting of 12 elementary schools and three middle schools. The district has submitted proposals for the construction of three new elementary school sites, which have been approved by the City. These schools will house approximately 1,500 students each and are reserved for approved development. Limited capacity is available at existing schools in the Evergreen District by adding portables, etc.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Franklin-McKinley School District

The Franklin-McKinley School District is comprised of 13 schools, consisting of 11 elementary and two middle schools. The District is currently at capacity and is on year-round education.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Fremont Union High School District

The Fremont Union High School District consists of six high schools. The District boundaries extend into west San Jose in the vicinity of Stevens Creek Boulevard. Fremont High School district serves high school students within the Cupertino Union School District. Additional school capacity is currently available.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Luther Burbank School District

The Luther Burbank School District consists of one elementary school. This school has come excess capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

L.77.

Moreland School District

The Moreland School District is comprised of eight schools, consisting of seven elementary schools and one middle school. Schools in this district currently have additional capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Morgan Hill Unified School District

The Morgan Hill Unified School District consists of 10 elementary schools, two junior high schools, and two high schools. Additional capacity is available in the elementary schools. The middle schools are currently near capacity, and the high schools are projected to be at capacity by 1997.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Mt. Pleasant Elementary School District

The Mt. Pleasant Elementary School District is comprised of six schools, consisting of four elementary, one middle school, and one closed site. Currently, capacity exceeds enrollment.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Oak Grove School District

The Oak Grove School District is comprised of 20 schools, consisting of 17 elementary schools and three middle schools. Schools in this District may have additional capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Orchard School District

The Orchard School District is comprised of one K-8 school. This school is currently over capacity.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District. L.77.

San Jose Unified School District

The San Jose Unified School District (SJUSD) is comprised of 44 schools, consisting of 28 elementary schools, eight middle schools, and eight high schools. District-wide capacity is approximately 31,800 students. In addition to the 44 occupied schools, there are five schools within the district that are being leased for other uses. The elementary and middle schools in this District are currently near capacity; high schools currently have some additional capacity.

The Existing Setting description is incomplete, factually inaccurate, and inadequate. One of 33 school districts in Santa Clara County, San Jose Unified School District is the largest school district in the city and county, with a geographic area of over fifty square miles. It is located in the center of the county and embraces the major portion of the City of San Jose. The District is 24 miles long from north to south, but only four miles wide at its widest point.

District-supplied transportation services are used extensively to provide all students full access to the educational program of the District, enhancing the District's effort to achieve desegregation goals. However, these services are expensive. There are no major north/south highways or freeways within the District's boundaries, making transportation of students in those directions difficult and costly. In 1991-92, approximately 6,550 students were bused at a cost of $5.6 million, or $3.25 per bus mile.

The Existing Setting description of San Jose Unified School District is factually inaccurate. The District has 42 schools: 26 elementary schools with a K-5 configuration, one (1) elementary school with a K-2 grade configuration, and one (1) elementary school with a 3-6 grade configuration; seven (7) middle schools, not eight (8) middle schools; and six (6) high schools, not eight (8) high schools. plus one continuation high school operated in a former elementary school facility. The educational facilities operated by the San Jose Unified School District include a total of 42 schools, not 44 schools as stated in the DEIR. The District's schools are identified on the following page by grade configuration.

The District has four (4), not five (5), closed elementary schools sites which include: Canoas, Hammer, Henderson, and Hacienda. All four (4) closed school sites are leased for educational purposes. Canoas and Hammer are operated by Challenger Schools, Henderson is operated by Country School of Almaden, and Hacienda is operated as Apostle's Lutheran Day School. These closed school sites are all located in the southern one-half of the District: Canoas is located south of Curtner Avenue; Hammer is located south of Branham Lane; and Hacienda and Henderson are located south of Camden Avenue in the extreme southerly end of the District.

L.77. The District's student enrollment capacity is set at 32,489, not the 31,800 identified in the DEIR, and is based on the 1985 Federal Court desegregation order under which the District operates. Presently, the District capacity of the elementary schools is 15,886, elementary enrollment is 14,442 leaving a District surplus capacity of 1,444 in its elementary schools. District capacity in its middle schools is 7,067, middle school enrollment is 6,481 with a District surplus capacity of 586. Within the Districts high schools, the District capacity is 9,536, high school enrollment is 7,873 indicating a resultant surplus high school capacity of 1,663. However, the situation varies by location within the District and is further complicated by the fact that under the provisions of the desegregation order, students do not necessarily attend the school in the neighborhood where they reside.

Community Systems Associates, Inc.

OVERVIEW OF DISTRICT EDUCATIONAL FACILITIES
SAN JOSE UNIFIED SCHOOL DISTRICT

Elementary Schools (K-5)
(28 schools)

Allen
Almaden
Bachrodt
Booksin
Carson
Cory (K-2)
Darling
Empire Gardens
Erickson
Gardner
Grant
Graystone
Hacienda Valley View
Hester
Los Alamitos
Lowell
Mann
Olinder
Randol
Reed
Scallenberger
Simonds
Terrel
Trace (3-5)
Washington
Washington at River Glen
Williams
Willow Glen

Middle Schools (6-8)
(7 schools)

Bret Harte
Burnett
Castillero
Hoover
Muir
Steinbeck
Willow Glen Ed Park South

High Schools (9-12)
(6 schools)

Gunderson
Leland
Lincoln
Pioneer
San Jose Academy
Willow Glen Ed Park North

Plus
Continuation High School
(1 school)

Broadway

L.77

The DEIR does not provide a basis for the statement the "elementary and middle schools in this District are currently ~~near~~ capacity; high schools currently have some additional capacity." The DEIR should provide its rational as to why a surplus capacity of 1,444 students is considered near capacity while a surplus capacity of 1,663 (a difference of 219 students) means that additional capacity is available. The DEIR fails to consider the deficiency in school in the Downtown area which the District estimates to be 4-6 elementary and 1 middle school.

The DEIR fails to address the location of the existing schools within the SJUSD.

In summary, **with the single exception of the number of elementary schools, not one factual piece of information is correct in the description of the Existing Setting of San Jose Unified School District. The other comments are unsupported, undocumented, and speculative. Despite the fact that a representative of the District was a member of the General Plan Task Force, the preparers of the DEIR failed to consult with the District to obtain accurate base data, and also failed to check the accuracy of the data they did use.**

Santa Clara Unified School District

The Santa Clara Unified School District is comprised of 21 schools, consisting of 15 elementary schools, three middle schools, and three high schools. Three elementary and two middle schools have closed and are leased by child-car providers and private school organizations. The Santa Clara Unified School district boundaries extend into San Jose. The elementary and middle schools in this District currently have additional capacity; high schools are at capacity. L.77.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

Union School District

The Union School District is comprised of 10 schools, consisting of eight elementary schools and two middle schools. Additional capacity is available at schools in this District.

The information as presented is incorrect, inadequate, and not representative of the current setting of the District.

3E. The mitigation measures proposed to reduce potential park service impacts are inadequate, based on speculative and erroneous assumptions, and adversely impacts schools. L.78.

Policy 17, page 265 should also address availability of schools and school playgrounds. If there is not a needed school in the area, how can the City meet its park requirement using the 2.0 acres of school playground? L.78

3F. The DEIR is inadequate and fails to provide any assessment of the adequacy of existing infrastructure to accommodate increased enrollments at existing schools.

The General Plan Update's increases in residential densities will have environmental impacts on infrastructure (sewer, water, telephone, power, etc.), traffic, and noise related to schools and their sites. No consideration or provisions are made in the General Plan Update to assure that the proposed increases in residential densities, specifically the 58,000 additional residential units, will not diminish the ability of the Consortium to provide adequate school services and facilities based upon their present conditions. For example, increases in enrollments as a result of new residential development provided for by the Draft General Plan, may require site improvements at existing school facilities in order to accommodate the new students. However, the DEIR has not made any assessment of the adequacy of the existing infrastructure (sewers, water, telephone, power, traffic system, etc.) serving existing schools to accommodate the necessary expansion. L.79

3G. Section V, Cumulative Impacts is inadequate in its assessment of the range of cumulative impacts on schools and improperly dismisses the impacts as not significant.

The DEIR section on Cumulative Impacts states in the sub-section on Services (pages 278 and 279) that Alternatives 1, 2, 4, and 5 would require the extension of services outside of the City's existing Urban Service Areas, which would include substantial expansions of services including police substations, fire stations, schools,... etc.

The last paragraph goes on to state that: L.80

> Implementation of the General Plan Update would increase demands upon schools by increasing the number of students served by local school district. However, this in not expected to result in a significant environmental impact to the provision of adequate school services.

No explanation or quantitative documentation to substantiate this conclusion is made in the DEIR contrary to law. CEQA Guidelines and case law provide that a draft EIR must discuss "cumulative impacts" when they are significant. (CEQA Guidelines, Section 15130, subd. (a).) And even when they are not deemed significant, the document should explain the basis for that conclusion. (Citizens to Preserve the Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 432 [222 Cal.Rptr.247].) "Cumulative impacts" are

defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines, Section 15355)

The discussion of cumulative impacts must reflect the severity of the impacts and their likelihood of occurrence. To be adequate, the discussion must include the following elements: (1) either (a) a list of past, present, and reasonably anticipated future projects, including those outside the agency's control, that have produced, or are likely to produce, related or cumulative impacts, or (b) a summary of projections contained in an adopted general plan or related planning document that is designed to evaluate regional or areawide conditions, provided that such documents are referenced and made available for public inspection at a specified location; (2) a summary of such individual projects' expected environmental effects, with specific reference to additional information stating where expected environmental effects, with specific reference to additional information stating where such information is available; and (3) a reasonable analysis of all of the relevant projects' cumulative impacts, with an examination of reasonable options for mitigating or avoiding such effects. (CEQA Guidelines, Section 15130, subd. (b).) L.80.

Significantly, Section 15130 of the CEQA Guidelines, subd. (c) states:

§ 15130

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of condition on a project-by-project basis.

Clearly, the impacts on schools resulting in a increase of 17,838 students within the Consortium's jurisdictions (over 20% increase from existing enrollments) represents a significant impact and requires the adoption of ordinances or regulations within the General Plan mitigate the impacts of the Draft General Plan.

3H. Section II, Consistency with Federal, State, Local, and Regional Plans, Goals and Policies of the DEIR is inadequate and not in compliance with the provisions of CEQA, CEQA Guidelines, and Title 21, Environmental Clearance Ordinance.

Section 15125 of the CEQA Guidelines states:

L.81.

§ 15125

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or Sate Implementation Plan once adopted), area-wide waste treatment and water

quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains. (emphasis added)

Section II, Consistency with Federal, State, Local, and Regional Plans, Goals and Policies does not provide any discussion on the inconsistencies between the Draft General Plan and the existing Horizon 2000 General Plan of San Jose. Significant portions of the new language proposed by the Draft General Plan directly contradict general plan language found elsewhere in the existing General Plan and proposed to be kept in the Draft General Plan. The Goals and Policies of the existing General Plan and those proposed in the Draft General Plan are inter- and intra-inconsistent with each other. Inconsistencies between the Project and any such plans dictate that its impacts would be considered significant. (CEQA Guidelines, Appendix G, subd. (a).) L.81

Additionally, the DEIR does not provide any assessment of the consistency of the Draft General Plan with adopted School District Master Plans or Deferred Maintenance Plans governing the local and regional jurisdictions of the nineteen school districts serving San Jose.

3I. The DEIR is inadequate and fails to fully disclose the potential impacts of the Draft General Plan's Goals and Policies on residential developmentt.

The DEIR fails to consider or disclose the potential impacts of the Draft General Plan's Goals and Policies on residential development. As an example, the Land Use section of DEIR does not consider the implication of Community Development, Land Use, Residential Land Use, Policy 1, which states: L.82

> Residential development at urban densities (one dwelling unit per acre or greater) should be located only where adequate services and facilities can be feasibly provided.

As one follows the public services- and school-related goals and policies in the San Jose 2020 Draft General Plan the inclusion of language relative to schools and public facilities are first mentioned in the General Plan in Section A., "City Concept" Sub-Section 1 which states:

L.83

A. CITY CONCEPT...

1. Urban Conservation

Goal: Improve the existing quality of life and create a stable, mature community.

Policies:

1. In the development review process and in designing service and capital facility programs, the City should strive to create an environment in which the highest value is placed on people.

2. The City should encourage new development which enhances the desirable qualities of the community and existing neighborhoods.

The Consortium believes that both of these policies reinforce the importance of schools in the development review process, as quality schools are a desirable characteristic of the San Jose community and its existing neighborhoods.

Sub-Section 3 of Section A, "City Concept" states:

3. Neighborhood Identity

Goal: Enhance the sense of neighborhood identity in San Jose

Policies:

3. Public and private development should be designed to improve the character of existing neighborhoods. Factors that cause instability or create urban barriers should be removed.

This policy limits development if it will not improve existing neighborhoods. If new residential development will not improve the characteristics of a neighborhood, such as creating overcrowded conditions in neighborhood schools which decreases the quality of local education, then the development should be redesigned or eliminated. L.83.

Policy 4 of Sub-Section 3, of Section A, "City Concept" states:

4. Neighborhoods should include places for interaction among residents such as parks, community centers, schools, commercial areas, churches, and other gathering points.

This comment emphasizes the importance of quality school facilities in existing and planned neighborhoods.

The next goals relating to schools/public services and facilities is found under Section B., "Community Development," as follows:

B. COMMUNITY DEVELOPMENT

1. Land Use

a. Residential Land Use

There are a wide variety of residential neighborhoods in San Jose, each with its own character defined by setting, housing types, densities, and, in some cases, cultural heritage. The environment and livability of existing residential neighborhoods are an intangible but important community resource to be preserved. Similarly, these qualities should be fostered in future neighborhoods. To this end, the Residential Land Use goals and policies reflect concerns for the protection and neighborhoods from incompatible land uses, the adequacy of public facilities and services, and the protection from hazards.

The Residential Land Use policies also reflect the City's objectives to promote higher density residential development in the future than was typical in the past. This objective recognizes that remaining vacant land resources are finite and should be used as efficiently as possible, that the relative affordability of housing is enhanced by higher densities given the rising price of land, and that higher densities given the rising price of land, and that higher densities make the delivery of public services more cost effective... L.84.

Goal: Provide a high quality living environment in residential neighborhoods.

Policies:

1. Residential development at urban densities should be located only where services and facilities can be provided...

9. When changes in residential densities are proposed, the City should consider such factors as neighborhood character and identity, compatibility of land uses and impact on livability, impacts on services and facilities including schools, and impacts on traffic levels on both neighborhood streets and major thoroughfares... [emphasis added]

To this point in the Goals and Policies, no exclusion of school services and facilities from the terms "services" and "facilities" has been made. Therefore, clearly it is the intent of the Draft General Plan Goals and Policies to include all public services and facilities, including schools, fire, police, libraries, etc., in policies relating to "services" and "policies."

This being the case, under this Policy 1 of the Community Development Section, Land Use, Residential Land Use, unless the impacts of development in overcrowded school

districts are mitigated as part of the general plan, residential development of one dwelling unit per acre or greater will not be allowed, especially in the downtown area and in areas of large scale new development.

The DEIR fails to address the need for adequate school facilities when considering new residential development in places where there are currently not sufficient school facilities (i.e., the Coyote and South Almaden Valley Urban Reserves), and when residential densities are increased (i.e., General Plan Amendment, zone change, intensification corridors, redevelopment project areas, specific plans, and special areas such as is covered in the Downtown 2010 Strategy Plan).

Sub-Section 2, of Section B, Community Development states:

> **2. Economic Development**
>
> As outlined in the Background for Planning section of the Plan, San Jose has historically served as a bedroom community for employment located in other cities. The City has continually provided the bulk of the County's housing, particularly its lower cost affordable housing, but it has lagged behind the rest of the County in terms of job growth. This development pattern has contributed to County-wide traffic congestion conditions and has deprived the City of San jose os an adequate tax base for providing desired service levels since residential development by itself cannot generate sufficient revenues to pay for the service needs it generates. The Economic Development goals and policies are necessitated by an existing local government tax structure which requires cities to maximize tax revenue from non-residential development to support the services required by residential land uses... L.84

Sub-Section 3, of Section B, Community Development states:

> **3. Urban Service Area**
>
> The City adopted a set of Urban Development Policies in 1970 to direct development to those areas where services and facilities could be provided. Because these policies deal with the timing and staging of development and are so closely related to other General Plan growth management policies, they were incorporated into the Plan in 1976. The Urban Service Area goals and policies address services provided by the City as well as those provided by other public agencies, such as flood control, public schools, and regional transportation.

This language states that the following goals and policies relating to the Urban Service Area also relate to those services provided by other public agencies including school

districts. This connects schools to previous reference to services and facilities. The previously stated opinion that all language relating to "services" and "facilities" includes school services and facilities is reinforced in this section of the "Goals and Policies."

The goal of Sub-Section 3, Urban Service Areas of Section D, Community Development, states:

> **Goal:** Insure that San Jose's future growth will proceed in an orderly, planned manner in order to provide efficient and economical public service, to maximize the utilization of existing and proposed public facilities, and to achieve the equitable sharing of the cost of such services and facilities.

The term "equitable sharing" of the costs of such services and facilities is assumed to mean that the parties to development should pay their fair share of the costs of providing services and facilities, including school services and facilities, which is created by their projects.

The Policies section of Sub-Section 3, of Section B, Community Development state:

Policies:

1. The General Plan designates an Urban Service Area where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring these services should be located.

As seen in the previously shown language in the description under Part 3., "Urban Service Area," it states, "The Urban Service Area goals and policies address services provided by the City as well as those provided by other public agencies, such as flood control, public schools, and regional transportation." School services are considered in this section of "Goals and Policies" to be included as part of the services rendered in the Urban Service Area. Policy I further reinforces the nexus that school services and facilities "are included under public services and facilities." L.84.

Policy 2, Sub-Section 3, Section B states:

2. The Urban Service Area should be expanded only when it can be demonstrated that existing facilities and services are available and adequate to serve the proposed expansion area. If existing facilities are not adequate, alternate consideration may be given to proposed facilities in the adopted Capital Improvements Program or similar programs of other agencies. If existing and/or proposed facilities are not adequate to serve the proposed expansion area, the Urban Service Area may be expanded if it can be demonstrated that all necessary facilities will be provided by the developers...

School services are part of the Urban Service Area, as demonstrated previously. The Draft General Plan specifically calls for the consideration of services and facilities, including schools, in areas outside the City's Urban Service Area, such as the Coyote and South Almaden Valley Urban Reserves. Therefore, if the City opens the Urban Reserve areas to new residential development pursuant to the Draft General Plan, it can only be done by expanding the City's Urban Service Areas which requires either:

a) Adequate school facilities and services are available to serve the expansion areas, or
b) Parties to development must ensure that they will provide all necessary facilities.

The above sections from the "Goals and Policies" Section reinforce the Draft General Plan's intent of treating school services and facilities in the same manner as other services provided by the City of San Jose in the Urban Service Area. As mentioned, Policy 3 of "Urban Service Area" states, "The Urban Service Area should be expanded only when it can be demonstrated that existing facilities and services are available and adequate to serve the proposed expansion area...If existing and/or proposed facilities are not adequate to serve the proposed expansion area, the Urban Service Area may be expanded if it can be demonstrated that all necessary facilities will be provided by the developers."

In sum, these passages mean that the Draft General Plan's consideration of development in rural areas, such as the Coyote Urban Reserve or the South Almaden Valley Urban Reserve, currently outside of the Urban Service Area, without providing for an adequate level of facilities, including school facilities, to serve this new area(s), then the development should not occur until such a level of facilities is existing or measures to ensure provision of such facilities are provided by the parties to development. The Draft General Plan includes development within the Urban Reserves which are currently outside of the City's Urban Service Area and contain no actual or proposed school facilities with which to house those new students generated from residential development of these areas. L.84.

All told, the Preferred Alternative of the Draft General Plan will generate approximately 58,000 additional residential units within the existing and proposed expansion of the Urban Service Areas.

Additionally, the lack of plans for new school facilities, including the planning, financing, or construction of these facilities, is not addressed in the DEIR. <u>The DEIR is inadequate in its disclosure of impacts.</u>

3J. The consideration of the significance of the impacts of the Draft General Plan on schools, particularly based on the criteria promoted in the City's Major Strategies and Goals and Policies, is inadequate, uneven, and contradictory.

0424

The Draft Sustainable City Major Strategy states San Jose's desire to become an environmentally and economically sustainable city. It states the Strategy works with the other Major Strategies of the General Plan to ensure that San Jose will be able to provide urban services to its residents in the most efficient manner possible, and that the City will have its best chance to sustain its current level of services into the future.

Is this to be done at the expense of schools?

- Draft Intensification Corridors Special Strategy Area Text.

This places additional housing in the most significantly impacted areas from a school facilities standpoint.

- Housing Major Strategy states that it works on encouraging infill development which the City can serve without overwhelming the City's fiscal resources.

The Consortium asks, **What about the schools needed to support this increased population and density?** Where is the equity in preserving the City's fiscal resources at the expense of the school districts? The Consortium contends that the City has made fiscal impacts an issue and identified them as a significant impact on the City in the Draft General Plan and the DEIR yet it refuses to consider the same fiscal impact and its significance on school districts. L.84.

3K. The Application of the Student Generation Factors used in the DEIR is inaccurate, misleading, and significantly underestimates the number of students to be generated.

The estimation of students to be generated by the General Plan is inaccurate, misleading, and understates the numbers of students to be generated. The numbers set forth in Table 34 of the DEIR only estimates students generated by new housing. As discussed earlier in Comment 3D, no assessment of the additional students generated indirectly by the creation of 126,000 new jobs in San Jose has be made.

Berryessa Union School District is used to illustrate the impact. Studies show that in the Berryessa Union School District, students are generated at a rate of .11 student per new job (employee) within the District. Applying Berryessa's student/new employee student generation rate (.11 is a very conservative estimate of students generated due to the Districts low capture rate) to the 126,000 new jobs for all of San Jose, an estimated 13,860 additional students would be generated in San Jose by implementation of the Draft General Plan. Historically, from 1980 to 1990, only 26.57% of all new families locate into new housing. The remaining 73.43% occupy existing dwelling units. Therefore, applying Berryessa's rate to all of San Jose, as many as 10,177 additional students above the 31,852 students identified in Table 34 could be expected to be

generated under the General Plan. The actual number could be higher, especially in Districts with a higher capture rate than Berryessa.

The DEIR inappropriately applies student generation rates to against single family and multiple family designations which are based on zoning density and not unit size and configuration. Since the DEIR does has not provided any information on unit size or configuration, an average student generation factor for all units should be used. Again, using Berryessa Union School District as an example, the estimated students generated can be shown to be underestimated. In Berryessa Union, the average student generation factor for all units is 0.4034. Applying this factor to the number of dwelling units projected within the District, the following numbers of students are expected.

Factor	Alt 1 DU's	Alt 1 Studnt.	Alt 2 DU's	Alt 2 Studnt.	Alt 3 DU's	Alt 3 Studnt.	Alt 4 DU's	Alt 4 Studnt.	Alt 5 DU's	Alt 5 Studnt
District .04034	2,820	1,138	4,124	1,664	4,502	1,816	2,820	1,138	2,820	1,138
DEIR	2,820	1,095	4,124	1,369	4,502	1.149	2,820	1,095	2,820	1,095
+/-		43		295		667		43		43
%		3.9%		21.5%		58.1%		3.9%		3.9%

L.84

As shown in this example, the DEIR underestimates the number of students to be generated from new residential development by 4% to 58% depending on alternative. And, as discussed previously in an earlier section of these comments, this number represents only those students expected on the Districts current level of capture, not the total number of students who reside within the District. The DEIR must: 1) recalculate the estimated student generation within school districts from new residential development using accurate numbers and appropriate and professional methodology; and 2) estimate students for each district based on new jobs using each individual districts factors in order to properly shown the number of students expected.

ENCLOSURES

Justification Report for School Facility Fees

Commercial, Industrial and Residential Development Projects

MORGAN HILL UNIFIED SCHOOL DISTRICT
Morgan Hill, California

As presented to the Board of Education
February, 1993

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EXECUTIVE SUMMARY

This Fee Justification Study analyzes the extent to which residential and commercial/ industrial development creates impacts on the schools of the Morgan Hill Unified School District (MHUSD), the need for school facilities, the cost of school facilities and the amount of development fees per square foot that may be levied for schools, pursuant to the provisions of Assembly Bill (AB) 181, Senate Bill (SB) 1287 and section 66001 and subdivision (e) of Section 53080.1 of the Government Code.

Morgan Hill's current school facilities capacity is evaluated in this Study to determine if excess capacity is available to house new students generated by residential development. A comparison of the District's current facilities capacity and its existing enrollment indicates the MHUSD facilities already exceed permanent capacity. Students are being housed in temporary classrooms. In total, District facilities currently have capacity for 9,029 students. Enrollment is expected to increase to 9,233 students for the fall of 1993, and to 11,766 by the year 2011 (Exhibit 2). In all likelihood, actual enrollment will far exceed these projections due to accelerated development in the unincorporated areas of the district.

The revenue component of this Study estimates the potential fee revenues generated by commercial and industrial development as well as fees paid on residential development. These fees are calculated by applying a fee of $2.65 per square foot, which includes the maximum increase of $1.00 per square foot authorized by SB 1287 as of January 1, 1993, to the number of new residential homes within the District. Commercial and industrial space is assessed a fee of 27 cents per square foot.

As net School Facilities Costs are higher than the amount generated by applying the maximum authorized fees on residential and commercial/industrial development, the levy of the maximum fee is clearly justified.

RECOMMENDATIONS

It is recommended that the Governing Board levy and collect a total fee of $2.65 per square foot of habitable residential area, which includes an additional $1.00 per square foot as authorized by SB 1287 and the Government Code.

It is further recommended that the Governing Board continue to levy and collect a fee of 27 cents per square foot of commercial/industrial space as authorized by the Government Code.

Justification Report for School Facility Fees

Commercial, Industrial and Residential Development Projects

MORGAN HILL UNIFIED SCHOOL DISTRICT
Morgan Hill, California
February, 1993

I. INTRODUCTION

This report evaluates the effect of commercial/industrial and residential development on the school facility needs of the Morgan Hill Unified School District.

Part I gives general information about the District, its needs and the School Facility Fee program; Part II presents the method used to justify School Facility Fees on commercial and industrial development projects; Part III discusses the relationship between School Facility Fees and residential development projects; and Part IV presents findings for the District.

A. *Description of the District*

The Morgan Hill Unified School District (or "District") provides K-12 and adult education for the City of Morgan Hill, areas of the City of San Jose, and areas of unincorporated Santa Clara County. The District includes large areas of remote undeveloped territory. District boundaries extend generally from Bernal Road in the North to Church Avenue in the South and from the Santa Cruz County line on the West across the valley and the Diablo Mountain Range to the Stanislaus County line on the East. A reduced scale map showing the District boundaries is enclosed on the next page as Exhibit 1. A detailed map showing District boundaries is available for inspection at the District Offices.

Exhibit 1

MORGA HILL UNIFIED SCHOOL DISTR T

Twenty Year Projection of First Month Enrollment

LOCATION		82	83	84	85	86	87	88	89	90	91	92	93	94	95
Elementary	KG	576	609	617	688	688	664	780	715	652	697	701	758	780	874
	1st	556	558	645	637	696	732	686	796	744	699	734	738	798	821
	2nd	518	514	530	586	628	666	726	675	746	742	682	716	720	778
	3rd	554	549	520	528	579	631	704	718	666	734	731	672	706	710
	4th	558	525	533	537	564	604	632	672	689	683	728	725	666	700
	5th	603	588	527	532	555	569	637	646	672	707	694	740	737	677
	6th	681	582	626	551	542	567	596	630	648	673	707	694	740	737
	SDC	104	96	97	66	73	69	68	63	49	58	58	58	58	58
SUBTOTAL		4150	4021	4095	4146	4325	4502	4829	4916	4866	4993	5035	5101	5205	5355
Middle School	7th	773	726	633	652	583	614	633	649	694	703	734	771	757	807
	8th	743	756	705	614	640	565	625	624	648	664	686	716	752	738
	9th	680	735	732	713	607	628	575	600	601	606	630	651	679	713
	OPP	0	11	20	11	8	17	12	12	15	17	17	17	17	17
	SDC	13	12	17	15	24	19	29	34	32	40	40	40	40	40
SUBTOTAL		2209	2240	2107	2005	1862	1843	1874	1919	1990	2030	2107	2195	2245	2315
High School	10th	718	675	840	889	725	637	649	572	567	618	603	627	648	676
	11th	640	648	612	674	749	691	580	569	544	586	606	591	614	635
	12th	542	578	500	511	606	704	578	535	508	494	531	549	535	556
	SDC	0	2	10	19	18	17	13	10	14	18	18	18	18	18
	I.S.	53	35	49	28	19	59	54	84	74	81	81	81	81	81
	Cont.	110	121	126	123	100	114	121	118	80	71	71	71	71	71
SUBTOTAL		2063	2059	2137	2244	2217	2222	1995	1888	1787	1868	1910	1937	1967	2037
GRAND TOTAL		8422	8320	8339	8394	8404	8567	8698	8722	8643	8691	9052	9233	9417	9707

LOCATION		97	98	99	00	01	02	03	04	05	06	07	08	09	10
Elementary	KG	863	857	852	849	849	849	851	854	858	862	868	874	880	884
	1st	914	909	902	897	894	894	894	896	899	903	908	914	920	927
	2nd	897	891	886	879	875	872	872	872	874	877	880	885	891	897
	3rd	790	884	878	673	866	862	860	860	860	861	864	867	872	878
	4th	761	783	877	871	866	859	855	853	853	853	854	857	860	865
	5th	716	774	796	892	886	881	873	869	867	867	867	868	871	874
	6th	712	716	774	796	892	886	881	873	869	867	867	867	868	871
	SDC	58	58	58	58	58	58	58	58	58	58	58	58	58	58
SUBTOTAL		5711	5872	6023	6115	6186	6161	6144	6135	6138	6148	6166	6190	6220	6254
Middle School	7th	739	777	781	845	869	973	967	961	953	948	946	946	946	947
	8th	784	721	758	762	824	848	949	943	937	930	925	923	923	923
	9th	747	744	684	719	723	782	804	900	895	889	882	877	876	876
	OPP	17	17	17	17	17	17	17	17	17	17	17	17	17	17
	SDC	40	40	40	40	40	40	40	40	40	40	40	40	40	40
SUBTOTAL		2327	2299	2280	2383	2473	2660	2777	2861	2842	2824	2810	2803	2802	2803
High School	10th	696	743	740	681	715	719	778	800	895	890	885	878	873	872
	11th	695	682	728	725	667	701	705	762	784	877	872	867	860	855
	12th	599	629	617	659	656	604	635	638	690	710	794	789	785	779
	SDC	18	18	18	18	18	18	18	18	18	18	18	18	18	18
	I.S.	81	81	81	81	81	81	81	81	81	81	81	81	81	81
	Cont.	71	71	71	71	71	71	71	71	71	71	71	71	71	71
SUBTOTAL		2160	2224	2255	2235	2208	2194	2288	2370	2539	2647	2721	2704	2688	2676
GRAND TOTAL		10198	10395	10558	10733	10867	11015	11209	11366	11519	11619	11697	11697	11710	11733

Twenty Year Projection

of First Month K-12 Enrollment

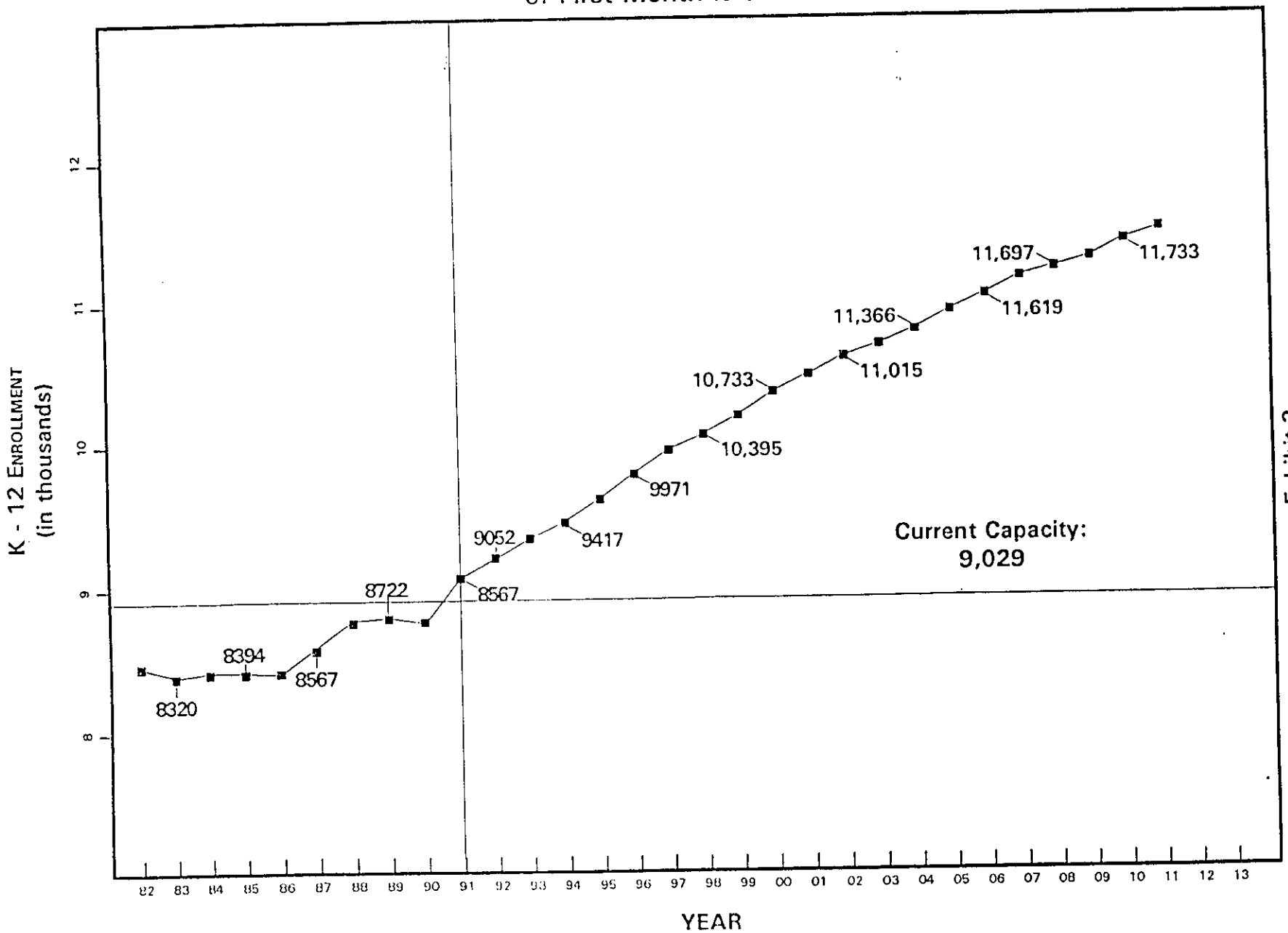

Exhibit 3

The district-wide K-12 enrollment in October 1991 was 8,891 students in nine elementary schools (grades K-6), two middle schools (grades 7-9), one high school (grades 10-12), and a continuation high school (grades 10-12).

Projections of future enrollment are made/updated annually. Exhibit 2 provides details of enrollment projections for the next 20 years (through the 2011-2012 academic year), and Exhibit 3 graphically illustrates this growth. For purposes of comparison, existing capacity, including permanent and leased buildings, is:

Elementary	4,781 students
Middle	2,018 students
High School	2,230 students
Total	9,029 students

Please see Exhibit 4 for more information on the current capacities of District schools.

This current capacity of 9,029 students compares to a projected Fall 1992 enrollment of 9,052 students. The difference is made up of temporary portable classrooms and reduced space availability for certain programs. While some space exists at the high school level, the District has a serious space shortage at the elementary and middle school levels.

B. *Relationship Between Development Projects and School Facilities Needs*

Population growth is a foreseeable outcome when new residential units are added to a community. Further, continuing growth is possible in a community only when a source of economic activity is present. Development of new business and employment centers creates demand for new residences, new public services (including schools), and additional support businesses.

Part II of this report shows that District enrollment and facility requirements will increase as a result of new commercial and industrial development projects located in the District. It is also shown that the total amount projected to be collected from all future School Facility Fees is less than the total financial cost from all future development projects.

Part III of this report demonstrates that additional and modernized facilities will be needed to accommodate students from future residential development within the District. Part III further shows that the maximum amount that may be collected from all projected residential impact fees is insufficient to meet the cost of providing these facilities.

Part IV of this report demonstrates that combined revenues from residential, commercial and industrial development projects in the District are less than the combined cost of providing adequate school facilities to accommodate enrollment growth related to these projects.

EXHIBIT 4

PUPIL CAPACITIES BY TYPE AND SCHOOL

Elementary	Number of Teaching Stations	KG	1-3	4-6	SDC	Sq.Ft.	Total
Burnett	17	54	187	240	10	27,535	491
El Toro	0	0	0	0	0	0	0
Encinal	9	0	0	270	0	14,850	270
Gwinn	13	0	0	390	0	21,450	390
Jackson	22	108	243	270	20	36,315	641
Los Paseos	19	108	432	0	10	30,780	550
Machado	2	0	54	0	0	2,970	54
Nordstrom	22	108	216	330	10	37,050	664
Paradise Valley	22	108	243	300	10	36,885	661
San Martin	17	108	405	0	0	28,215	513
Walsh	19	54	243	240	10	30,615	547
Total K-6	162	648	2023	2040	70	266,665	4,781

Exhibit 4-A

Secondary	No. of Teaching Stations	Reg. 7-8	Lab 7-8	Reg. 9-12	Lab 9-12	SDC	Sq.Ft.	Total
Britton	43	432	270	280	120	20	90,294	1,122
Murphy	34	351	135	280	120	10	73,825	896
Live Oak	82	0	0	1708	432	30	86,461	2,170
Central	4	0	0	45	15	0	7,200	60
Total 7-12	163	783	405	2313	687	60	357,780	4,248
					Grand Total		624,445	9,029

Exhibit 4-B

C. *Relationship of Reconstruction to New Development Projects*

New development projects increase the demand for school facilities. Like many physical items, school facilities require periodic reconstruction to restore the full usefulness to which they were designed. After 30 years of continuous use, school facilities require extensive reconstruction investments which far exceed routine maintenance efforts and periodic expenditures for items of major maintenance. In addition, increased numbers of students will cause facilities to be used which would otherwise not be used. This investment in school facilities is necessary to ensure that students associated with future commercial, industrial and residential development projects will be housed in adequate school facilities.

D. *Summary of Findings*

The remainder of this report will discuss the relationship of development projects to school facility needs and the costs that may be paid by School Facility Fees. An extensive discussion addresses a method for computing the relationship between residential development projects and School Facility Fees.

Another section discusses the relationship between commercial and industrial development projects and School Facility Fees.

Findings established by this report are discussed in depth in later sections of this report. A summary of the findings follows. Table 1 summarizes the fiscal impact of future development projects.

TABLE 1

Summary of Fiscal Impacts of Development Projects and Potential Revenues from School Facility Fees

Fiscal Impact of Future Development	$58,530,396
Potential Future Revenues:	
All Future Fees, New Residences	$30,448,500
All Future Fees, Resid. Additions	1,522,420
Total of Future Residential Fees:	$31,970,920
All Future Fees, Residential	$31,970,920
All Future Fees, Commercial/Industrial	2,160,000
Grand Total of Future Fee Revenues:	$34,130,920

These findings may be summarized as follows:

* Commercial and industrial development will contribute to the demand for school facilities in the Morgan Hill Unified School District.

* School facilities are needed to serve increased demand, and reconstruction costs will be encountered to provide adequate facilities for all students entering the school system as a result of continuing development in the District.

* Continuing development within the District will increase the demand for school services. New residences will directly add to the demand for additional school facilities. Additional commercial and industrial development projects will cause additional workers to locate in the District, which in turn will bring additional demand for new and existing housing, and will also bring students into the District due to the work location of the parents.

* The District may some day qualify to participate in the State School Building Lease Purchase Program or the State 50/50 program. These programs requires the District to provide to the state a "local matching share" amount. This is the amount that could have been collected from School Facility Fees if fees had been levied on all non-exempt projects within the District during the defined match period (regardless of whether the District actually collected these fees or not). With other funds committed to projects needed throughout the District, the District levies these fees to continue with the needed state-aided projects while addressing, as best it is able, the needs at other schools.

* The relationship between commercial/industrial development projects and the need for school facilities may be traced through the following chain of linkages: more development projects mean more jobs, more jobs mean moreworkers, more workers mean more residents, more residents mean more households, more households mean more children, and more children mean more demand for school facilities.

* The amount of fees collected by the District for commercial and industrial projects ($0.27 per square foot), as adjusted for inflation as provided in law, is less than the amount of school facility capital costs associated with new commercial and industrial development.

* All fees from all future commercial/industrial development in the District will not exceed the total cost of school facilities related to commercial/industrial development.

* The total cost of school facilities from all examined types of commercial or industrial development in the District is greater than projected revenue from the District's fee of $0.27 per square foot ($2,160,000).

* The total identified school facility cost from new residential projects is $58,530,396. Total fees from new residential development ($31,970,920) is less than the cost associated with new residential development.

II. ANALYSIS OF FEES ON COMMERCIAL/INDUSTRIAL PROJECTS

This section reviews the process used to determine what cost relationship, if any, exists between commercial or industrial development projects and school facility needs. This issue has been explored by other planning agencies, including studies previously considered by the District.

The approach utilized in this report is to apply nationally recognized standards, U.S. census employment statistics, and local statistics to determine the impact of future commercial and industrial development projects on the District. Many of the factors used in this analysis were taken from the 1980 U.S. Census which remains the most complete and authoritative source of information on the community. Other studies have been made that use extrapolations from Census data. Rather than using results from other studies that rest on different assumptions made for different purposes, this report uses factors that employ the actual Census data to the extent possible. Given the lack of statistics developed solely for the area served by the District, statistics have been assembled from detailed Census tables which represent as closely as possible conditions within the District.

Factors used are:

A. *Employees per Square Foot of Development*
B. *Percentage of Employees Residing within the District*
C. *Number of New Homes per Resident Employee*
D. *Number of Pupils per Home*
E. *Cost of School Facilities per Pupil*

A x B x C x D x E = *School Facility Cost per Square Foot of Development.*

If the product is greater than zero, this equation establishes both (1) the existence of a relationship between the commercial or industrial development project and school facility needs, and (2) the amount of impact. This impact may be mitigated by fees on new commercial or industrial development projects within the District.

A. *Employees per Square Foot of Development*

This section describes the method used to determine numbers of employees per square foot of development.

1. The number of employees per square foot of development has been established in national and regional surveys. Reference documents and resources used in this analysis are published by the Institute of Transportation Engineers (ITE), American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHREA), the National Fire Protection Association, and the San Diego Association of Governments (SanDAG), among others.

The surveys are used for many different purposes:

* Fire Departments must compute exit requirements from various type of buildings,
* Traffic planners must estimate roadway and parking needs based on permissible types of buildings in a given development project,
* Air conditioning and heating engineers must determine likely heat and cooling load requirements for future buildings,
* Utility planners must estimate future needs for projects before the projects are built or the spaces are leased.

These standards are the result of years of professional research, and have been widely used across the nation. Table 2 lists employee per square foot standards for various categories of commercial and industrial development projects.

TABLE 2

Employees Per Square Foot of Building Area

Type of Development	Employees/ Square Foot	Square Foot/ Employee	Employees/ 1,000 Sq.Ft.
Movie Theater	.00066	1,515	0.66
Racquet/Health Club	.00100	1,000	1.00
Warehouse/Distributing	.00125	800	1.25
Heavy Industrial	.00154	650	1.54
Regional Shopping Center	.00157	636	1.57
Light Industrial/Manufacturing	.00182	550	1.82
Motel	.00200	500	2.00
Bank	.00250	400	2.50
Neighborhood Shopping Center	.00258	388	2.58
Research/Development Complex	.00333	300	3.33
Hotel	.00357	280	3.57
Medical Office	.00370	270	3.70
Office Park: office/commercial	.00380	263	3.80
Preschool/day care	.00400	250	4.00
Auto Repair Facility	.00400	250	4.00
Hospital	.00424	236	4.24
Office Building >100,000 sf	.00425	335	4.25
Office Building <100,000 sf	.00454	220	4.54
Restaurant	.00800	125	8.00

(Multiple shifts are included in these ratios.)

2. Business Relocations within the District: In the case of a business moving to a new facility from an existing building in the District, it is assumed that the older facility will be occupied by a new business enterprise of the same type and with the same number of employees as the business that relocated.

B. *Percentage of Employees Residing within the District*

The preceding section established that each type of commercial or industrial development within the District will employ some number of individuals, depending on the type of development. This section addresses the issue of how many of these new employees are likely to live within the District, rather than commute from homes in other communities.

1. Published Statistics on Residence Location: The 1980 U.S. Census gathered data on residence and employment locations for many communities in the nation. The Census reported that 29.9% of the employed residents of the City of Morgan Hill also worked in the City. No separate statistic is available for the individuals who worked in Morgan Hill. It will be assumed that, at a minimum 30% of the workers in Morgan Hill also live in the community. When workers from surrounding areas which are in the District but not in the city are included, this figure certainly must be higher than 30%.

2. Children of Workers Living Outside of the District: Chapter 172 of the Statutes of 1986 (AB 2071, Allen) added Section 48204 to the California Education Code. The law's effect has been summarized by State Department of Education analysts as:

> *"This measure makes a significant change in California's compulsory education law by providing that an elementary school pupil whose parent or guardian is employed within the boundaries of a school district may be deemed to have complied with the requirement for school attendance within that district."*

This law allows any parent to request enrollment of his or her elementary age student in the school district where the parent works, an action that clearly will affect the participating school districts. New commercial and industrial development will expand the base of workers to whom this new option is available.

C. *Number of New Homes Per Resident Employee*

This section establishes the number of homes which are likely to be associated with each new resident employee.

Information on the number of homes per resident employee is found in the 1980 Census. Thirty-nine percent of the families had one or fewer workers in their family, meaning that 61% of the families had more than one worker per home. This in turn means that there was an overall ratio of less than one home per worker, as some homes have two or more workers.

To determine the number of homes per worker, the 7567 employed residents of Morgan Hill in 1980 will be divided by the 5,566 homes in the city in that year to get a ratio of 0.735 homes per worker.

This factor means that, on average, each additional worker will demand 0.735 new or existing housing units as some workers will be the second workers in a household.

As an example, of 1,000 new employees in a given commercial or industrial development, 30% are likely to reside in the District. These 300 new resident-workers will demand an average of 0.735 homes each, or a total of 220 additional homes.

D. *Number of Pupils Per Home*

In 1991-92 the District had an enrollment of 8,891 pupils from 13,411 housing units for an average of 0.663 pupils per home. This ratio will be used in this report.

E. *Cost of School Facilities Per Pupil*

Estimates of school facility cost involve both the size of the new facility and the cost per square foot of construction, plus a land cost factor. Central office, transportation, and support service costs are not included in determination of costs that may be charged against fees collected from commercial or industrial development projects.

1. Cost of New Facilities: Using standards from this State Allocation Board, each elementary pupil requires 59 square feet of building area Each 7-8th grade student requires 80 square feet of building area, and each 9-12 pupil requires 91 square feet.

Each square foot of construction for a new school will cost $125. This amount is consistent with cost standards of the state School Building Lease Purchase Program.

Furnishings and equipment will be needed for the new facilities. This is estimated to cost $200 per pupil for elementary schools, $225 per pupil for middle schools, and $250 per pupil for high schools. The higher costs reflect the increased amount of specialized equipment needed in the middle and high schools.

Land is estimated to cost $135,000 per acre. An elementary school of up to 700 pupils requires 10 acres, a middle school of up to 1,000 pupils requires 20 acres and a high school of up to 2,000 pupils requires 40 acres, according to the "School Site Analysis and Development Handbook," published by the California State Department of Education.

TABLE 3

COST OF NEW SCHOOL FACILITIES PER PUPIL*

Elementary (K-6) Schools — 700 pupil capacity			
Facilities	59 sq.ft. per pupil @ $125/sq.ft.	=	$7,375
Furn./Equipment	$200 per pupil	=	200
Land	10 acres @ $135,000/acre/700	=	1,929
Est. per pupil cost		=	$9,504
Middle Schools (7-8) — 1,000 pupil capacity			
Facilities	80 sq.ft. per pupil @ $125/sq.ft.	=	$10,000
Furn./Equipment	$225 per pupil	=	225
Land	20 acres @ $135,000/acre/1000	=	2,700
Est. per pupil cost		=	$12,950
High Schools (9-12) — 2,000 pupil capacity			
Facilities	91 sq.ft. per pupil @ $125/sq.ft.	=	$11,375
Furn./Equipment	$250 per pupil	=	250
Land	40 acres @ $135,000/acre/2000	=	2,700
Est. per pupil cost		=	$14,325
Weighted Cost Per Pupil for All Grades			
Elementary	$9,504 x 7/13	=	$5,118
Middle	$12,950 x 2/13	=	1,994
High School	$14,325 x 4/13	=	4,412
TOTAL		=	**$11,524**

* The weighting factor adjusts for the different numbers of grades at the different levels. District schools are organized into K-6, 7-9 and 10-12 levels. These cost factors are generally based on state formulas which utilize the groupings shown. Our interest is in the average K-12 cost, which is not affected by this different organizational scheme (i.e., high school level investments are made at the 7-9 middle school). Elementary school includes grades K-6, which is seven of the 13 grades. Middle school is grades 7-8, or two of the 13 grades, and high school is grades 9-12, or four of the 13 grades.

2. Cost of Modernization and Reconstruction: "Modernization" costs are defined by the State Allocation Board as expenditures that extend the life of the facility and do not exceed 25% of the building's replacement cost. Reconstruction costs, as defined by the State Allocation Board, are modernization costs that also expand the capacity of existing facilities. This austere state program funds basic facility rehabilitation projects for districts with severe needs.

The terms "construction" and "reconstruction" as used in Government Code Sections 53080 and 65995 are not clearly defined. They are not assumed to be limited to the definitions in Education Code 17721.3 that apply to projects funded by the State Allocation Board. The term "reconstruction" as used in Government Code 65995 is specifically assumed to include modernization projects funded by the State Allocation Board and will be used in this report as a general reference for projects which modernize, reconstruct, rehabilitate or otherwise make more useful existing school facilities, as determined by the District Board of Education.

This report will use a reconstruction cost estimate of $31.25 per square foot (25% of the $125 estimated cost of new construction).

Costs are based on the state's square footage allowance for reconstruction projects which is 7% less than the allowance for new construction of 55, 75 and 85 square feet per pupil for elementary, middle and high school projects, respectively.

The above cost is for buildings only. Students must be housed in adequate classrooms while the construction or reconstruction projects are underway, which sometimes will require the use of temporary (leased) classroom buildings. The cost for temporary classrooms will vary between sites, but is estimated to be $4,000 per classroom per year for leased temporary classroom buildings that meet the state's stringent earthquake safety requirements for school buildings.

In addition, the District must pay for installing and moving these temporary classrooms. It is estimated to cost $6,000 to install and have power hooked up to each classroom. If each building is moved after three years, this cost may be prorated one-third to each year it is in use at that location, or $2,000 per year. Moving is estimated to cost $2,000 per move, plus $1,000 to restore the former site, or an additional $1,000 per year per classroom unit assuming the same 3-year placement at a campus.

Combined, these costs are $4,000 annual lease cost plus $2,000 per year prorated set up costs plus $1,000 per year prorated move and site restoration cost, or a total cost of $7,000 per classroom building per year. This cost will not be incurred at every location, as some schools will be able to shift students to other rooms during the reconstruction projects. Therefore, the cost will be reduced by one-half to reflect a better estimate of the number of temporary classrooms needed during the projects. This cost may be converted by dividing by the common size of a classroom (e.g., 960 square feet) to get a cost per square foot factor of $7.30, which will be reduced by half to arrive at a temporary housing cost of $3.65 per square foot.

It is further projected that site improvements will be needed to bring the outside of the schools to the same modern and functional level as the modernized interiors. A cost estimate of $3.25 per square foot of corresponding building area will be used (equivalent to $3,120 per classroom being modernized). This includes renovated walkways, exterior drinking fountains, exterior locker areas, bike storage enclosures, lunch areas, and the various exterior features needed to complement classrooms and support areas.

In addition to work on the building and fixtures, new or refurbished furnishings and equipment are needed to return the modernized classrooms to full usefulness. This is estimated to cost $219 per pupil. Assuming 30 pupils and 960 square foot for each classroom, this may be expressed as $6.85 per square foot.

Including these factors as a part of reconstruction costs addresses the complete reconstruction needs of the school, rather than limiting reconstruction to the structure. These costs are combined and weighted to adjust to the different costs at the various grade levels. Based on Table 4, a total reconstruction cost per pupil of $3,029 will be used in this report.

TABLE 4

Modernization/Reconstruction Costs

Factors included in Modernization/Reconstruction Costs:

Cost Category	Cost per Square Foot
Basic Modernization Cost	$31.25
Interim/Temporary Housing	3.65
Exterior Renovation	3.25
Furnishings/equipment	6.85
Total	**$45.00**

Cost of Modernization/Reconstruction per Pupil:

K-6:	55 sq.ft. x $45/sq.ft.	=	$2,475 x 7/13	=	$1,333
7-8:	75 sq.ft. x 45/sq.ft.	=	$3,375 x 2/13	=	519
9-12:	85 sq.ft. x 45/sq.ft.	=	$3,825 x 4/13	=	1,177
Total K-12 weighted average cost per pupil				=	**$3,029**

Table 4

Please Note: The weighting factors are described in Table 3.

F. *Calculation of Cost Relationship*

Five factors have been identified for the calculation of school facility capital needs resulting from new commercial and industrial development. These factors are combined to quantify impact on the District's facility needs from new commercial or industrial developments. As the District is already overcrowded and no existing space is available for pupils related to new development projects, the cost for new construction must be used. Impacts for sample types of projects are given below in Table 5. Impacts for development projects not included on this list may be computed by estimating the uses closest to the actual employee-per-square foot ratio for the proposed development.

The District may supplement this list from time to time with additional data to determine the potential impact from project categories not listed.

A survey of existing local Morgan Hill businesses has been conducted verifying these average employee-per-square foot ratios.

TABLE 5

Computation of Monetary Impact

Type of Development Project	Workers per sq. ft.	Percent District Resident	Homes per Worker	Pupils per Home	Cost per Pupil	Cost per sq.ft.
Movie Theater	0.00066	0.30	0.735	0.66	$11,524	$1.10
Racquet/Health	0.00100	0.30	0.735	0.66	$11,524	1.68
Warehouses	0.00125	0.30	0.735	0.66	$11,524	2.10
Heavy Indust.	0.00154	0.30	0.735	0.66	$11,524	2.59
Regional Shops	0.00157	0.30	0.735	0.66	$11,524	2.64
Lt Industrial	0.00182	0.30	0.735	0.66	$11,524	3.06
Motel	0.00200	0.30	0.735	0.66	$11,524	3.35
Bank	0.00250	0.30	0.735	0.66	$11,524	4.19
N'bhood Shops	0.00258	0.30	0.735	0.66	$11,524	4.33
R & D	0.00333	0.30	0.735	0.66	$11,524	5.58
Hotel	0.00357	0.30	0.735	0.66	$11,524	5.99
Medical Office	0.00370	0.30	0.735	0.66	$11,524	6.21
Office Park	0.00380	0.30	0.735	0.66	$11,524	6.37
Preschool	0.00400	0.30	0.735	0.66	$11,524	6.71
Auto Repair	0.00400	0.30	0.735	0.66	$11,524	6.71
Hospital	0.00424	0.30	0.735	0.66	$11,524	7.11
Large Office	0.00425	0.30	0.735	0.66	$11,524	7.13
Office Bldg	0.00454	0.30	0.735	0.66	$11,524	7.60
Restaurant	0.00800	0.30	0.735	0.66	$11,524	13.42

G. *Discussion*

Table 5 shows that the cost of providing necessary school facilities for the students associated with new commercial and industrial development projects within the Morgan Hill Unified School District is greater than $0.27 (twenty-seven cents) per square foot for all types of projects shown that have an employee per square foot density greater than one employee for every 7,928 square feet of floor area.

All types of commercial and industrial development projects shown in Table 5 have an impact on the Morgan Hill Unified School District greater than this amount. Results, including examples, are discussed in depth in Part IV as are specific projects underway or planned by the District, and other costs faced by the District.

III. ANALYSIS OF FEES ON RESIDENTIAL DEVELOPMENT

This section establishes the relationship between the development of new homes and the need for school facilities. It is shown that the total amount of School Facility Fees collected from all types of residential development, including an additional $1.00 per square foot authorized by SB 1287, is less than the cost of school facilities resulting from the projects.

A. *Total Fees Expected from Residential Development*

This section analyzes the relationship of future housing construction and additions to fees levied on these projects.

Because future development in much of the District is contingent on plans to renovate the sanitary sewage treatment system, and the exact timing of development in Coyote Valley is not known, projections of future growth focus on the long-range or build-out expectation. In the immediate future, until the sewage issue is resolved, growth is likely to be slowed. After that time, new growth parameters may be established. In addition to the sewer situation, the community has indicated a strong desire to preserve the existing approach of controlled growth. Currently, Measure "P" allocates only a limited number of building permits each year in the City of Morgan Hill. Growth in the county, including San Martin, is limited only by minimum parcel size, zoning, access to urban services and market demand. San Jose may allow greater growth, especially in the now sparsely developed Coyote Valley area.

1. New Residential Construction: An additional 7,660 homes are assumed to be built in the District over the next twenty years. Each is assumed to average 1,500 square feet that may be assessed a fee by the school distinct. Assuming a constant fee at the current legal maximum rate of $2.65 per square foot, this provides a revenue projection through 2011 of $30,448,500.

2. Additions to Existing Residences: Additional fees will be generated by additions to existing residences. There is no firm basis for estimating the amount of additions on existing homes that may occur in any given year. Based on actual patterns, a factor of 5% of the area of new housing development will be used throughout the projection period. This estimate reflects the exclusion of residential addition projects with a value less than $20,000 as provided by AB1929 in Government Code Section 53080. Assuming 7,660 additional homes, with an average of 1,500 square feet each, gives an estimate of 11,490,000 square feet of net residential construction. Five percent of this amount is 574,500 square feet of additions to existing residences, which will yield $1,522,420 if the levy of $2.65 per square foot continues throughout this time period.

3. Combined Total Projection from Residential Projects: The total expected revenue from all forms of residential construction at the rate of $2.65 per square foot is therefore projected to be $30,448,500 from new residential construction plus $1,522,420 from additions or a total of $31,970,920. Again, it is very important to note that this projection covers many years and that many factors will change in the future as the sewer situation and growth plans for Coyote Valley and South Santa Clara County are defined.

B. Impact of Future Residential Development: The preceding section established a projection of 7,660 additional homes to be built in the District. Section II-D of this report established that each home in the District has, on average, 0.66 pupils. Facility cost factors were established in Section II-E. Applying the assumption of 0.66 pupils per home times the projected 7,660 future homes yields a projected growth-related enrollment increase of 5,079 pupils.

As all District facilities are now or will be utilized to capacity and many relocatable classrooms are in use in the District, it is assumed for purposes of this study that new facilities, including land, are needed to provide space for these students. The total cost to the District will be 5,079 pupils times the New Construction per Pupil cost factor of $11,524, for a total cost of $58,530,396. This represents only a portion of the Districts's total future facility need, since support facilities such as food service, media centers, warehousing, maintenance and central office needs are not included.

In addition to new construction needs, some modernization or reconstruction of existing facilities will be needed to maintain the usefulness of these schools for future students. Because all existing schools are fully committed to students from existing homes, all future growth must be housed in new facilities. Therefore, no specific cost allocation will be made for modernization or reconstruction costs; any such costs will be in addition to the costs of new facilities just noted.

IV. FINDINGS FOR THE MORGAN HILL UNIFIED SCHOOL DISTRICT

The preceding sections presented a methodology for evaluating school facility capital costs associated with new commercial, industrial and residential development projects.

It was determined that all types of commercial and industrial development projects have an impact on the District. Commercial or industrial development with an employment per square foot intensity greater than 7,928 square feet per employee (0.00016 employees per square foot) has been shown to have an impact on the District greater than the maximum fee permissible under the law.

It was further shown that residential development has an impact on the District and that fees projected to be collected from residential development are less than the cost of meeting these school facility needs.

A. *The Reasonable Relationship Between School Facility Costs and Fees on Commercial or Industrial Development Projects*

Government Code 65995(b)(2) provides that "the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary and high school facilities and shall be reasonably related and limited to the need for schools caused by the development." Additional findings are required by Government Code 66000 et seq.

This relationship may be evaluated by applying three tests, each of which must be met for the project to meet the Government Code's requirements. These three tests may be stated as:

1. *Does a reasonable relationship exist between the need for elementary and high school facilities and commercial or industrial development projects?*

2. *Does the District need new or modernized or rehabilitated elementary and/or high school facilities?*

3. *Is the fee amount reasonably related to the need caused by the commercial or industrial development and does the fee not exceed the cost of facilities for which it is imposed?*

B. *Evaluation of Three Tests of Relationship*

The following sections will evaluate the three tests listed above and will use examples of future development to show that the District's needs are greater than the combined expected revenues from fees on all forms of development.

1. New Development and the Need for School Facilities: Part II of this report established (a) that new commercial or industrial development within the District causes an increase in the number of workers in the District, (b) that a percentage of these workers reside in the District, and (c) that each housing unit in the District has a statistical relationship to the District's enrollment by the probability of having children living in that home who will attend a school operated by the District.

This report further established that new construction needs, in addition to modernization and reconstruction needs, of the District must be addressed so that these future students will have adequate school facilities in which to receive an education. Restating the previous points, the need for school facilities is dependent on the number of school age children to be served.

New commercial or industrial development projects bring additional jobs, which require additional employees. Some of these new employees will live in the District and enroll their children or dependents in District schools, and increase the demand for school facilities.

More development projects mean more jobs, more jobs mean more workers, more workers mean more residents, more residents mean more households, more households mean more children, and more children mean more demand for school facilities.

School facility costs to meet increased demand caused by commercial or industrial development will be partly offset by fees on these projects. Other facility costs will be partly offset by fees on residential projects linked to new workers. Facility costs unrelated to new development will be financed by other sources of income, if such revenues become available to the district.

2. Need for School Facilities: The Morgan Hill Unified School District has projected continuing growth in the future based on all projections of new housing and commercial/industrial development and enrollment increases in elementary grades. This growth is consistent with projections from the County and other demographic sources.

(a) New Construction Needs

Based on these projections, the District has initiated a comprehensive building program to provide for its future school facility needs. Projects may be funded with local sources, including School Facility Fees. These projects include replacement of existing temporary classrooms, various expansion projects and support service staff work space. Other projects will include modernization or reconstruction at all other school sites, and necessary legal and administrative expenses necessary to support the growth program.

(b) Modernization/Reconstruction

This long range need for facilities, combined with the age of existing buildings and the need to provide adequate facilities for students related to continuing development within the District, calls for continuing intensive use of all facilities. Enrollment will grow at various schools due to continuing development of new homes, and will grow throughout the District because of continuing development of employment centers in all areas of the District.

To meet this need, the District must continue to make extensive construction and reconstruction investments to meet the demands of continuing enrollment levels and the demands of new students entering the school system.

Some schools require reconstruction to overcome obsolescence and the process of deterioration brought on by age. Such needs prevent full and effective use by new students from homes linked to new commercial or industrial and residential construction within the District. Reconstruction costs were clearly intended to be a part of the School Facilities Fee statutes. The economic justification for use of impact fees for reconstruction costs rests in the recognition of school facilities as "consumable" (in an economic sense) goods. A school facility has a finite life and must be "built again" in all or part when the asset has reached the end of its useful life. Just as overcrowded schools are "unavailable" for students from new development (residential, commercial or industrial), schools in need of reconstruction are not available for optimal use by students and instructional staff. Renewing functional capacity in the District's schools is as important to this established community as is the construction of new school buildings.

These projects may occur at any of the following sites: Burnett, El Toro, Encinal, Jackson, Los Paseos, Nordstrom, Paradise Valley/Machado, San Martin/Gwinn and Walsh Elementary Schools; Britton and Murphy Middle Schools; Live Oak High School and Central High School; and other District properties or facilities used for District purposes, as appropriate.

3. Relationship Between Fee Amount and Costs from New Development: Part III established that all forms of commercial and industrial development in the District will contribute to the need for new or modernized school facilities. Development projects with more workers per square foot of area will have a greater impact than development projects with fewer workers per square foot of area. It should be noted that development of even low intensity uses will bring a demand for higher intensity uses, so that the combined impact may be greater than the impact of each use in isolation.

It was shown that standards exist for projecting the number of workers per square foot of new commercial or industrial development. It was also shown that 30% of the workers in the District also live in the District, that an average of 0.735 homes are required per worker, that each home generates 0.663 pupils, and that the cost of new facilities will be $11,524 per pupil.

Combining the factors described above leads to a determination that commercial or industrial developments that have less than 7,928 square feet of space for each worker will have an impact on the District greater than the $0.27 per square foot statutory maximum fee for commercial or industrial development projects, and that other commercial or industrial developments will have a lesser, yet monetarily significant, impact on the District.

This report has shown that a fee greater than $0.27 per square foot is appropriate for all commercial or industrial development projects likely to be built in the District.

(a) Example: Commercial/Industrial Development

Using the example of an office building from Part II of this report, it can be shown that a fee of $7.60 per square foot is justified.

Office buildings, on average, have one worker for every 220 square feet of space, or 0.00454 workers per square foot. It was shown that 30% of the new workers are likely to live in the District, that each worker will require 0.735 homes, that each home is likely to produce 0.663 students in the District, and that new construction costs will be $11,524 per additional student. Combining these factors yields a fee of $7.60 per square foot, which is far greater than the statutory maximum of $0.27 per square foot.

Continuing with this same example, a 100,000 square foot office project will have 0.00454 workers per square foot, or 454 workers. Of these, 30% or 136 workers will live in the District and require 0.735 homes each, or 99 homes. There are an average of 0.663 students per home, or 66 students from these 99 homes. New construction costs are $11,524 per student, or $760,584 for this project. The 100,000 square foot office project will be charged a fee of $0.27 per square foot, or $27,000.

This is less than the school facility need of $760,584 caused by the project.

Some of the students may live in new homes, which also may pay a fee as a residential development. Revenues from residential development also associated with the commercial project used in the preceding example are discussed below.

Assumptions used in this analysis were given earlier. They are: 7,660 homes will be built in the future; new homes will average 1,500 square feet in size; 8,000,000 square feet of commercial or industrial development will be built; an assumption of $2.65 and $0.27 per square foot fee rates; and that other factors from Part II will remain constant.

Costs associated with the Commercial/Industrial projects also exceed revenues when fees from linked residential projects are considered.

Using the example of the 100,000 square foot office building, it was previously shown that 99 homes in the District will be associated with the project. If, to use an extreme example for purposes of illustration, these 99 future homes are occupied by workers from the specific office building, then fees paid by homes occupied by these workers may be measured against the commercial building's total impact on the District. Applying the assumption of 1,500 square feet in each of these homes and a fee of $2.65 per square foot, each home will pay a fee of $3,975. The 99 new homes linked to the 100,000 square foot office building will pay a total of $393,525.

Combining the fee revenue from residential development linked to this project ($393,525) with the projected revenue from the 100,000 square foot office building project ($27,000), there is a future anticipated combined revenue of $420,525, or 55% of the cost ($760,584, equal to 66 pupils times $11,524 cost per pupil) associated with the development.

(b) Relationship of Revenues and Costs: Residential Development

This same type of analysis may be applied to residential development projects. Assume the following situation: a 100 home development, each home averages 1,500 square feet of chargeable area, each home has on average 0.663 pupils per home, and a fee of $2.65 per square foot is collected by the District. Total cost of facilities that are attributable to this new development is 66 students times an estimated construction cost of $11,524 per pupil, or $760,584. The 100 homes will have a total area of 150,000 square feet. A fee of $2.65 per square foot will yield $397,500 or 52% of the costs ($760,584) attributable to the development.

(c) Relationship of Revenues and Costs — All Future Developments

The following analysis will establish that the total amount of fees to be collected by the District is less than the total cumulative cost impact of new development. It has been assumed that 8,000,000 square feet of commercial or industrial development remain to be built in the District between the present time and 2010. Assuming a fee of $0.27 per square foot, this reflects a maximum revenue of $2,160,000.

Because future commercial and industrial development is not known by category, it will be assumed that 50% will be offices at an employee per square foot of floor area ratio of 0.00454, 20% will be research and development centers at 0.00333, 10% will be large shopping centers at 0.00157, 10% distribution or other large, low-intensity uses at 0.00125, and 10% will be office parks at 0.00380. This gives a weighted average of 0.00360 employees per square foot.

By applying this weighted average to the 8,000,000 square feet of development, a total of 28,800 employees are projected. Part II showed that 30% of the employees in these developments will live in the District and require 0.735 homes per employee. These factors suggest that 6,350 homes will be demanded in the District by the employees of the proposed commercial and industrial development. This is 83% of the total future expected level of housing development in the District.

Again applying an extreme example for purposes of illustration, if the 6,350 future homes in the District are occupied by workers in the 8,000,000 square feet of new commercial/industrial space, then the District will have an impact of $48,516,040 (6,350 homes times 0.663 pupils per home times $11,524 per additional pupil). Revenues from the 6,350 homes will be $25,241,250 (6,350 homes at 1,500 square feet each times $2.65 per square foot). Even when the revenue from commercial and industrial projects is added to this amount, ($2,160,000 or 8,000,000 square feet times $0.27 per square foot), the revenue is $27,401,250 or only 56% of the total impact.

C. *Local Match Requirement for State-Aided Projects*

The need for school facilities and the District's lack of financial resources with which to conduct the needed projects has led the District to investigate participation in the State School Building Lease Purchase Law of 1976, as amended. This imposes, at Section 17705.5 of the of the California Education Code, the "Local Matching Share Requirement".

The Local Match is based on the amount that could have been collected had the maximum allowable fee been imposed on all assessable projects in the District during the specified period of time that the project is underway. If a district does not impose School Facility Fees or imposes Fees at a rate less than the maximum, then it must pay the difference to the state from other funds. The District has no "other funds" available for this purpose and therefore would need to collect fees at the maximum rate to pay the required Local Match amount when it becomes involved in State Funding programs.

In addition, School Facility Fees collected from commercial and industrial development projects within the Morgan Hill Unified School District will be used for reconstructing existing school facilities and the expansion of capacities.

In addition to the above costs, School Facility Fees may be used to pay the administrative, legal, architectural, engineering or other professional costs associated with implementing the above types and/or categories of projects.

Funding for new construction and reconstruction is restricted to the District's capital outlay accounts. The District has prepared to enter the state school building program as a key component of its future school facility financing program.

D. *Other Funding Sources*

General Fund: The District's General Fund (operating) budget is entirely committed to instructional and operating expenses.

State Funds: The District has received 12 portable classrooms from the State Emergency Portable program and has applied to participate in the 50/50 program which grants monies to eligible school districts for new construction projects when 50 percent of the total project costs have been raised locally. In addition, the State Lease Purchase program provides funding for needed projects in the form of lease-purchase agreements, where the state loans funds for the project in exchange for a lien on all the District's real property assets and a fixed annual "lease" payment. This arrangement continues for 40 years until the state's loan is repaid. The District must supply a portion of the project funds as a mandatory local "Match" payment. The match is based on the amount that could have been collected from School Facility Fees on all affected projects in the District during the time the project is in process, including design time. Some funding is also available for modernization projects at schools that are more than 30 years in age and that meet other eligibility criteria. Due to funding shortages at the state level, any assistance to the District is likely to be delayed.

Ad Valorem Taxes/General Obligation Bonds: The District has recently extended its existing Live Oak lease purchase taxing authority (Measure "B"), which is projected to generate +/- $20,000,000 through the year 2000. These funds will be used to build El Toro Elementary and for modernization and rehabilitation of existing schools. General Obligation Bonds would require an affirmative vote of 67% of the voters in the General Election. This option may be explored in the future.

Special Non Ad Valorem Taxes ("Parcel Taxes"): Approval by more than two thirds of the voters is required to impose taxes that are not based on the assessed value of individual parcels. These taxes have been used in other California school districts; however, the amounts collected are generally small and are used to supplement operating budgets or finance small "pay as you go" projects. Bonds, which extend payments over many years, are more feasible and are recommended for capital projects. At present, voters in the District have not voted to approve such taxing authority.

Mello-Roos Community Facilities District Bonds: This funding option works most like a traditional assessment district, with bonds issued for specific public improvements that are redeemed by special taxes paid by the owners of property within the area. A Mello-Roos District may include all or a part of the school district. Undeveloped areas with fewer than 12 registered voters may create a Mello-Roos District by a vote of the landowners. If more than 12 voters live in the proposed area, then an election of all voters in the District must be held and a two-thirds majority obtained. The litigation regarding the creation of Community Facilities District #1 has been adjudicated in favor of the District and plans to create a second/third Community Facilities District are underway. It is anticipated that successful creation of these additional districts will be a necessary component of the District's capital facilities plan.

Fees for Interim Facilities ("SB 201" Fees): The District has collected fees for rental of temporary classroom space in the past. This method may still be used; however, the combined fee paid by a project may not exceed $2.65 per square foot for residential projects and $0.27 per square foot for non-residential projects. These fees must be imposed by action of the City Council or County Board of Supervisors. As School Facility Fees imposed under Government Code Section 530890 and 65995 are equal to the maximum levy, additional SB 201 fees are not an option for the District. This report has demonstrated that the actual impact of development projects far exceeds the maximum allowable School Facility Fees.

Redevelopment Project Funds: The District recently negotiated with the City of Morgan Hill Redevelopment Agency to receive funds from the agency to meet a portion of the capital outlay needs identified in this report. However, the redevelopment project amendment was voted down by referendum and this source of funding is not available to the district.

Surplus Property Revenues: At present the District has two surplus properties available for generating revenue to meet future needs (Avenida Espana and Old Morgan Hill School). Surplus property is not selling due to the current recession. The sale of these properties at some point in the future may yield $1,000,000 to $5,000,000.

Cost Reducing Options: The District has explored various means of meeting its future capital facilities needs by reducing the need for school facilities. These may be implemented in the future if other options are unsuccessful. It is important to note that, even with these options, the District faces tremendous future building needs because of development and associated growth in the community.

Year Round School Concept: The District is studying the year-round school concept as well as changes in grade configurations. When and if such changes are authorized and implemented by the Governing Board, there will be less need for new construction of school facilities. However, such relief will only be partial and the need to continue collecting development fees will not be eliminated.

Deferred Maintenance Funds: This program provides district funds which are matched by the state up to a specific maximum amount, and may be used for major maintenance costs which meet certain criteria established by the state.

E. *Conclusion*

Because of these findings, it is recommended that the Governing Board continue to levy and collect a fee of $0.27 per square foot of commercial or industrial development, including such inflationary amounts authorized by law. Types of development projects not shown on Table 5 shall be assessed a fee of $0.27 per square foot unless documentation is provided to the District, in agreement with adopted District procedures, which allow District staff to determine a fee for the project.

It is further recommended that the Board of Education continue to levy and collect a fee of $1.65 per square foot of habitable area, and such inflationary amounts authorized by law, as defined by Government Code Section 65995(b) (1) with respect to new residential development, and to the extent of the resulting increase in habitable space, as defined in Government Code Section 65995(b) (1), to other residential construction as to any development project having a value more than $20,000, and an appropriate fee for qualified senior citizen housing projects.

It is further recommended that the Board of Education levy an additional $1.00 per square foot of residential area as authorized by SB 1287.

F. *Compliance with California Environmental Quality Act (CEQA)*

The District has met CEQA requirements in documents adopted as part of the Board of Education Resolutions concerning this issue. The Board of Education has determined that adoption or modification of this report is Categorically Exempt from requirements of CEQA pursuant to section 21080 (b)(8)(4) of the California Public Resources Code because the fees are to obtain funds for capital projects necessary to maintain service within existing District boundaries.

G. *Appeal Procedure*

The Board of Education has adopted resolution #52 dated February 5, 1990, which creates a procedure to appeal the imposition of these fees as required by Government Code Section 53080.1(e)(2).

P. RESPONSE TO COMMENTS FROM MORGAN HILL UNIFIED SCHOOL DISTRICT, RECEIVED NOVEMBER 3, 1993.

See responses to Comments L.11-L.84.

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Sacramento, California
December 4, 1992

Honorable Willie L. Brown, Jr.
219 State Capitol

School Facilities Fees - #30455

Dear Mr. Brown:

QUESTION NO. 1

Does Chapter 1354 of the Statutes of 1992 prohibit a city, county, or city and county from considering the adequacy of school facilities in the course of adopting or implementing a general plan, zoning ordinance, or other legislative land use policy?

OPINION NO. 1

Chapter 1354 of the Statutes of 1992 does not prohibit a city, county, or city and county from considering the adequacy of school facilities in the course of adopting or implementing a general plan, zoning ordinance, or other legislative land use policy.

ANALYSIS NO. 1

Before assessing the effect of Chapter 1354 of the Statutes of 1992[1], we consider the existing law regarding the relationship between the development of real property and school facilities construction.

[1] This measure is the chaptered version of Senate Bill No. 1287 of the 1991-92 Regular Session.

ENCLOSURES

I. Existing Law

Prior to January 1, 1987, development projects were potentially subject to school facilities fees or other requirements imposed by cities and counties either pursuant to Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code[2] (hereafter "Chapter 4.7") or pursuant to their police power generally (see Candid Enterprises, Inc. v. Grossmont Union High School Dist., 39 Cal. 3d 878). Where school overcrowding is demonstrated to exist, Chapter 4.7 generally prohibits a city or county from approving a residential development unless it first requires, except as specified, that land be dedicated, fees be paid, or both, for classrooms and related facilities, except as specified (Secs. 65972 and 65974). Approval of a residential development includes, for this purpose, the approval of an ordinance rezoning property to a residential use, the granting of a discretionary permit for residential use, or the approval of a tentative subdivision map for residential purposes (see Sec. 65972).

As of January 1, 1987, however, the law governing school facilities fees and other requirements was amended by Chapter 887 of the Statutes of 1986. Under that chapter, the Legislature added Section 53080, granting to school districts the express authority to levy developer fees and other requirements as "a reasonable method of financing the expansion and construction of school facilities resulting from new economic development within the district" (subd. (e), Sec. 7, Ch. 887, Stats. 1986).

That authority is expressly made subject, however, to the restrictions set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 (hereafter "Chapter 4.9"; para. (1), subd. (a), Sec. 53080). Included among those restrictions is Section 65995, which limits the total amount of the developer fees and other requirements to fund the construction or reconstruction of school facilities that may be levied by school districts under Section 53080, by a city or county under Chapter 4.7, or both, to $1.50 per square foot of assessable space, in the case of residential development, and $0.25 per square foot of chargeable covered and enclosed space, in the case of commercial or industrial development (subd. (b), Sec. 65995). Those dollar limits are increased periodically according to a designated adjustment for inflation (para. (3), subd. (b), Sec. 65995).

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[2] All section references are to the Government Code, unless otherwise indicated.

Section 65995 also contains two provisions expressing the Legislature's intent to forbid any local legislation, except as explicitly authorized under the state laws discussed above, that would condition the approval of development according to the impact upon school facilities. First, subdivision (a) of Section 65995 prohibits the legislative body of any local agency, including the governing board of a school district (see California Bldg. Industry Assn. v. Governing Bd., 206 Cal. App. 3d 212, 224), from levying any fee or other requirement against a development project to fund the construction or reconstruction of school facilities except as authorized under Section 53080 or Chapter 4.7 (subd. (a), Sec. 65995).

Second, subdivision (e) of Section 65995 expressly declares the intent of the Legislature to preempt local legislation that would require fees or other consideration to be paid as a condition of the approval of development. In this regard, although Section 65995 does not specifically exclude a local measure that authorizes the denial of a development project on the basis of the adequacy of school facilities, we think that the restriction placed by the Legislature upon local legislation that would require that the impact of a development project on school facilities be mitigated would be construed to apply equally to a local standard that a development project be denied in the absence of that mitigation. A statute is to be construed so as to be given a reasonable result consistent with the legislative purpose, in light of the context of the legislation and its apparent objective (Cossack v. City of Los Angeles, 11 Cal. 3d 726, 732-733; see Clean Air Constituency v. California State Air Resources Bd., 11 Cal. 3d 801, 813).

In addition to the school-related conditions upon development that may be established by local legislative action pursuant to Section 53080 or Chapter 4.7, a city or county generally possesses the authority to impose conditions upon the approval of a development project relative to the project's potential burden upon public services or other environmental impact concerns; this authority may be exercised under existing state law pursuant to the California Environmental Quality Act, as set forth in Division 13 (commencing with Section 21000) of the Public Resources Code (hereafter "CEQA"; see Secs. 21002 and 21002.1, P.R.C.; Laurel Hills Homeowners Assn. v. City Council, 83 Cal. App. 3d 515, 521) and the Subdivision Map Act (Div. 2 (commencing with Sec. 66410), Title 7). However, Section 65996, which also is contained in Chapter 4.9, identifies Section 53080 and other specific statutory provisions as the exclusive methods of mitigating environmental effects under CEQA with regard to conditioning the approval of a development project on the adequacy of school facilities, and prohibits any public agency from denying

Subsequent judicial decisions have elaborated, however, upon the scope of Sections 65995 and 65996 in that regard. William S. Hart Union High School Dist. v. Regional Planning Com., 226 Cal. App. 3d 1612 (hereafter "Hart"), involved the refusal of a county to consider the school facilities impact of a proposed zoning change. The court declared that subdivision (e) of Section 65995 preempts only "requirements for school finance that a local agency will impose on a development project" (emphasis in original). The court explained that, because the local legislative decision in Mira did not involve requirements to be imposed on a development project, but, rather, the legislative enactment of "land-use policies" (emphasis in original), that decision was not preempted by Section 65995 or any other provision of Chapter 4.9 (see Murrieta Valley Unified School Dist. v. County of Riverside, 228 Cal. App. 3d 1212, 1230; hereafter "Murrieta"). Based upon that distinction, the court concluded that the county was not restricted by state law from considering school facilities impact with respect to its decision to grant or deny the proposed zoning change (Id., pp. 1626-1627).

A similar analysis was employed in Murrieta, supra. In that case, the county approved an amendment to its general plan to permit additional development to occur as a matter of land use policy, without considering, pursuant to the requirements of CEQA, the school facilities impact of that general plan amendment (Id., pp. 1218-1219). The court described a general plan as a "basic land use charter governing the direction of future land use in the local jurisdiction," and held that the amendment of a general plan is a legislative act that does not involve the approval of a "development project" for purposes of Section 65996 (Id., pp. 1230-1231). Further, the preemption in subdivision (e) of Section 65995 was held by the court to relate only to the financing of school facilities with development fees, "a far cry from stating that a public agency cannot include in a general plan amendment land use and development objectives and standards to mitigate the amendment's potential negative effects on adequacy of school facilities" (Id., p. 1234, fn. 16).

The court concluded, consequently, that neither subdivision (e) of Section 65995 nor Section 65996 preempts a county, when considering a general plan amendment that may adversely affect the existing condition of inadequate school facilities in a school district, from "considering and providing feasible land use and development mitigating measures" as required by CEQA. The court suggested that these measures could include, for example, the reduction of residential densities or the controlled phasing of residential development within the attendance areas of the school district having inadequate school facilities (Murrieta, supra, p. 1234).

approval of a development project on the basis of the adequacy of school facilities pursuant to CEQA or the Subdivision Map Act.

The first decision of record in which Section 65996 was judicially construed is Mira Development Corp. v. City of San Diego, 205 Cal. App. 3d 1201 (hereafter "Mira"), a case in which a city council denied a rezoning application that was prerequisite to the approval of a proposed residential development project. In that case, the city council's decision was alleged by the developer to have been based upon the inadequacy of school facilities and, therefore, to have violated the prohibition set forth in Section 65996 (Mira, supra, p. 1217).

The court in Mira began its analysis by distinguishing an application for a "development project," to which Section 65996 expressly applies, from a request for a zoning amendment. The court held that a governmental response to an application for the approval of a development project is an adjudicative act, meaning an act that requires the application of an existing rule to a specific set of existing facts (Mira, supra, pp. 1217-1218; see Landi v. County of Monterey, 139 Cal. App. 3d 934, 936). In contrast, the court characterized a governmental response to a proposed zoning amendment as a legislative act, which involves the formulation of a generally applicable rule or policy (Mira, supra, p. 1218; Landi v. County of Monterey, supra, p. 936)[3].

Pursuant to that distinction, the Mira court characterized Section 65996 as a restriction upon only the adjudicative authority of that agency. The court refused to "broaden" the meaning of Section 65996 to include any restriction upon a public agency's authority over proposed zoning amendments or over other matters involving the agency's exercise of its legislative powers (Mira, supra, p. 1218).

In declining to overturn the city council's action on the basis of Section 65996, the Mira court did not discuss the applicability to the city council's action of subdivision (e) of Section 65995, or of any other aspect of the preemption doctrine. Thus, the Mira decision failed to address expressly whether subdivision (e) of Section 65995, rather than Section 65996, would be construed to preempt the city council, in the exercise of its legislative powers, from denying a rezoning application on the basis of school facilities impact.

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[3] As a legislative act, a zoning decision is afforded more deference than a public agency's adjudicative decisions (Mira, supra, p. 1218; Arnel Development Co. v. City of Costa Mesa, 28 Cal. 3d 511, 522).

The restrictions established in Chapter 4.9 have been construed by the courts, accordingly, to apply to the local imposition of conditions on the approval of individual development projects, but not to the local adoption or amendment of general land use policies.

To summarize, Section 65995 precludes local agencies, including cities and counties, from adopting any legislative requirement, except to the extent authorized by Section 53080 and Chapter 4.7, that imposes fees as a condition to approval of a development project in order to reduce the project's negative impact on school facilities (see Murrieta, supra, p. 1234, fn. 16). Section 65996, in our view, requires that, in the exercise of local adjudicative authority to require under CEQA that the school facilities impact of a development project be mitigated, only the statutory remedies identified in that section may be utilized, with the result that a local governmental agency may not employ CEQA to require individual development projects to otherwise mitigate school facilities as a condition of receiving approval.

However, pursuant to the authority discussed above, we conclude that Chapter 4.9 does not prohibit a city, county, or city and county from considering the adequacy of school facilities in the course of adopting or implementing legislative land use policy in the form, for example, of a general plan or zoning ordinance.

We next must determine the extent to which the changes in Chapter 4.9 made by Chapter 1354 of the Statutes of 1992 will alter the existing law described above.

II. Effect of Chapter 1354 of the Statutes of 1992

Chapter 1354 of the Statutes of 1992 amends Sections 65995 and 65996, and adds and repeals those sections, with the effect that additional language is added to those sections, effective January 1, 1993, but if Assembly Constitutional Amendment No. 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on that measure, Sections 65995 and 65996 will revert to the versions of those sections in effect under existing law as described above. This analysis will address the changes made by Chapter 1354 of the

Statutes of 1992 to Sections 65995 and 65996 that will take effect on January 1, 1993[4].

We initially consider the provisions of Chapter 1354 of the Statutes of 1992 that revise Section 65995.

Chapter 1354 of the Statutes of 1992 revises subdivision (a) of Section 65995 to read as follows:

> "65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, <u>whether by administrative or legislative action</u>, for the construction or reconstruction of school facilities.
>
> * * *" (New wording indicated in underline.)

Thus, while the current provisions of Section 65995 prohibit cities, counties, or other local agencies from levying any fee or other requirement, except to the extent authorized by Section 53080 and Chapter 4.7, as a condition to approval of a development project in order to fund the construction or reconstruction of school facilities, Chapter 1354 of the Statutes of 1992 will revise that section to specify that this prohibition applies to the levying of fees or other requirements "whether by administrative or legislative action."

Generally speaking, a legislative act is described as a governmental act that prescribes a new policy or plan; an administrative act, by comparison, is an act undertaken to carry out the legislative policies and purposes established by the legislative body (<u>Fishman</u> v. <u>City of Palo Alto</u>, 86 Cal. App. 3d 506, 509). An act is administrative, rather than legislative, if it involves, for example, the determination of specific rights under existing law with regard to a specific fact situation (<u>Mountain Defense League</u> v. <u>Board of Supervisors</u>, 65 Cal. App. 3d 723, 728-729).

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[4] Chapter 1354 of the Statutes of 1992 also adds Section 65995.3, which will be discussed in Analysis No. 2.

Based upon that distinction, the approval of a development project, including the issuance of any permit, the granting of zoning variances and conditional use permits, and the approval of tentative subdivision maps is considered an administrative act (Hart, supra, p. 1625; Landi v. County of Monterey, supra, p. 936). By contrast, the approval of a zoning amendment or the amendment of a general plan is not limited in scope to a specific attempt to develop, and is characterized, therefore, as a legislative act (Hart, supra, p. 1625; see Murrieta, supra, pp. 1230-1231).

Thus, Section 65995, as revised by Chapter 1354 of the Statutes of 1992, will expressly prohibit a city, county, city and county, or other local agency from either establishing legislative standards, or applying any legislatively established standard, so as to require, as a condition of the approval of any development project, that a fee be paid or other requirement be met for the purpose of funding school facilities construction or reconstruction, other than as levied pursuant to Section 53080 or Chapter 4.7.

As discussed above, existing law already limits the exercise of legislative authority to impose a school facilities fee or other requirement against a development project. Section 65995, in its current form, prohibits the legislative body of any local agency from establishing any requirement that a development project comply with a school facilities fee or other requirement, other than pursuant to Section 53080 or Chapter 4.7, and preempts the subject matter of the financing of school facilities from that source as a matter of statewide concern (subds. (a) and (e), Sec. 65995). Further, Section 65996 currently identifies Section 53080 and other specific statutory provisions as the exclusive methods of mitigating environmental effects under CEQA with regard to conditioning the approval of a development project on the adequacy of school facilities, and prohibits any public agency from denying approval of a development project on the basis of the adequacy of school facilities pursuant to CEQA or the Subdivision Map Act.

Consequently, while existing law limits the authority of a local agency to require that a development project provide financial mitigation of its school facilities impact in the course of the agency's administrative implementation of Section 53080 and CEQA, the revision to Section 65995 made by Chapter 1354 of the Statutes of 1992 further prohibits a local agency from requiring that mitigation in its administrative implementation of any other legislative authority.

We turn next to the provisions of Chapter 1354 of the Statutes of 1992 that amend Section 65996. Section 65996, as revised by Chapter 1354 of the Statutes of 1992, reads as follows:

"65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project~~, as defined in Section 53080,~~ by administrative or legislative action pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

"~~(a)~~ (1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

"~~(b)~~ (2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

"~~(c)~~ (3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

"~~(d)~~ (4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

"~~(e)~~ (5) Section 53080 of the Government Code.

"~~(f)~~ (6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

"~~(g)~~ (7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

"(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or ~~Division 1 (commencing with Section 66410) of this code~~ Title 7 (commencing with Section 65000), deny approval of a project on the basis of the adequacy of school facilities, or impose conditions on the approval of a project for the purpose of providing school facilities that exceed the amounts authorized pursuant to this chapter.

"(c) This section shall have prospective application only, and shall not affect any action taken by a local agency prior to the effective date of this section.

"(d) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed." (Changes in wording indicated in strikeout and underline.)

We begin with the first substantive revision made to Section 65996 by Chapter 1354 of the Statutes of 1992, to the effect that the limitations set forth in that section expressly apply to local mitigation "by administrative or legislative action" of school facilities impact pursuant to CEQA.

Section 21082 of the Public Resources Code, a provision of CEQA, expressly authorizes all public agencies to adopt local legislative measures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to CEQA. Consequently, this first revision to Section 65996 will specify that the restrictions set forth in that section apply not only to local administrative action taken under CEQA to require that a development project mitigate its impact on school facilities, but also to mitigation requirements under CEQA that may be imposed under local legislative measures, as may be adopted pursuant to Section 21082 of the Public Resources Code.

The second substantive revision to Section 65996 made by Chapter 1354 of the Statutes of 1992 addresses the provision of that section that currently prohibits a public agency from denying approval of a project on the basis of the adequacy of school facilities pursuant to CEQA or the Subdivision Map Act. This revision deletes the specific reference to the Subdivision Map Act, as set forth in Division 2 (commencing with Section 66410) of Title 7, instead applying that prohibition to the exercise of local authority under Title 7 (commencing with Section 65000) in its entirety (hereafter the "Planning and Zoning Law").

The Subdivision Map Act provides for the regulation and control of the design and improvement of subdivisions and grants power for that purpose to the legislative bodies of local agencies, including the authority to adopt ordinances to regulate the design and improvement of subdivisions (Secs. 66411, 66418, 66419, and 66421).

The Planning and Zoning Law, which includes the Subdivision Map Act, also includes, for example, Chapter 3 (commencing with Section 65100) of Division 1 of Title 7, which contains various provisions governing the adoption or amendment of a general plan. Every city or county, whether chartered or general law, is required under that chapter to adopt a comprehensive, long-term general plan, containing specific mandatory elements for the physical development of the city or county (Secs. 65300, 65302, and 65700).

Also within the Planning and Zoning Law is Chapter 4 (commencing with Section 65800) of Division 1 of Title 7, which sets forth certain limitations upon local authority over zoning. The power of a city or county to zone is not granted by the Legislature, but derives from the broad "police powers" conferred on them by Section 7 of Article XI of the California Constitution (Taschner v. City Council, 31 Cal. App. 3d 48, 62, disapproved on other grounds, Associated Home Builders etc., Inc. v. City of Livermore, 18 Cal. 3d 582, 596, fn. 14) and, in the case of charter cities, and cities and counties with authority over municipal affairs, from the charter (Secs. 5 and 6, Art. XI, Cal. Const.; City of Los Angeles v. Department of Health, 63 Cal. App. 3d 473, 479).

Thus, this revision to Section 65996 prohibits a public agency from denying approval of a project on the basis of the adequacy of school facilities, not only when acting pursuant to the Subdivision Map Act, but also when acting pursuant to other provisions of the Planning and Zoning Law, including, but not limited to, the adoption or amendment of a general plan or zoning law. Although the adoption or amendment of a general plan or zoning law, as a legislative action, ordinarily involves the establishment of categorical land use policy rather than the approval of a development project (see Murrieta, supra, pp. 1230-1231; Hart, supra, pp. 1626-1627), the apparent effect of this revision will be to specifically prohibit the inclusion within a general plan or zoning law of any provision that would authorize the denial of individual development projects on the basis of the adequacy of school facilities.

In addition to revising Section 65996 to prohibit a public agency, pursuant to CEQA or the Planning and Zoning Law, from denying approval of a project on the basis of the adequacy of school facilities, Chapter 1354 of the Statutes of 1992 adds an express prohibition upon the imposition of conditions on the approval of a project for the purpose of providing school facilities that exceed the amounts authorized pursuant to

Chapter 4.9. Thus, Section 65996 will specifically preclude a public agency from exercising its authority under CEQA or the Planning and Zoning Law, as discussed above, to require that school facilities fees or other requirements, in excess of the amounts authorized under Chapter 4.9, be paid on behalf of any development project as a condition of approval.

To summarize, while existing law limits the authority of a local agency to require that a development project provide financial mitigation of its school facilities impact in the course of the agency's administrative implementation of Section 53080 and CEQA, the revision to Section 65995 made by Chapter 1354 of the Statutes of 1992 further prohibits a local agency from requiring that mitigation in its administrative implementation of any other legislative authority.

The revisions made to Section 65996 made by Chapter 1354 of the Statutes of 1992 specify that the restrictions set forth in that section apply not only to local administrative action taken under CEQA to require that a development project mitigate its impact on school facilities, but also to mitigation requirements under CEQA that may be imposed under local legislative measures, as may be adopted pursuant to Section 21082 of the Public Resources Code. In addition, those revisions specifically prohibit the inclusion within a general plan or zoning law of any provision that would authorize the denial of individual development projects on the basis of the adequacy of school facilities, and preclude a public agency from exercising its administrative or legislative authority under CEQA or the Planning and Zoning Law, as discussed above, to require that school facilities fees or other requirements, in excess of the amounts authorized under Chapter 4.9, be paid on behalf of any development project as a condition of approval.

The revisions made to Sections 65995 and 65996 by Chapter 1354 of the Statutes of 1992 do not purport to address, however, the authority of a local agency to consider the adequacy of school facilities in any context other than the approval of individual development projects. Consequently, based upon the analysis set forth above, it is our conclusion that Chapter 1354 of the Statutes of 1992 does not prohibit a city, county, or city and county from considering the adequacy of school facilities in the course of adopting or implementing a general plan, zoning ordinance, or other legislative land use policy.

III. Alternative Construction of Chapter 1354 of the Statutes of 1992

You have asked that we consider an alternative interpretation of the revisions made to Sections 65995 and 65996 by Chapter 1354 of the Statutes of 1992. This alternative argument posits that the legislative intent underlying those revisions was to revise the meaning of the term "development project," as used in Sections 65995 and 65996, to include the legislative action of a local agency in adopting or amending a general plan or zoning law to establish land use policy. According to this argument, the effect of this construction would be that a local agency would be prohibited by those sections, as revised by Chapter 1354 of the Statutes of 1992, from taking into account the impact on school facilities in deciding on the adoption or amendment of a general plan or zoning law.

As quoted above, Chapter 1354 of the Statutes of 1992 revises Section 65995 to state that, except as authorized under Section 53080 or Chapter 4.7, "no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, whether by administrative or legislative action, for the construction or reconstruction of school facilities" (emphasis added to denote language inserted by Ch. 1354, Stats. 1992).

To begin with, Section 65995, as revised by Chapter 1354 of the Statutes of 1992, retains from existing law the phrase "a development project, as defined in Section 53080." This is inconsistent with the contention that Chapter 1354 of the Statutes of 1992 should be interpreted as a revision of the definition of the term "development project."

More importantly, the only apparent reasonable construction of the clause "whether by administrative or legislative action" within the context of the provision of Section 65995 quoted above, in our opinion, is that the clause modifies the "levying" by a legislative body of a fee, charge, dedication, or other requirement. It is our view, as expressed in the discussion above, that "whether by administrative or legislative action" is clearly an adverbial clause in this context that addresses the methods pursuant to which that levying of fees or other requirements may occur.

The alternative argument requires an interpretation that the phrase "whether by administrative or legislative action" was inserted in Section 65995 after "a development project, as defined in Section 53080" to further define "development project" to mean any administrative or legislative action. In our opinion, it is an unreasonable construction to suggest that the noun "development

project" was modified by the clause "whether by administrative or legislative action" to express the meaning that "development project" is defined to include, for purposes of Section 65995, any administrative or legislative action. Had the Legislature actually intended that result, we think it probable that the definition of "development project" in Section 53080 would have been amended or, alternatively, that a statement would have been added to Chapter 4.9 to the effect that "development project" includes any "administrative or legislative action."

Furthermore, this alternative interpretation would result in the simultaneous combination within Section 65995 of two inconsistent definitions of the term "development project." As noted above, Section 65995, as revised by Chapter 1354 of the Statutes of 1992, contains the express reference "a development project, as defined in Section 53080." Section 53080 defines "development project" to mean "any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate" (para. (2), subd. (a), Sec. 53080). Although "project" is not defined by Section 53080, that term is defined elsewhere in the Planning and Zoning Law to mean "any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies" (Sec. 65931). A phrase or expression may be interpreted in accordance with its use in other related statutes (Frediani v. Ota, 215 Cal. App. 2d 127, 133).

Therefore, for purposes of Section 65995, "development project" means an activity undertaken for the purpose of development that involves a public agency's issuance to a person of a lease, permit, license, certificate, or other entitlement for use. As so defined, the term "development project" has been held by the courts to exclude legislative action by a public agency involving the adoption or amendment of general plans and zoning laws (see Mira, supra, p. 1218; Landi v. County of Monterey, supra, p. 936). A construction to the effect that Section 65995 purports to define "development project" as specified in Section 53080 and, simultaneously, to mean any "administrative or legislative action" of the legislative body of a local agency would thus be internally inconsistent and, consequently, unreasonable.

Section 65996 is revised by Chapter 1354 of the Statutes of 1992 to state that designated provisions "shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, ~~as defined in Section 53080,~~ by administrative or legislative action pursuant to [CEQA]" (changes in wording

indicated in strikeout and underline). The analysis set forth above with regard to the inclusion in Section 65995 of the clause "whether by administrative or legislative action" also applies in this parallel context, to the effect that the clause "by administrative or legislative action" in Section 65996 may be construed reasonably, in our view, to refer only to the methods of mitigation utilized by local agencies when considering the approval of a development project (see Murrieta, supra, p. 1233, fn. 15)[5].

Finally, the legal impact of defining "development project" in Sections 65995 and 65996 to include any "administrative or legislative action" would not appear to have the alleged result of prohibiting a city or county from taking into account the impact on school facilities in deciding on the adoption or amendment of a general plan or zoning law. In Section 65995, defining "development project" to include any administrative or legislative act would have the literal effect of prohibiting the legislative body of a local agency from levying, other than pursuant to Section 53080 or Chapter 4.7, a school facilities fee, charge, dedication, or other requirement against, for example, the legislative act of adopting or amending a general plan or zoning law. Similarly, in Section 65996, defining "development project" to include any administrative or legislative act would have the literal effect of restricting the mitigation requirements that may be imposed by a local agency under CEQA against its adoption or amendment of a general plan or zoning law.

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[5] The deletion by Chapter 1354 of the Statutes of 1992 of the phrase ", as defined in Section 53080," from Section 65996 could be argued to reflect the legislative intent to revise the meaning of the term "development project," as used in that section. The Legislature cannot be presumed to have indulged in idle acts (Stafford v. Realty Bond Service Corp., 39 Cal. 2d 797, 805; People v. Foley, 170 Cal. App. 3d 1039, 1056).

However, Chapter 1354 of the Statutes of 1992 does not purport to add language to Section 65996 that reasonably may be construed to replace the definition of "development project" set forth in Section 53080. Consequently, pursuant to the rule of statutory construction that a phrase or expression may be interpreted in accordance with its use in other related statutes (Frediani v. Ota, 215 Cal. App. 2d 127, 133), we conclude that "development project" would have the same meaning in Section 65996 as it does in Section 65995, which defines the term by express reference to Section 53080 and by use of the definition of the term "project" in a related section, namely Section 65931.

It is well settled that, in construing a statute, a court may use a wide variety of extrinsic aids, such as the history of the statute, committee reports, staff bill reports, legislative debates, unpassed amendatory legislation, and even letters of legislative intent (see In re Marriage of Bouquet, 16 Cal. 3d 583, 590-591; People v. Superior Court (Arthur R.), 199 Cal. App. 3d 494, 499-500). In this case, for example, the Senate Third Reading analysis of July 30, 1992, states that "[b]y setting the fee cap as an exclusive method for mitigating school impacts when considering 'legislative' actions, [S.B. 1287] reverses the effect of the Mira decision."

It is equally true, however, that legislative intent may be given effect only if it can reasonably be inferred from the language of the act (see Coulter v. Pool, 187 Cal. 181, 185-186; Ex parte Goodrich, 160 Cal. 410, 416-417; see also Anderson v. I.M. Jameson Corp., 7 Cal. 2d 60, 66-68). In this case, for the reasons set forth above, it is our opinion that the legislative intent suggested by the Senate Third Reading analysis, and by the alternative argument addressed in this discussion, cannot reasonably be inferred from the language in Sections 65995 and 65996 as revised by Chapter 1354 of the Statutes of 1992. We conclude, accordingly, that this alternative construction of those sections would not be adopted by the courts.

QUESTION NO. 2

Where a school district has imposed the maximum supplemental school facilities fee authorized under Section 65995.3 against a development project, is a second school district, having common territorial jurisdiction with the first, authorized to likewise impose that fee on that development project?

OPINION NO. 2

Where a school district has imposed the maximum supplemental school facilities fee authorized under Section 65995.3 against a development project, a second school district, having common territorial jurisdiction with the first, is not authorized to likewise impose that fee on that development project.

ANALYSIS NO. 2

As indicated in Analysis No. 1, the authority of a school district to impose fees or other requirements against development to fund school facilities construction is set forth in Section 53080. The authority under that section to impose those fees or other requirements is expressly made subject to "any

limitations set forth in Chapter 4.9" (subd. (a), Sec. 53080). The limitations set forth in Chapter 4.9 include the restriction that "[i]n no event" shall the total amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7, exceed designated dollar amounts. Those amounts were established, prior to adjustment for inflation, at $1.50 per square foot of assessable space, in the case of residential development, and $0.25 per square foot of chargeable covered and enclosed space, in the case of commercial or industrial development (subd. (b), Sec. 65995)[6].

The question here relates to a situation in which two school districts have common territorial jurisdiction, as may occur when neither is a unified school district. The imposition of a school facilities fee or other requirement pursuant to Section 53080 under those circumstances is specifically addressed, under existing law, by Section 53080.2. If the total amount of school facilities fees "authorized pursuant to Section 53080," as levied by two nonunified school districts having common territorial jurisdiction, would exceed "the maximum fee authorized under Section 65995," Section 53080.2 requires the governing boards of the affected school districts to enter into an agreement specifying the allocation of the fee revenue or, alternatively, to submit the dispute to the authority of an arbitration panel.

Section 65995.3, as added by Chapter 1354 of the Statutes of 1992, reads as follows:

> "65995.3. (a) In addition to the fee, charge, dedication, or other requirement specified in subdivision (b) of Section 65995, an additional fee, charge, dedication, or other requirement of one dollar ($1) per square foot of assessable space may be levied by the governing board of a school district against that residential construction described in subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 53080 for the construction or reconstruction of school facilities.
>
> "(b) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters

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[6] It is our understanding that, as adjusted for inflation, those limits currently are $1.65 per square foot for residential development, and $0.27 per square foot for commercial or industrial development.

voting on the measure, and as of that date this section is repealed."[7]

Section 65995.3 thus authorizes a school district governing board to levy a "fee, charge, dedication, or other requirement of one dollar ($1) per square foot of assessable space" against residential construction "[i]n addition to the fee, charge, dedication, or other requirement specified in subdivision (b) of Section 65995." Because Section 65995 currently operates, together with other provisions of Chapter 4.9, as a statement of maximum dollar limits and other restrictions upon the authority granted to school district governing boards in Section 53080 to levy school facilities fees or other requirements (see subd. (a), Sec. 53080; California Bldg. Industry Assn. v. Governing Bd., supra, p. 233), we conclude that Section 65995.3, as an addition to Chapter 4.9, likewise would be deemed to operate as a restriction upon the authority granted in Section 53080, by revising the dollar limits identified in that chapter. A statute should be interpreted with reference to the system of law of which it is a part (People v. Comingore, 20 Cal. 3d 142, 147).

We next must consider the effect of Section 65995.3 upon the scope of Section 53080.2. As discussed above, Section 53080.2 provides a method of distributing school facilities fees revenues between two nonunified school districts having common territorial jurisdiction, when the total amount of the fees levied by those two districts pursuant to Section 53080 would exceed "the maximum fee authorized under Section 65995" (subd. (a), Sec. 53080.2).

When the language of a statute is clear, a court interpreting it should follow its plain meaning (Great Lakes Properties, Inc. v. City of El Segundo, 19 Cal. 3d 152, 155) except that the literal meaning of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole (Silver v. Brown, 63 Cal. 2d 841, 845). In this case, a literal interpretation of Section 53080.2 would require that the distribution between two school districts of the revenues from the imposition of school facilities fees be governed by an agreement or arbitration when the total amount of those fees would exceed "the maximum fee authorized under Section 65995," even though Section 65995.3 will authorize a school

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[7] Like the revisions made by Chapter 1354 of the Statutes of 1992 to Sections 65995 and 65996, Section 65995.3 becomes effective January 1, 1993, but is repealed if Assembly Constitutional Amendment No. 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on that measure (subd. (b), Sec. 65995.3).

district to levy a school facilities fee against residential construction that exceeds "the maximum fee authorized under Section 65995" by $1 per square foot of assessable space. This result, which would require that any total school facilities fee exceeding $2.65 per square foot of assessable space for residential construction be governed by agreement or arbitration when levied by two nonunified school districts, although a school facilities fee of $3.65 per square foot of assessable space for residential construction could be imposed by a single school district, would constitute an absurd result, in our view, for purposes of the rule of statutory construction cited above.

Moreover, regardless of whether Section 53080.2 is deemed to apply to the supplemental school facilities fee amount authorized under Section 65995.3, it is our opinion that the additional $1 per square foot of assessable space authorized by Section 65995.3 may not be exceeded where two nonunified school districts have common territorial jurisdiction over the development against which the school facilities fee is levied. As noted above, the amount authorized under Section 65995.3 is a supplement to the total dollar amount of any fees or other requirements "authorized under Section 53080, or pursuant to Chapter 4.7" that may be exceeded "[i]n no event" (subd. (b), Sec. 65995). Pursuant to the rules of statutory construction that when the language of a statute is clear, a court interpreting it should follow its plain meaning (Great Lakes Properties, Inc. v. City of El Segundo, supra, p. 155), and that a statute should be construed so as to harmonize it, if possible, with other laws relating to the same subject (Ische v. Unemployment Ins. Appeals Bd., 12 Cal. 3d 584, 590), we conclude that the circumstance that more than one school district has territorial jurisdiction over a development is not an event that would be deemed to supersede the aggregate dollar limit for school facilities fees established by Sections 65995 and 65995.3.

This conclusion is enhanced by reference to the situation in which one or both of the school districts having common territorial jurisdiction are applicants for state funding of school facilities construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Sec. 17700), Pt. 10, Ed. C.). Under Section 17705.5 of that chapter, which, like Sections 53080 and 65995, became effective January 1, 1987 (see Ch. 887, Stats. 1986), the total building cost portion of the state funding for any project approved by the State Allocation Board under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 is reduced by a matching share

requirement imposed upon the school district for which the project is approved. The amount of that district matching share requirement, which is calculated on the basis of developer fee revenues that the applicant district is authorized to collect under Section 53080, is reduced by the express terms of Section 17705.5 by an amount described as follows:

"17705.5. * * *

"(3) An amount reflecting the extent to which the district is precluded from collecting those fees by reason of the levy and collection of developer fees by another school district having common territorial jurisdiction." (Emphasis added.)

We think that this provision, exempting an applicant district from matching share liability to the extent it is "precluded" from collecting developer fees by the collection of those fees by another district in the circumstances described, indicates the intent of the Legislature that the imposition and collection of developer fees by a school district under the authority of Section 53080 limits or precludes the authority of a district having common territorial jurisdiction to impose and collect those fees. The language of Section 17705.5 of the Education Code thus supports the conclusion that the maximum amounts set forth in Section 65995 for any school facilities fee may not be exceeded as to any development, whether or not the development lies in the territorial jurisdiction of more than one school district. Furthermore, this provision of Section 17705.5 was enacted well before the enactment of Section 53080.2, which merely governs the distribution of school facilities revenues between school districts having common territorial jurisdiction (Ch. 1209, Stats. 1989).

We conclude, therefore, pursuant to the rule of statutory construction cited above (see Silver v. Brown, supra, p. 845), that the reference in Section 53080.2 to "the maximum fee authorized under Section 65995" would be construed, subsequent to January 1, 1993 (the effective date of Section 65995.3), to refer to the dollar limit in Section 65995 as supplemented by Section 65995.3.

In accordance with that conclusion, and based upon the foregoing discussion, it is our opinion that where a school district has imposed the maximum supplemental school facilities fee authorized under Section 65995.3 against a development project, a second school district, having common territorial jurisdiction with the first, is not authorized to likewise impose that fee on that development project.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Jeffrey A. DeLand
Deputy Legislative Counsel

JAD:sjm

RESOLUTION NO. 93-131

AMENDING

RESOLUTION NO. 92-164

A RESOLUTION OF THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY REGARDING SCHOOL FACILITIES IMPACT MITIGATION

WHEREAS, rapid population growth in recent years in Riverside County has resulted in large increases in the numbers of students that the County's school districts are required to educate, and has resulted in the need to enlarge existing school plant facilities and construct new facilities to house the students in accordance with the standards required by state law, and

WHEREAS, financing the construction of school plant facilities is the responsibility of the State of California, and

WHEREAS, the State of California has been unable to adequately fulfill its obligation toward school plant facilities financing and has shifted the responsibility for financing of them to local school districts, which, under Chapter 887, Statutes 1986, and Chapter 1354, Statutes 1992 may establish developer mitigation fees for residential, commercial and industrial uses, and may establish Mello-Roos Community Facilities Districts (CFD's) to provide for school plant facilities financing as authorized and limited by the laws of the State of California, and

WHEREAS, the combination of state school bond monies, school district imposed developer fees, CFD's, local school bond monies, and other sources of financing have generally been inadequate to provide for the enlargement and construction of school plant facilities sufficient to adequately house new students in accordance with the minimum standards set forth by the State of California, and

WHEREAS, adequate school facilities are of benefit to both new developments as well as the community at large, and are necessary components of a community's social and infrastructure systems, and

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WHEREAS, the inability of many school districts to provide adequate school plant facilities due to limitations on their ability to finance them has resulted in school overcrowding that is a detriment to the public health and welfare, and

WHEREAS, new student impacts on school plant facilities are due primarily to residential uses, except senior citizen and resort-oriented development, and

WHEREAS, impacts due to commercial and industrial development are less significant than residential development, may be partially mitigated through developer fees authorized by the State of California under Chapter 887, Statutes 1986, and furthermore, are partially offset by the contributions of commercial and industrial uses toward a strong tax base in the County to support public services, including schools, and

WHEREAS, school funding sources under current state laws and available funding are oriented toward the provision of interim school facilities, and a need exists to fund permanent K-12 school facilities, including facilities for the special education needs of special or disadvantaged students, and

WHEREAS, the County, pursuant to the California Environmental Quality Act, has the authority to review development proposals for impacts on school facilities, and

WHEREAS, the State of California, has limited the permissible methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or conditioning approval of projects to the items listed in Government Code §65996(a), and

WHEREAS, the County, pursuant to Chapter 1354, Statutes 1992, has the authority to condition administrative and legislative acts, including general plan amendments, specific plans and amendments thereto, development agreements, and changes of zone, if it finds that impacts on schools have not been mitigated to a level of insignificance.

BE IT RESOLVED, FOUND, DETERMINED AND ORDERED by the Board of Supervisors of the County of Riverside, in regular session assembled on April 20, 1993, that Resolution No. 92-164, adopted June 30, 1992 is amended to read:

A. Any school district located partly or totally within the unincorporated area of the County of Riverside may present requests to the County that impacts on school facilities resulting from new residential developments and the associated increases in the number of students within its district be mitigated, and the County shall review and consider granting such requests, in accordance with the provisions and procedures established herein. Any school district that requests the County to consider financial mitigation in conjunction with any proposal, that exceeds that provided for under Government Code §53080, 65995(b) and 65995.3, shall have received prior certification from the County that a school district mitigation plan prepared by or on behalf of the school district conforms to the content requirements for such plans as specified herein.

B. Any residential development proposal for which an agreement has been executed, prior to the effective date of this resolution, between the developer and the school district, the provide for mitigation of the student generation impacts of the proposal on the school facilities of the district, and said agreement has been acknowledged as adequate mitigation by the County in the adoption of the resolution, ordinance, and/or conditions of approval for the proposal, is exempt from consideration of mitigation under this resolution.

C. Any residential development proposal made in conjunction with the S.C.D. (Senior Citizen Developments) zone shall be exempt from school facilities mitigation that exceeds any limits for such mitigation as established by state law for recognized senior citizen residential developments.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that all

school district mitigation plans shall be prepared and considered in accordance with the following provisions and procedures:

A. The mitigation plan shall contain documentation of the need for any level of mitigation that exceeds the total of revenue anticipated to be received by the school district from the development mitigation fee established pursuant to Chapter 887, Statutes 1986, and Chapter 1354, Statutes 1992 plus any other source of funding available or anticipated to be available to the school district for the provision of school facilities. Said plan shall contain, at a minimum, the following elements:

1. Student Generation Factors (SGF).

a. The SGF are to be established based on a household survey taken within the school district.

b. The SGF survey parameters shall include:

1) Dwelling units constructed within the last three years shall be surveyed.

2) A minimum sample of 250 dwelling units shall be surveyed.

3) The sample taken should be representative of the current or anticipated future characteristics of the community, including consideration for the resort and second home characteristics of the community.

4) The housing product types surveyed shall be identified, including whether single-family, multi-family and single-family attached, and mobile home product types are included.

5) The SGF for elementary, middle, and high schools shall be included.

6) The SGF shall be based on an assessment of student "pass through" from new homes over a five-year period.

7) The SGF shall reflect peak student loading.

8) The household survey used to develop the SGF shall exclude senior citizen housing from consideration.

9) The school district shall retain the opportunity to identify special conditions that affect the SGF, and accordingly present a case for modification of the parameters affecting development of the SGF.

2. Typical School Factors (TSF).

a. Land Cost:

1) Shall be based on state standard or agreement, and

2) Shall be based on finished and improved school sites, construction ready, including the extension of necessary infrastructure.

b. Development of school sites shall be based on California Department of Education standards for infrastructure, location, and acreage.

c. School construction costs shall be as authorized by the State Office of Local Assistance (OLA), or as required by local and state codes.

d. All costs for plans, test, inspections, furniture and equipment, and contingencies shall be in accordance with OLA requirements.

3. Optimum Facility Utilization.

a. The school district shall demonstrate, in the mitigation plan, optimum utilization of its facilities.

b. The mitigation plan shall include consideration of a year-round, multi-track education program, double school sessions, and alternative student loading programs.

4. Bond Issues and Other Funding Sources.

a. The school district shall certify, and provide supporting evidence in the mitigation plan that it is pursuing state and alternative facilities financing.

b. If the school district is not pursuing or does not anticipate pursuing alternative financing, it shall explain in the mitigation plan its rationale for not doing so.

c. The mitigation plan shall include considerations of methods of financing the payment for and construction of school facilities, to ensure the provision of adequate facilities and to minimize actual costs to future residents, including the use of developer loan funds based on anticipated state bond funds reimbursement and community facilities districts.

5. Central Administration and Support Facilities and Interim Facilities.

a. A school district shall have the opportunity, through the mitigation plan, to present an argument justifying mitigation for impacts on administration and support facilities and interim facilities.

b. If the school district elects to present an argument pursuant to Section A.5.a., above, its mitigation plan shall demonstrate that the mitigation requested is proportional to the impacts directly attributable to new development.

6. Level of Support From New Development.

The mitigation plan may provide for total mitigation, from all potential funding sources, of the impacts on school facilities that are shown to result from new residential developments. The mitigation plan shall not be used to provide for

mitigation of impacts attributable to existing development.

7. Coordination of Planning Review for School Site Development.

The mitigation plan shall include provisions for consultations between the school district and the County agencies on school facility location and site development plans, in order to promote compatibility with County land use, circulation, and other plans, and coordination on public improvements, including streets, sidewalks, and traffic control mechanisms.

B. The mitigation plan shall be adopted by the school district board of trustees.

C. The school district shall submit its adopted mitigation plan to the County for its review and certification as to whether it conforms to the required content specified herein, in accordance with the following procedures:

1. The school district shall submit the adopted mitigation plan, accompanied by the appropriate fee as set forth in Ordinance No. 671, to cover the County's costs of reviewing the plan, to the Planning Director. Upon receipt of the mitigation plan, the Planning Director shall provide written notice to the Riverside County Superintendent of Schools and the Riverside County Chapter of the Building Industry Association, that the plan has been received by the Planning Director.

2. Within 30 days following receipt of the school district's mitigation plan, the Planning Director shall review the plan to determine whether it conforms to the required content as specified herein. The Planning Director may request the Riverside County Superintendent of Schools to provide an independent review of the mitigation plan with regard to technical matters. After reviewing the

mitigation plan, the Planning Director shall take one of the following actions:

a. Certify, by written notice to the superintendent of the applicant school district, that the mitigation plan conforms to the requirements for content as specified herein. The Planning Director shall provide a copy of the notice to each of the following:

1) Clerk of the Board of Supervisors

2) County Counsel

3) County Superintendent of Schools

4) Building Industry Association, Riverside County Chapter

b. Notify, in writing, the superintendent of the applicant school district that the school district's mitigation plan will not be certified as conforming to the requirements specified herein, and describing the deficiencies that will need to be corrected before the mitigation plan can be certified.

3. The applicant school district or any other interested party may appeal any decision of the Planning Director regarding certification of any school district mitigation plan. Any such appeal shall be made to the Board of Supervisors. Any such appeal shall be limited to considerations of whether the content and effect of the school district mitigation plan conforms to the requirements specified herein. Any such appeal shall be made and considered in accordance with the following procedures:

a. The appeal shall be filed with the Clerk of the Board of Supervisors within 10 calendar days after the notice of the Planning Director's decision appears on the Board's agenda.

b. The appeal shall be filed in writing, stating the basis for appeal, and shall be accompanied by the appropriate fee for the appeal as set forth in Ordinance No. 671.

c. Upon the filing of the appeal, the Clerk of the Board shall set the matter for public hearing before the Board of Supervisors on a date within 30 calendar days after the date of the filing of the appeal.

d. The Board of Supervisors shall render its decision on the appeal within 10 calendar days after the close of the public hearing.

D. Upon certification by the Planning Director, and following the period within which appeals therefrom may be filed, or following action by the Board of Supervisors to certify any school district mitigation plan upon the filing and hearing of an appeal, such plan shall thereafter be regarded as being the basis for the identification by the applicant school district of specific impacts attributable to individual residential development proposals, and mitigation measures appropriate to eliminate or reduce to a level of insignificance the impacts attributable to such residential development proposals. The County shall not adopt any financial mitigation in excess of the district imposed development mitigation fee, unless it is found to be consistent with the provisions of a school district mitigation plan previously certified by the County and the mitigation measure or measures are permitted by state law. The County shall consider for adoption financial mitigation proposed by a school district, where a mitigation plan prepared by or on behalf of the district has been certified by the County, in project environmental assessments and decisions for project approval, or conditioning, to the extent permitted under applicable state laws.

E. A school district may request, at any time, that the County certify an amendment to its previously certified mitigation plan, in accordance with the provisions and procedures described above.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that all residential development proposals that require legislative and/or administrative action and that are subject to initial environmental study in accordance with the California Environmental Quality Act (CEQA) and the Riverside County Rules to Implement CEQA shall be reviewed for potential impacts on school facilities, and mitigation for such impacts, in accordance with the following procedures:

A. The Planning Director shall notify, by means of written notice, the school district or districts within whose boundaries the proposed project is located, either:

1. Prior to the first LDC meeting, when a proposed project requires administrative action, and prior to completion of the initial environmental assessment, or

2. Prior to the completion of the environmental assessment, when no administrative action is required on the proposed project, that an application for the proposed project has been filed and that the school district's comments and recommendations with respect to the proposed project are requested prior to the first LDC meeting, if applicable, and prior to completion of the environmental assessment.

B. The Planning Director's notice to each school district shall include information regarding the proposed project, including a site plan, in sufficient detail to enable the school district to determine what potential impacts, if any, on school facilities could result if the proposed project is implemented. The information provided shall identify the developer, the location of the project site, and the number of dwelling units proposed or that could result from the proposed project. The notice shall also include a statement that all comments and

recommendations regarding the proposed project must be received by the Planning Director prior to the date of the first LDC meeting, if applicable, and prior to a specified date for completion of the environmental assessment, in order to be included in the environmental assessment and/or staff report for the proposed project.

C. The project application shall not be deemed complete and filed for purposes of the Planning & Zoning Law or Subdivision Map Act or CEQA, unless the status of school impacts and mitigation, if needed, has been determined. If such a determination cannot be made within 30 calendar days following the submittal of the project application, the Planning Director shall notify the developer that additional information or special study or an EIR is required to assess the status of school impacts and mitigation. Mitigation shall be evidenced by a legally binding written agreement between the school district and developer, where such an agreement has been reached between the school district and developer. Within 30 calendar days following the submittal by the developer of an application to the Planning Director for the proposed project, any one of the following actions may occur:

1. The status of the potential school facility impacts due to the proposed project has been determined, and it has been determined that either impacts will not occur, or will occur but can be eliminated or reduced to a level of insignificance as evidenced by legally enforceable, executed agreement between the school district and developer, or other appropriate documentation.

2. The status of the potential school facility impacts due to the proposed project has not been determined, and either the developer has been notified that additional information or special study is required prior to completion of the environmental assessment, or a Notice of

Preparation for an EIR has been issued to require an analysis of the specific nature of project impacts and the potential mitigation measures available. The developer may appeal to the Riverside County Planning Commission from the Planning Director's decision to issue the Notice of Preparation for an EIR in accordance with the Riverside County Rules to Implement CEQA.

3. The status of the potential school facility impacts due to the proposed project has not been determined. As an alternative to the submittal of additional information or special study or the preparation of an EIR, if the developer believes that adequate mitigation has been or will be provided, the developer may request that his project be scheduled for a hearing before the appropriate hearing body in lieu of responding to an additional information request, or submitting a special study or prior to responding to a Notice of Preparation for an EIR, even though the Planning Director has determined that an initial study cannot be completed, and a negative declaration or a mitigated negative declaration cannot be adopted. Under this alternative, the Planning Director shall recommend denial of the project, based on the project proponent's non-compliance with CEQA.

D. The Planning Director shall include in the environmental assessment and in the staff report to the hearing body for the proposed project an analysis of any potential impacts of the proposed project on school facilities, and steps which have been taken or will be taken to mitigate such impacts. The Planning Director shall include in the environmental assessment and staff report any written comments or recommendations that have been provided to the Planning Director by any school district that believes that its facilities will be impacted by the proposed project. The Planning Director shall recommend

that one of the following actions be made by the hearing body with respect to school facilities impaction:

1. Recommend adoption of a negative declaration, based on a finding that the proposed project will not significantly impact school facilities.

2. Recommend adoption of a mitigated negative declaration, with a finding that the project could result in significant impacts on school facilities, but that mitigation has occurred or will occur, as evidenced by an agreement between the school district and the developer, or other appropriate documentation, which has been identified in the initial environmental assessment, that will eliminate potential impacts or reduce them to a level of insignificance.

3. Recommend certification of an EIR, and approval of the proposed project, with or without mitigation measures, and with or without a statement of overriding considerations, as appropriate.

4. Recommend denial of any appeal from a requirement by the Planning Director to prepare an EIR to address the potential impacts of the proposed project on school facilities.

E. The hearing body shall act in accordance with one of the following alternatives:

1. Adopt a negative declaration for the proposed project based on a finding that the proposed project will not significantly impact school facilities.

2. Adopt a mitigated negative declaration for the proposed project, based on a finding that the project could result in significant impacts on school facilities, but that mitigation has occurred or will occur that will eliminate potential impacts or reduce them to a level of insignificance.

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3. Certify an EIR, based on a finding that the EIR has adequately addressed the potential impacts of the project on school facilities in accordance with CEQA and the Riverside County Rules to Implement CEQA. Under this alternative, the hearing body may either conclude that full mitigation is proposed and is appropriate, or may conclude that full mitigation is infeasible or concludes that less than full mitigation is appropriate. A statement of overriding findings shall be made if fully mitigation is feasible but less than full mitigation is appropriate.

4. Require that an environmental impact report be prepared in accordance with the California Environmental Quality Act (CEQA) and the Riverside County Rules to Implement CEQA, based on a finding that the proposed project could result in significant impacts on school facilities.

F. If the hearing body's action is appealed, the appeal body, or the Board of Supervisors if it eventually assumes jurisdiction over the matter and orders the project set for hearing, shall adopt one of the same alternative actions with respect to school facilities as required of the original hearing body.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that any legislative residential proposal that would constitute the final legislative action taken by the County that is necessary to permit development of a property at a higher residential intensity than is currently permitted, shall be accompanied by the filing of a quasi-judicial project or projects that demonstrate specific and full utilization of the legislative action proposed, except under the following circumstances:

1. Any quasi-judicial residential projects that have been approved by a hearing body prior to the effective date of this resolution, that include in the conditions of approval thereof, a requirement for the filing of a general plan amendment or zone change prior to the use

permitted, or

2. Any quasi-judicial residential project that includes in its conditions of approval, the requirement for the filing of a general plan amendment or a change of zone, where it is determined by the hearing body that the general plan amendment or zone change will not result in significant impacts on school facilities, or mitigation has occurred or will occur that will eliminate school facility impacts or reduce them to a level of insignificance.

3. Any specific plan, or development agreement, where a specific, legally enforceable agreement has been executed between the developer and school district, regarding mitigation, phased or not, of any school facility impacts resulting from residential uses, has been included in the conditions of approval of the specific plan or the terms of the development agreement.

4. Any legislative action that would result in equal or less intensive residential impacts on school facilities than is currently permitted.

5. Any legislative action where it can be seen with certainty, as determined by the Planning Director or hearing body, that either there will be no significant impacts on school facilities, or mitigation has occurred or will occur that will eliminate the impacts or reduce them to a level of insignificance.

Any quasi-judicial project hereby required to be filed concurrently with any legislative action proposal, is thereafter required to proceed together with the referenced legislative action to any and all required public hearings before the appropriate hearing body and the Board of Supervisors. In the event that an applicant developer for a legislative proposal refuses to file the required quasi-judicial projects, the proposed legislative action shall proceed to the appropriate hearing body with a recommendation

for denial, based on a finding that significant impacts on school facilities could result from the proposed project, but sufficient mitigation for such impacts cannot be determined and required in the absence of a quasi-judicial development proposal that makes full use of the legislative action proposed.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that for administrative and/or legislative actions including but not limited to general plan amendments, specific plans, specific plan amendments, changes of zone and development agreements, evidence that adequate mitigation has occurred or will occur may be established as follows:

A. For general plan amendments, evidence of a legally enforceable agreement between the school district and developer that specifies the exact nature, amount, process, and conditions of mitigation to be provided by the developer, shall be provided to the Planning Director and incorporated by reference into the resolution adopting the general plan amendment.

B. For specific plans and specific plan amendments, evidence of a legally enforceable agreement between the school district and developer that specifies the exact nature, amount, process, and conditions of mitigation to be provided by the developer, shall be provided to the Planning Director and incorporated by reference into the conditions of approval of the specific plan and the resolution adopting the specific plan, or into the terms of the development agreement.

C. For changes of zone, evidence of a legally enforceable agreement between the school district and developer that specifies the exact nature, amount, process, and conditions of mitigation to be provided by the developer, shall be provided to the Planning Director and County Counsel prior to the adoption by the Board of Supervisors of the ordinance effecting the change of zone.

D. For administrative project approval, evidence of a legally

enforceable agreement between the school district and developer that specifies the exact nature, amount, process and conditions of mitigation to be provided to the Planning Director and incorporated by reference into the conditions of approval of the project.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that any legislative residential proposal that would not constitute the final legislative action taken by the County that is necessary to permit development of a property at a higher residential intensity that is currently permitted, shall be evaluated under the assumption that the property will be developed to the maximum density and intensity of use that would be permitted if legislative approval of the proposal were granted.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that the only mitigation measures the Planning Director, Planning Commission, East Area Planning Council or Board of Supervisors shall consider in mitigating the environmental effects related to the adequacy of school facilities shall be those specified in Government Code §65996(a).

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that the Planning Director, Planning Commission, East Area Planning Council and Board of Supervisors shall not condition approval of any project to provide mitigation in excess of the amounts authorized by Government Code §65995 and §65995.3 unless the school district has a school district mitigation plan which has been certified in accordance with this Resolution.

BE IT FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that nothing in this Resolution shall be interpreted as limiting or restricting the ability of the Planning Director, Planning Commission, East Area Planning Council or Board of Supervisors to require additional information, special studies or an Environmental Impact Report on environmental issues, other than adequacy of school facilities, that may be associated with residential projects

submitted to the County of Riverside for approval.

BE IF FURTHER RESOLVED, FOUND, DETERMINED AND ORDERED that it is the intent of the Board of Supervisors that this Resolution be in force and effect until amended, rescinded, suspended, superseded or until a subsequent resolution or ordinance is enacted which supersedes this Resolution.

Roll Call:
Ayes: Buster, Dunlap, Ceniceros, Younglove
Noes: Larson
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.
PERRIS A. HAYONEY, Clerk of said Board
By

JGV:re.123

0498

L. RESPONSE TO COMMENTS FROM COMMUNITY SYSTEMS ASSOCIATES, INC., RECEIVED NOVEMBER 3, 1993

L.1. Comment noted.

L.2. There is no requirement that the State review period established by the State Clearinghouse run concurrently with the local review period. The State Clearinghouse forty-five day public review period for this EIR began on September 17, 1993 and ended on November 1, 1993. The local review period for this EIR began on September 20, 1993 and ended on November 3, 1993. Mr. Krupp was notified both in writing and in person of the City's review period. Prior to the close of the public review period, Mr. Krupp submitted nearly 200 pages of comments and other information on the Draft EIR.

L.3. Mr. Krupp's comments are noted. See response to Comments L.11 through L.85.

L.4. The City's records show that Mr. Krupp received a certified letter on November 1, 1993 indicating that the City could not extend the public review period and that all comments should be submitted by 5 p.m. on November 3, 1993.

L.5. Mr. Krupp's comments are noted.

L.6. Comment noted. See response to Comments L.11 through L.12 below.

L.7. Mr. Krupp's comments are noted.

L.8. See response to Comments L.11 through L.85 below.

L.9. Mr. Krupp's comments are noted.

L.10. Mr. Krupp's explanation of the format of his comments is noted. Please see responses to Comments Number L.11 through L.85 below.

L.11. The Notice of Preparation (NOP) for this EIR included a project description, a location map and the probable environmental effects of the proposed project in conformance with the requirements of Section 15082 of the CEQA Guidelines.

L.12. Section 15082 of the CEQA Guidelines specifies that a Lead Agency shall distribute a Notice of Preparation "(i)mmediately after deciding that an Environmental Impact Report is required for a project...". In conformance with this requirement, the City of San Jose distributed a Notice of Preparation prior to completing the impact analysis of the proposed alternatives and prior to determining what mitigation would be required. The analysis showed that all of the alternatives would result in significant traffic impacts. Additional alternatives were analyzed and traffic mitigation was included to insure that the EIR included an alternative that did not result in significant traffic impacts. The purpose of the EIR process is to identify impacts and mitigation or alternatives that will reduce these impacts to an acceptable level. If the EIR analysis were complete at the time the NOP was distributed, the early consultation required by CEQA would not be achieved. Please note that Alternative 4 (64,000 units) and Alternative 5 (58,300 units) included significantly fewer residential units than the 70,000 unit alternatives discussed in the NOP.

L.13. The Preferred Alternative under consideration by the City Council is a refinement of Alternative 5. This Alternative will not result in any additional impacts that were not identified in the analysis of Alternative 5. The Preferred Alternative includes approximately 6,000 fewer housing units and the same number of jobs as Alternative 5. The Draft EIR presents a worst case analysis of the impacts of the Preferred Alternative.

L.14. Page 55 of the Draft EIR specifies (to the extent that this information is known to the lead agency) the agencies expected to use the EIR in their decision-making and the approvals for which the EIR will be used. The Uses of the EIR section states as follows:

> "The City of San Jose will use this EIR to provide the environmental review for the adoption of the San Jose 2020 General Plan, including related text amendments and changes to the General Plan Land Use/Transportation Diagram. This EIR also provides the environmental review for LAFCO approval of the proposed minor amendments to the Urban Service Area."

The Uses of the EIR section indicates that the EIR <u>may</u> be used for additional specified actions consistent with the goals and policies of the General Plan, but also cautions that additional environmental review may be required for these actions. The specified actions include:

> "...adoption of ordinances and policies which implement the General Plan; minor zoning changes and General Plan amendments that are consistent with the General Plan and; special studies required by or related to implementation of the General Plan Policies."

The City is not aware of any other responsible agencies that will use this EIR for specific approvals. The school districts are not Responsible Agencies that will be required to use this EIR for discretionary decisions to implement the General Plan. Please note that the City has been unable to find any record that any school district has ever filed a Notice of Determination as a Responsible Agency for use of the Horizon 2000 General Plan Final EIR.

L.15. The City Council of the City of San Jose is the decision-making body that will approve or deny the proposed General Plan, including amendments to the text of the Plan and revisions to the Land Use/Transportation Diagram. Legal notice of all public hearings regarding the proposed General Plan has been provided. As indicated in the Draft EIR transmittal letter, the Planning Commission will hold a public hearing on the EIR on December 1, 1993. It is anticipated that this hearing will be continued to December 8, 1993 to allow adequate time for public agency review of the responses to comments submitted on the Draft EIR. The City Council is currently scheduled to consider the proposed San Jose 2020 General Plan on December 14, 1993.

The proposed General Plan is expected to be implemented over the next 26 years. It is not possible at this time to provide a comprehensive list of the specific approvals necessary to implement the Plan; however, appropriate public notice and CEQA review will be undertaken for each project at the time it is proposed.

L.16. The City considered all of the Notice of Preparation responses in the preparation of the Draft EIR to ensure that the significant environmental impacts of the General Plan alternatives were adequately addressed. See response to Comments L.17 through L.56. below.

L.17. Pages 102 through 123 of the Draft EIR and Appendix E address traffic impacts of the General Plan alternatives at a level of specificity that is appropriate to the level of specificity of a General Plan in conformance with Section 15146 of the CEQA Guidelines. No significant traffic impacts are expected as a result of roadway changes or changes in transit facilities.

L.18. General Plan Thoroughfares Policy #8 and Pedestrian Facilities Policy #16 address pedestrian safety and the need for pedestrian facilities. These policies will be implemented at the time specific developments or street improvements are proposed to ensure the provision of safe and convenient pedestrian facilities. No significant environmental impacts relative to pedestrian safety are expect as result of implementation of the San Jose 2020 General Plan. Appropriate pedestrian facilities will be provided at the time specific developments or street improvements are proposed in conformance with General Plan policy.

L.19. The noise analysis prepared for the project by Illingworth & Rodin, Inc., contained in Appendix G of the EIR, included noise measurements recently taken throughout San Jose. The noise analysis included data from noise measurements taken from noise analyses, many of which were prepared by Illingworth & Rodkin, for other program-level, project-level, and specific plan EIRs. These data were used in conjunction with the computer noise modeling to determine existing noise levels in San Jose.

The contents of the Noise Element of the General Plan are mandated in Section 65302(f) of the California Administrative Code. In the most recent revisions to this code completed several years ago, the requirement to monitor noise levels at noise sensitive area and the requirement for a noise exposure inventory were deleted.

L.20. The air quality impacts of the proposed Plan are addressed on pages 130 through 139 of the Draft EIR. Potential impacts associated with hazardous materials are addressed on pages 228 through 234. The analysis of potential hazardous materials impacts does not identify the ages or school status of those who could potentially be exposed to hazardous materials; however, pages 234 through 235 identify program mitigation to insure that impacts associated with hazardous materials are adequately mitigated. Please note that none of the alternates propose new industrial uses adjacent to existing school sites.

L.21. The Draft EIR did not include data on capacity and enrollment because the City was unable to obtain consistent and parallel data from the school districts. Following is a discussion of the information provided by the school districts or obtained from other sources relative to the existing capacities and enrollments of the school.

The number of additional students expected to result from implementation of the General Plan Alternatives is shown on Table 34 of the Draft EIR. Please note that the adopted Horizon 2000 General Plan assumes approximately 52,000 additional residential units within the City's Sphere of Influence. The Preferred Alternative now under consideration by the City Council assumes approximately the same number of additional residential units as the adopted Plan, with some change in the location of the units. The student generation presented in Table 34 for Alternative 5 (which assumes approximately 58,000 additional housing units) represents a worst case estimate of additional students. The addition of these students to the school districts serving San Jose is not expected to result in a significant environmental impact relative to school services.

Alum Rock Elementary School District: According to the information provided by the School District, the District currently has excess student capacity of 2,014 students. The Draft EIR identifies that the new residential development assumed in Alternative 5 by 2020 will result in an additional 590 students. This represents an increase of 160 students over the adopted Horizon 2000 General Plan (Alternative 1).

It appears that Alum Rock Elementary School District has capacity to accommodate the additional students resulting from implementation of the proposed General Plan.

Berryessa Elementary School District: The Draft EIR identifies that the Berryessa School District is currently at capacity. The lack of excess capacity is limited to the middle schools. Existing elementary schools have excess capacity of 975 students. In addition, the City's School Site Reuse Plan indicates that the District has two undeveloped school sites. Both the adopted Horizon 2000 General Plan and the proposed San Jose 2020 Plan will result in an additional 1,095 students from new residential development. Approximately 225 of these are middle school students and 870 are elementary school students. Page 257 of the Draft EIR identifies measures school districts have used in the past to provide additional capacity, including measures that do not require funds for new construction. The Berryessa School District has indicated that one these measures, year-round schools, was used by the School District prior to the mid-seventies to alleviate over-crowded schools. A four track year-round system could increase school capacity by as much as 33 percent. Measures are available to accommodate students resulting from implementation of the General Plan in the Berryessa School District.

Cambrian Elementary School District: The School District's 1993 Developer Impact Study indicates that the District had an excess capacity of 248 students in 1992, but is expected to exceed the capacity of its currently open schools by 1994/95. The District is currently leasing two surplus schools and a portion of a third for non-public school uses. The School District has indicated that these schools cannot be reopened due to the District's need for the revenue generated by these leases. The Draft EIR indicates that both the adopted Horizon 2000 Plan (Alternative 1) and Alternative 5 will add an additional 290 students. It appears that measures are available to accommodate these additional students without significant environmental impact.

Campbell Union Elementary School District:

The Draft EIR indicates that the schools serving San Jose within Campbell Union Elementary School District will exceed their capacities by 1996-1997, based on written communication by the School District. This same communication presented current data for these schools that showed an excess capacity of approximately 375 students. The District is currently leasing one surplus elementary school within San Jose for a non-public school use. There are three additional leased or closed school sites within the District. The excess capacity would appear to accommodate the additional 333 students projected for General Plan Alternative 5. If not, measures identified on page 257 of the Draft EIR could also be used to increase capacity.

Campbell Union High School District:

The Draft EIR identifies that the Campbell Union High School District is presently operating below capacity. According to information supplied by the School District for October of 1992, the District had excess capacity of approximately 3,900 students without considering the capacity of Branham High School (capacity of 2,100) which is currently leased for non-public school uses. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would add an additional 586 students by 2020. It appears that this district has adequate capacity to accommodate the additional students associated with the proposed General Plan.

Cupertino Union School District:

The Draft EIR identifies that the Cupertino Union School District would require additional classroom space beyond current capacity to accommodate growth from new residential development. According to information supplied by the School District, an excess capacity of approximately 391 is expected in school year 1994-95. Not included in this capacity figure are two surplus schools currently not used for public school instructional purposes. Table 34 of the Draft EIR identifies that Alternative 5 will

add approximately 615 students by 2020. It appears that the District has adequate capacity to serve the additional students within its existing or closed schools. If not, measures identified on page 257 of the Draft EIR could also be used to increase capacity.

East Side Union High School District:

The Draft EIR indicates that according to the District's study "Overview of Residential Development Impacts", short term growth may be accommodated in additional portable classrooms, but maximum school capacity with portables would be exceeded in the long term. The study indicates that 1176 students could be accommodated in additional portable classrooms. A comparison of school capacities provided in this study with school enrollments provided by the District for March of 1993, showed a total excess capacity in existing facilities of 1,154. The School District has received site approval from the state for a new high school located at the intersection of Quimby Road and Ruby Avenue. Assuming a capacity of 2,000 students for the new high school, the total future excess capacity of the School District would be 4,330 students.

Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 5,289 students by the year 2020. This student increase includes all approved but not yet constructed residential projects, all projects currently under consideration and all vacant land planned for residential development by 2020 within the East Side Union High School District. Please note that the preferred alternative under consideration by the City Council would generate approximately 100 fewer students than Alternative 5.

It appears that most of the students resulting from implementation of Alternative 5 could be accommodated with the existing and planned capacity of the School District. Additional capacity could be provided through measures identified on page 257 of the Draft EIR. Implementation of a four track year-round school system, alone, would increase capacity by as much as 33 percent, or almost 7,000 students.

Evergreen School District:

The Draft EIR, as modified in Section III of this Amendment indicates that while limited capacity is currently available in the Evergreen School District, the District anticipates adding capacity as needed.

Table 34 of the Draft EIR indicates that the new residential development assumed under Alternative 5 will result in an additional 3985 students by the year 2020, the same level of development assumed under the adopted Horizon 2000 General Plan (Alternative 1). Please note that this figure includes students anticipated from development of the Evergreen Specific Plan, Silver Creek Planned Residential Community, and Richmond Ranch, as well as other approved development within the District.

According to the Director of Planning for the Evergreen School District, the District does not maintain capacity figures. While limited capacity is currently available, the District creates additional capacity as needed by adding portables, adjusting school boundaries, moving students between schools and constructing new schools. The District indicated that portables could be used to create a maximum capacity of 900 students at each elementary school. Currently, additional portables can be added to all but two elementary schools.

The District anticipates opening a new elementary school approximately every three years. Each school, as built, would accommodate 600-660 students. As indicated above, the addition of portables could increase the capacity of each school to 900. The District plans to open a new school in the

Silver Creek Planned Residential Community in the Fall of 1994. This school is being financed with Mello-Roos funds and developer fees. Two additional elementary schools are planned for public school sites identified in the Evergreen Specific Plan Land Use Plan. Funding for the construction of these schools is identified in the Evergreen Specific Plan.

Fremont Union High School District:

The Draft EIR indicates that the Fremont Union High School District has additional school capacity. Information provided by the District indicates an enrollment of 7,259 students in April of 1993 and a capacity of 8,304 students. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 542 students by 2020. It appears that these additional students could be accommodated within existing capacity or by the measures for increasing capacity identified on page 257 of the Draft EIR.

Franklin-McKinley:

The Draft EIR identifies that the Franklin-McKinley School District is currently at capacity and is on year-round education. The District did not submit enrollment or capacity figures in response to the City's request.

Table 34 indicates that Alternative 5 will result in the generation of 2,965 students. Please note that the Alternative 5 does would not result in the generation of any more students than that anticipated under the adopted Horizon 2000 General Plan (Alternative 1) Almost all of the students anticipated under Alternatives 1 and 5 are located in, or adjacent to, the Communications Hill Planned Community. The Communication Hill Planned Community Land Use Plan identifies a public school site that has received site approval from the State Department of Education. The District also anticipates the construction of an additional middle school (Middle Creek Jr. High School).

In 1990 the District sold its district administrative offices and constructed a new administrative headquarters. Since that time, the District has taken steps to sell portions of two middle schools for residential development. The School District has not identified any significant environmental impacts associated with the sale of these school grounds, despite the loss of playing fields and potential locations for additional portable classrooms. Proceeds from the sale of these properties are not proposed to be used to provide additional classroom facilities.

Luther Burbank:

The Draft EIR identifies that implementation of Alternative 5 would result in an increase of a single student.

Moreland School District:

The Draft EIR states that Moreland School District has additional capacity. The City's School Site Reuse Plan indicates that this District currently has four surplus schools that are leased for non-public school uses. Table 34 indicates that implementation of Alternative 5 would result in an addition of 17 students. It appears that Moreland School District has capacity to accommodate the projected increase in students.

Morgan Hill Unified School District:

The Draft EIR identifies that the Morgan Hill Unified School District has additional capacity available in the elementary schools, that the middle schools are currently near capacity and that high schools are projected to be at capacity by 1997. These conclusions were based on capacity and enrollment data provided by the School District during preparation of the Draft EIR. This information indicated a total enrollment of 8,846 and a total capacity of 9,121. In commenting on the Draft EIR, the District submitted new data contained in the 1993 Justification Report for School Facility Fees which indicates a capacity of 9029. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in 98 additional students over the next 26 years, a significant reduction over the number of students expected under the adopted Horizon 2000 General Plan (Alternative 1). It appears that these additional students could be accommodated through portable classrooms, year-round schools and other mechanisms for increasing school capacity identified on page 257 of the Draft EIR.

Mount Pleasant Elementary School District:

The Draft EIR states that capacity in the Mt. Pleasant School District exceeds enrollment. Information provided by the School District indicates a capacity of 3,819 students (including a closed school site) and an enrollment of 2544 as of May 1993. Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in an increase of 113 students by 2020. It appears that the Mt. Pleasant District has existing capacity to serve this projected student increase without implementation of measures identified on page 257 of the Draft EIR.

Oak Grove School District:

According to the Draft EIR there may be additional capacity for students in the District. This statement is based on information from the District; however, despite numerous requests, the District did not furnish the City with capacity data. Table 34 of the Draft EIR identifies that new residential development assumed in Alternative 5 by 2020 will result in an additional 2868 students. This represents an increase of 783 students over the adopted Horizon 2000 General Plan (Alternative 1) The City of San Jose School Site Reuse Plan identifies two school sites that are currently not used by the District. It appears that the reopening of these schools together with other methods to increase capacity identified on page 257 of the Draft EIR would accommodate the additional students.

Orchard School District:

Based on information supplied by the District, the Draft EIR identifies that the Orchard School District is a one school district with a capacity of 375. The District is currently operating over capacity. Table 34 of the Draft EIR identifies that Alternative 5 will result in an additional 442 students from new residential development, an increase of 215 students over the adopted Horizon 2000 General Plan. The preferred alternative under consideration by the City Council would generate approximately 326 students, 116 fewer than under Alternative 5.

Page 257 of the Draft EIR identifies measures that school districts have used in the past to provide additional capacity. Without construction of a new school the District would not be able to accommodate the projected increase in enrollment. If construction of a new school is not possible, the District boundaries could be reconfigured to incorporate portions of the Orchard School District into Berryessa Union School District and Santa Clara Unified School District, districts which appear to have capacity to accommodate the additional students. Alternatively, the entire District could be incorporated into one of the adjacent districts. This would allow for more efficient administration and more flexibility in accommodating changing enrollments.

San Jose Unified School District:

The Draft EIR identifies that San Jose Unified elementary and middle schools are near capacity and that high schools currently have some additional capacity. Enrollment information was provided by the School District for 1993. Elementary schools in the District have an enrollment of 14,778 and a capacity of 15,616. (Williams Elementary School, opened in the Fall of 1992, was not include in these figures.) There are currently four elementary schools leased for non-public school uses. These schools would add capacity for approximately 1590 students. Based on these figures, the District had an excess elementary school capacity of 2,218 students in 1992.

In addition, the District owns one undeveloped elementary school site. Correspondence from the District indicates that proceeds from a 13-acre administrative office site sold in 1993 are ear-marked for purchase of a new elementary school site and new school facilities in a more centralized location. Presumably, leased elementary schools that are not strategically located could be sold for the same purpose. The City's School Site Reuse Plan indicates that San Jose Unified has sold 7 school sites since 1984.

The District's information shows a middle school enrollment of 6,512 and a capacity of 7,067, resulting in excess capacity of 555 students. High Schools have an enrollment of 7,798 and a capacity of 9,536, resulting in excess capacity for 1,738 students.

Table 34 of the Draft EIR indicates that implementation of Alternative 5 would result in a total of 7,995 additional students, 4633 elementary/middle school students and 3362 high school students. The Preferred Alternative under consideration by the City Council would result in an increase of 7,360 additional students. It appears that the additional students resulting from implementation of the proposed General Plan could be accommodated with a combination of current excess capacity and implementation of mechanisms identified on page 257 of the Draft EIR. Please note that a four-track, year-round school program, alone, would increase student capacity by as much as 33 percent, or 10,000 additional students.

Santa Clara Unified School District:

The Draft EIR identifies that the elementary and middle schools in Santa Clara Unified School District currently have additional capacity and that the high schools are currently at capacity. Based on information supplied by the District, additional capacity of approximately 2960 students is available, not including the capacity of the three elementary schools and two middle schools which are currently being leased for non-public school uses. Assuming a capacity of 550 for elementary schools and 1200 for middle schools, opening the leased schools would accommodate approximately 4100 additional students.

Table 34 of the Draft EIR indicates that the adopted Horizon 2000 General Plan (Alternative 1) would add 2,063 new students and Alternative 5 would add 3,815 new students. The preferred alternative under consideration by the City Council, would generate approximately 3020 additional students, 795 fewer than Alternative 5. It appears that the District has adequate capacity to serve the worst case number of students resulting from implementation of the proposed General Plan. If not, mechanisms identified on page 257 of the Draft EIR (including ones that do not require the construction of new schools) could be implemented to increase capacity.

Union School District:

The Draft EIR states that additional student capacity is available in the Union School District. Information provided by the School District identifies a built capacity of 7462 students. Some unspecified portion of this capacity has been converted to other uses. Current enrollment is 4,657. The City's School Site Reuse Plan indicates that the District has three surplus schools that are leased for non-public school uses and that two additional schools were sold since 1989. Table 34 of the Draft EIR shows that implementation of Alternative 5 would result in an increase of 210 students. It appears that Union School District could accommodate these additional students without implementation of the measures identified on page 257 of the Draft EIR.

L.22. Please see response to Comment 21 above.

L.23. Mr. Krupp's explanation of the various ways of assessing capacity is noted and incorporated into the environmental record for this project.

L.24. The fiscal impacts on the school districts of increasing student enrollment are not expected to result in any significant environmental impacts. Section 21083 of the CEQA legislation appears to be misquoted in this comment.

L.25. See response to Comment L.21-L.24 above.

L.26. The Draft EIR addresses the impacts and mitigation of the proposed General Plan alternatives relative to water service on pages 237-238. Impacts and mitigation relative to sanitary sewers are addressed on pages 246-250. Traffic impacts and mitigation are addressed on pages 102-123. Energy is addressed on page 272. These impacts are discussed at a level of specificity that is commensurate with the level of specificity of the project addressed in the Draft EIR. It is not possible at the General Plan stage to analyze site specific impacts associated with future decisions by the school districts to expand facilities. Individual school districts are the Lead Agencies responsible for environmental review for proposed school facility improvements.

L.27. See response to Comment L.19. regarding noise. Pages 263-265 of the Draft EIR address parks impacts and mitigation. The proposed General Plan alternatives are not expected to result in a significant environmental impact relative to an "...increased strain on the District's play fields and buildings for neighborhood gatherings and play areas". Please note that the City has agreements with a number of school districts for the joint use of certain school facilities for recreational purposes. Facilities not subject to such an agreement can be closed to the public during non-school hours if public access to these facilities is not desired. If a school district believes that future agreements for joint use of school facilities would result in significant environmental impacts, these impacts would need to be addressed during the CEQA review for those agreements.

L.28. Page 263 of the Draft EIR identifies that the City's goals for parks have not been achieved in the past. Pages 263-264 identify that implementation of the General Plan alternatives would result in increased demands on park services. Pages 264-265 identify mitigation for parks impacts. The mitigation includes General Plan policy that calls for the use of the parks level of service benchmarks to evaluate major land use or policy changes as well as application of the Parkland Dedication Ordinance and the Parallel Impact Fee at the time specific residential projects are proposed. The City's program for providing parks services to existing and future residents is not expected to result in a significant environmental impact on school districts or school district lands.

L.29. This comment misinterprets Level of Service Policy #16. The school districts are not expected to provide 2 acres of play field per 1000 population, or any amount. This policy establishes a benchmark of 3.5 acres of neighborhood and community serving park land per 1000 population and specifies that a minimum of 1.5 acres of the 3.5 acres must be park land and up to two acres may be school playgrounds. There is no minimum for school playfields. If school districts choose not to make school playgrounds available to the public, the 3.5 acres will consist of no school playgrounds. See also response to Comment L.27 above.

L.30. Proposed General Plan Parks and Recreation Policy #18 is not expected to result in a significant environmental impact. This policy states that the City should "...consider negotiating with property owners and local School Districts in newly developing residential areas for the dedication of playground/recreation portions of future school sites to the City...". Such a policy does not require school districts to dedicate land to the City or even to negotiate with the City.

L.31. As indicated in the response to Comment L.29 above, proposed Service Policy #16 does not require school districts to provide school playgrounds for park and open space use and is not expected to result in any significant environmental effect on school districts.

L.32. See response to Comment L.21 above. Please note that the preferred alternative proposed by the City Council anticipates only 175 new residences in the Morgan Hill Unified School District within the horizon of the proposed San Jose 2020 General Plan.

L.33. See response to Comment L.21 above.

L.34. The East Side Union High School District did not provide a response to the Notice of Preparation for the San Jose 2020 Draft EIR within the 30-day review period. The U.S. Postal Service return receipt shows that the District received the NOP on January 4, 1993. The letter from Rob Corley in response to the NOP was dated February 12, 1993. The City received no request for an extension of the review period. Despite the District's failure to respond within the 30-day review period, the City did consider the response in the preparation of the Draft EIR.

The traffic impacts of the General Plan alternatives are addressed on pages 102-120 of the Draft EIR. Air quality impacts are addressed on pages 130-139 and school impacts are addressed on pages 254-258. Student Generation for East Side Union High School District was based on the 0.20 students per dwelling unit generation figure specified in the NOP response. Since this generation rate was to be applied per unit, regardless of unit type or density, the EIR did not provide numbers of units by General Plan designation. Even the distinction between single family and multiple family units provided in Table 34 of the Draft EIR did not influence total student generation due to the methodology specified by the School District. The best available information regarding the timing of future residential units in the East Side Union High School District is the number of units projected by 2020 as indicated in Table 34. The rate of construction will depend on a set of complex factors that are not addressed in a General Plan, including the decisions of individual property owners and ecomonic conditions over the next twenty-six years.

L.35. The East Side Unified School specified in its NOP response that the EIR "...should state the expected number of pupils by applying the ratio of 0.20 high school age pupils per home". Given this requested methology, the purpose of including information regarding the size and configuration of the future housing is unclear. Furthermore, neither the City's General Plan nor the zoning code control the size of residential units. Unit sizes are a function of market forces that are neither governed nor predicted in the General Plan alternatives.

L.36. Table 24 of the Draft EIR identifies the number of projected students associated with the planned residential growth in the East Side Union High School District in conformance with the District's response to the NOP. See also response to Comment L.21 above.

L.37. Page 252 of the Draft EIR states, based on information provided by the District, that the East Side Union High School District is planning to construct one new high school in the vicinity of Quimby Road. The City has not been provided with information regarding any other sites planned for new schools.

L.38. See response to Comment L.21 above.

L.39. According to CEQA, the economic effects of a project are not to be treated as significant effects on the environment. The Draft EIR concludes that the potential fiscal impacts of providing school facilities to serve the projected increase in student population would not result in any significant environmental impact; consequently, a detailed analysis of the per pupil costs of providing services is not an appropriate element of the environmental analysis and is not included in the Draft EIR.

L.40. Comment noted.

L.41. The Draft EIR concludes that the General Plan would not result in a significant environmental impact relative to schools; consequently, no mitigation is required. See also response to Comment L.39 above.

L.42. Page 258 of the Draft EIR concludes that implementation of the General Plan will not result in significant environmental impacts relative to school services; consequently, mitigation measures are not required.

L.43. The Draft EIR does not suggest accommodation of all future students in portable classrooms or by busing students to other campuses. Portable classrooms and busing are two measures included in a list of mechanisms that have been used by school districts in the past to accommodate increased enrollments.

L.44. See response to Comment L.42 above.

L.45. Mr. Krupp's explanation of Proposition 170 and Senate Bill 1287 is acknowledged and incorporated into the environmental record for this project.

L.46. The Draft EIR concludes that implementation of the proposed General Plan will not result in significant environmental impacts relative to school services. Mr. Krupp's comments regarding Proposition 170, regarding Opinion No. 30455 of the Legislative Council of the State of California and regarding the actions of the Board of Supervisors of Riverside County are noted and incorporated into the environmental record for this project.

L.47. Page 257 of the Draft EIR states that implementation of the General Plan would not result in a significant environmental impact relative to school services; consequently, no mitigation measures are required under Section 21002 of the CEQA Statute.

L.48. Student generation identified in the Draft EIR takes into account projects which are under construction, projects approved but unbuilt, projects for which approval is pending and projects submitted for review but not yet approved. This information was calculated by applying anticipated dwelling unit yields to the acreage of vacant land by residential General Plan designation, based on the 1992 Vacant Land

Inventory and by calculating potential residential yield associated with proposed land use changes on already developed parcels. There are no cumulative projects that are located outside of the City's Sphere of Influence, but inside the District's boundaries.

L.49. The NOP response refers to the Mitigation Monitoring Program. This program is not included in the Draft Environmental Impact Report, but will be prepared prior to approval of the San Jose 2020 General Plan in conformance with the requirements of AB 3180. See also response to Comment L.47 above.

L.50. Please see response to Comment L.18 above regarding pedestrian facilities. See response to Comment L.28 regarding park facilities.

L.51. The potential environmental impacts of the proposed General Plan relative to school facilities are addressed on pages 254-257 of the Draft EIR. The programmatic and fiscal impacts of the proposed project are not expected to result in a significant environmental impact on the Franklin-McKinley School District.

L.52. School facilities are addressed on pages 250-258 of the Draft EIR. The EIR concludes that implementation of the General Plan will not result in a significant environmental impact relative to schools.

L.53. Table 34 on page 256 of the Draft EIR indicates the number of additional dwelling units within San Jose Unified School District assumed for each of the General Plan Alternatives as request in the District's NOP response. Generation rates provided by the District were applied to these dwelling unit yields to determine the number of additional students associated with each alternative. It is unclear how the additional enrollment figure of 10,2082 included in this comment was calculated. See also response to Comment L.21 above.

L.54. The Draft EIR addresses all of the significant environmental impacts associated with expansions of the Urban Service Area as proposed in the General Plan Alternatives. The Preferred Alternative identified by the City Council does not include development of the Urban Reserves in the near term and includes only very minor expansions in the Urban Service Area.

L.55. The traffic mitigation section (pages 120-123 of the Draft EIR) and the air quality mitigation section (pages 139-141) include extensive mitigation dealing with alternative modes of transportation, including pedestrian/bicycle uses and connections to mass transit. Policy 39 on page 122 specifically addresses development of a bikeway system that links parks with residences, employment centers, schools and transit facilities.

Parks services are addressed on pages 262-265 of the Draft EIR. The proposed General Plan uses residential population rather than employment as the basis for assessing parks needs. The preference of the County Parks Department for a system that uses both employment and residents in determining parks needs is acknowledged and incorporated into the environmental record for this project.

L.56. The Draft EIR addresses the impacts and mitigations of the General Plan alternatives at a level of specificity that is commensurate with the level of specificity of the General Plan itself. A General Plan is not a budget document, but is the long-range plan that guides future capital improvement programs and the annual budget process. A mitigation monitoring program will be adopted by the City Council prior to approval of the General Plan in conformance with the requirements of AB 3180.

L.57. The revisions to the proposed General Plan goals and policies that have occurred since the Draft EIR was circulated for public review do not constitute significant changes in the project and do not result in significant new impacts that were not addressed in the Draft EIR. Most of these revisions consist of minor clarifications and rewordings, or provide additional mitigation. None of the revised policy language warrants recirculation of the Draft EIR.

L.58. At the time the General Plan is considered for approval by the City Council it will include updated appendices.

L.59. The preferred alternative as identified by the City Council would not result in any additional impacts that have not been addressed in the Draft EIR. The City Council's preferred alternative anticipates less residential growth by 2020 than Alternative 5 (approximately 52,000 residential units as compared to the 58,000 addressed in Alternative 5) and would result in lesser impacts than are identified in the Draft EIR for this alternative. The analysis included in the EIR, therefore, represents a worst case analysis of the impacts of the Council's Preferred Alternative.

L.60. The Planning Commission and the City Council have taken actions to select a preferred alternative. Once the Environmental Impact Report is complete, the Planning Commission will make recommendations to the Council regarding the proposed General Plan and the City Council will take action to approve or deny the proposed San Jose 2020 General Plan. Mr. Krupp's objection to the City's General Plan Update process is noted.

L.61. Please see response to Comments L.58 and L.59 above.

L.62. The proposed General Plan is not expected to "...(d)isrupt or divide the physical arrangement of an established community..."; "...(c)onflict with established recreational, educational, religious or scientific uses of the area..."; or "...cause substantial adverse effects on human beings, either directly or indirectly." Please see also response to Comment L.21 above.

L.63. Page xxxii of the Summary has been revised in Section III of this Amendment to identify the concern regarding school financing and the choice among alternatives.

L.64. The Planning Commission and City staff have considered all of Mr. Krupp's comments on the General Plan. The Responses to comments on the Draft EIR are contained in this Amendment. The Planning Commission will consider both the comments and responses prior to making a decision on the adequacy of the EIR.

L.65. Mr. Krupp's recommendation that the General Plan be denied and his recommended General Plan text changes are acknowledged and incorporated into the environmental record for this project.

L.66. The purpose of all Home-Based-School trips is transportation between residences and school facilities.

The model does not account for court ordered desegregation, magnet schools or any other of the myriad and everchanging factors that could effect traffic patterns associated with individual land uses assumed in the model. The total of 85 bus routes reported by the San Jose Unified School District, many of which do not involve p.m. peak hour trips, represent a minute portion of the total 500,000 peak hour trips addressed in the model. An increase in the number or length of bus trips for even a very large school district like San Jose Unified would not result in perceptible changes in the modeling results.

The traffic generation for elementary and middle schools is based on rates used for government offices. This methodology results in worst case traffic conditions since these schools generate less p.m. peak hour traffic than are assumed for government office uses.

The high school portions of the Education Parks are treated as special generators. Traffic generation for the middle school portions is based on the rates assumed for government office uses.

The Coyote Valley Urban Reserve is not proposed for development within the timeframe of the 2020 Plan. Three surplus school sites located in southern Almaden or within the Almaden Urban Reserve continue to be modeled as elementary schools. Even if this were not the case, schools do not generate significant numbers of p.m. peak hour trips.

Additional school sites may be identified in the future that are not currently designated for school uses in the General Plan. The absence of these school uses in the traffic analysis does not result in an underestimation of traffic impacts because schools are not significant p.m. peak hour traffic generators and because traffic generation assumptions made for each parcel of land within the City's Sphere of Influence is based on current General Plan designations. Future changes in the model to reflect new school sites would be expected to result in increases in traffic for some sites and decreases for others, depending on the previous land use designation.

L.67. The Draft EIR addresses the existing setting information for schools at a level of specificity that is appropriate to the level of specificity of a General Plan.

L.68. The Draft EIR has been revised in Section III of this amendment to include a ranking of school district size based on enrollment.

L.69. The information included in the schools setting section was provided by the School Districts themselves. See also response to Comment L.21 above.

L.70. Page 250 of the Draft EIR has been revised in Section III of this Amendment to correctly reference Table 34.

L.71. The City does not anticipate an increase in average household size over the timeframe of the proposed General Plan. This is consistent with projections prepared by the Association of Bay Area Governments. Proposed job growth resulting from implementation of the San Jose 2020 General Plan is not expected to generate additional students above and beyond those associated with new residential units.

L.72. Inter-district transfers as a result of the Allen Bill do not appear to have resulted in significant increases in student populations within school districts serving San Jose. Alum Rock School District has indicated that in the 1993-94 school year 21 students transferred into the District and 189 transferred out. East Side Union High School District identified 0 transfers in and 5 out. Oak Grove School District reported 38 transfers in and 144 out. San Jose Unified School District reported 222 transfers in and 168 out in the 1992/93 school year. Data for San Jose Unified was unavailable for the 1992/93 school year.

L.73. It was assumed that the student generation figures provided by the school districts are average generation rates that account for all types of housing.

L.74. See responses to Comments L.71-L.73 above.

L.75. Comment noted.

L.76. Table 34 has been revised in Section III of this Amendment to include the student generation rates provided by the school districts. Student generation rates to be used in preparing the Draft EIR were requested from each school district. None of the school districts that provided generation rates indicated that these rates were inappropriate for the purpose of estimating future student growth associated with the proposed General Plan. For school districts that did not have such rates or did not provide them as requested, the rates identified at the bottom of Table 34 were used. Mr. Krupp's recommended methodology for estimating student generation is noted and incorporated into the environmental record for this project.

L.77. Information included in the schools setting section was based on information provided by the school districts. The text of the Draft EIR has been revised in Section III of this Amendment to reflect new information that has been verified by the school districts.

L.78. See response to Comments L.28 and L.29 above.

L.79. See response to Comment L.26 above.

L.80. The analysis of potential school impacts is based on a summary of dwelling unit projections proposed in the San Jose 2020 General Plan. Based on an analysis of the potential cumulative effects of implementation of the General Plan, the EIR concludes that the proposed Plan would not result in significant cumulative environmental impacts relative to schools; consequently, no mitigation is required.

L.81. The Draft San Jose 2020 General Plan is not entirely consistent with the adopted Horizon 2000 General Plan. The purpose of this General Plan Update is to revise the adopted Horizon 2000 Plan. The proposed changes to the Plan are described in Section I of the Draft EIR. The impacts of implementing the proposed Plan as compared to the existing Plan are described in Section III of the Draft EIR.

L.82. The Draft EIR discusses all of the significant land use impacts associated with implementation of the General Plan alternatives.

L.83. Comment noted.

L.84. See response to Comment L.21 above.

Community Systems Associates, Inc.

October 18, 1993

10 YEARS OF EXCELLENCE
Community Systems Associates, Inc.

Ms. Carol Hamilton
CITY OF SAN JOSÉ
Department of City Planning and Building
801 North First Street
San José, California 95110-1795

REGARDING: Timing of Submission of Comments on the San José 2020 General Plan Draft Environmental Impact Report (SCH No. 92123085)

RECEIVED
OCT 19 1993
CITY OF SAN JOSE
PLANNING DEPARTMENT

Dear Ms. Hamilton:

Community Systems Associates, Inc. ("CSA") has been retained to represent the Alum Rock Union, Berryessa Union, East Side Union High, Oak Grove, and San Jose Unified School Districts (jointly hereafter referred to as "Consortium") to represent them in reviewing the proposed San José 2020 General Plan Update ("Project") and the Draft Environmental Impact Report, SCH No. 92123085 ("DEIR") to protect the Coalition's administrative and legal remedies, to provide the City of San Jose ("City") with the information supporting the Coalition's contentions, and to enable the Coalition to consistently and effectively participate in the plan adoption process, and the environmental review process.

Please be advised that the Consortium, in their capacity as responsible agencies, is in the process of preparing comments to the DEIR. While the Consortium will return their comments to the City of San José, as lead agency, "as soon as possible" (Pub. Resources Code, Section 21003.2, sub. (a).), it is anticipated that the comments will not be complete until the end of the public review period, November 1 for the State Clearinghouse and November 3, for the City.

The Consortium will be addressing its comments to "those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency." All comments will be "supported by specific documentation." (Pub. Resources Code, Section 21104, sub. (c), 21153.) However, due to inadequacy of the DEIR, especially as it relates to school issues and concerns, and the fact that the Consortium did not receive copies of the DEIR until September 24, 1993, the Consortium will need the entire 45-day public review period to properly make its comments. In light of the fact that the City had ten months to prepare the DEIR (December, 1992 Notice of Preparation to September 17, 1993, submittal to the State

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Clearinghouse) and was unable to provide even basic existing setting documentation in the DEIR, it should be understandable the Consortium will need the full public review period to prepare a complete and documented set of comments.

The Consortium is providing the City of San Jose with this notice, so that the City may anticipate that a substantial number of significant comments will be forthcoming from the Consortium near the end of the public response period, and so that it can advise the Planning Commission of this status. Based on the Consortium's initial review of the DEIR, there are a significant number of areas upon which the Consortium will be commenting. Therefore, the Consortium also wishes to alert the City that it may want to reconsider its current public hearing schedule so the City can allocate and provide the appropriate time for City Staff and the City's consultants to prepare the mandatory written responses.

As you should be aware, the evaluation and response to public comments is an essential part of the CEQA Process. "Failure to comply with the requirement can lead to disapproval of a project." (Discussion following CEQA Guideline, Section 15088; Environmental Protection Information Center v. Johnson ("EPIC") (1st Dist, 1985) 170 Cal.App.3d 604,627 [216 Cal.Rptr. 502]; and Gallegos v. California State Board of Forestry (1st Dist. 1978) 76 Cal.App.3d 945, 952-955 [142 Cal.Rptr. 86].) M.

In the final EIR, the City of San Jose must evaluate and respond to all the comments of the DEIR it receives within the public review period. The written responses must describe the disposition of the significant environmental issues raised in the comments (e.g., suggestions for revising the proposed project to mitigate anticipated impacts). The City must specifically explain its reasons for rejecting suggestions received in comments and for proceeding with the project despite its environmental impacts. Such explanations must be "factual," and must be supported with specific references to empirical information, scientific authority, and/or explanatory information. The responses, moreover, must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. (CEQA Guideline, Section 15088, sub. (b); Sierra Club v. Gilroy City Council (6th Dist. 1990) 222 Cal.App.3d 20,46 [27 Cal.Rptr. 393]; EPIC, supra, 170 Cal.App.3d at 628 [216 Cal.Rptr. 502]; see also Gallegos, supra, 76 Cal.App.3d at 954 [142 Cal.Rptr. 86]; People v. County of Kern (5th Dist. 1974) 39 Cal.App.3d 348, 355-360 [173 Cal.Rptr. 390]; and Mountain Lion coalition v. California Fish and Game Commission (1st Dist. 1989) 214 Cal.App.3d 1043, 1048 [253 Cal.Rptr. 104]; see also Twain Harte Homeowners Association, Inc. v. County of Tuolumne (5th Dist. 1982) 138 Cal.App.3d 664, 678-687 [188 Cal.Rptr. 233].)

Additionally, please be aware that effective as of January 1, 1992, Public Resources Code section 21092.5, subdivision (a), provides that, at least ten days before certifying

a final EIR, a lead agency "shall provide a written proposed response to a public agency on comments made by that agency" in conformance with CEQA standards. Such responses may be offered separately from the final EIR, or made part of that document. If the City of San Jose, as lead agency, chooses, though, to simply send a commenting agency a copy a final EIR, the latter document cannot be certified until ten days later. M.

If you should have any questions, or wish to discuss any portion of this letter, please feel free to contact me at any time.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President
1182revew018.dmd

cc: Planning Commission
City of San Jose

Mr. Les White, City Manager
City of San Jose

Mr. Gary Schoennauer, Director of Planning
City of San Jose

Ms. Linda Latasa
Alum Rock Union School District

Mr. Patrick Allen
Berryessa Union School District

Mr. Paul Fettig
East Side Union High School District

Mr. Hardy Childers
Oak Grove School District

Ms. Cathy Masters
San Jose Unified School District

M. RESPONSE TO COMMENTS FROM COMMUNITY SYSTEMS ASSOCIATES, INC., RECEIVED OCTOBER 18, 1993.

See responses to Comments L.11-L84.

Community Systems Associates, Inc.

October 18, 1993

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RECEIVED

OCT 19 1993

CITY OF SAN JOSE
PLANNING DEPARTMENT

Ms. Carol Hamilton
CITY OF SAN JOSÉ
Department of City Planning and Building
801 North First Street
San José, California 95110-1795

REGARDING: Notification of Opinion of Need to Recirculate
San José 2020 General Plan Draft Environmental Impact Report
(SCH No. 92123085)

Dear Ms. Hamilton:

Community Systems Associates, Inc. ("CSA") has been retained to represent the Alum Rock Union, Berryessa Union, East Side Union High, Oak Grove, and San Jose Unified School Districts (jointly hereafter referred to as "Consortium") to represent them in reviewing the proposed San José 2020 General Plan Update ("Project") and the Draft Environmental Impact Report, SCH No. 92123085 ("DEIR") to protect the Coalition's administrative and legal remedies, to provide the City of San Jose ("CIty") with the information supporting the Coalition's contentions, and to enable the Coalition to consistently and effectively participate in the plan adoption process, and the environmental review process.

Please be advised that the Consortium, in their capacity as responsible agencies, is of the opinion, based on its initial review of the DEIR, that significant new information will need to be added to the DEIR as the result of Consortium's comments. The CEQA Guidelines provide that if, subsequent to public review and interagency consultation but prior to final certification, the lead agency adds "significant new information" to the EIR, the agency **must issue new notice and must recirculate the EIR for additional commentary and consultation**. (Pub. Resources Code. Section 21092.1.)

The CEQA Guidelines state in Chapter VIII, The EIR Process, (H) "Recirculation of an EIR":

> Public agencies often modify and improve projects and acknowledge new information in response to public and agency comments. Where the changes are significant, the revised environmental document must be subjected to the same "critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed

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judgement as to the validity of the conclusion to be drawn therefrom." (Sutter Sensible Planning, Inc. v. Board of Supervisors (3rd Dist. 1981) 122 Cal.App.3d 813, 822 [176 Cal.Rptr. 342]

Contrary to the statements made by the City Attorney at the October 13, 1993, public hearing, a change in the "Project" is not the only reason that an EIR must be recirculated. Certainly, that is one of the reasons, however, Section 21092.1 of CEQA clearly provides that:

> **§ 21092.1**
>
> When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice pursuant to Section 21092, and consult again pursuant to Sections 21004 and 21153 before certifying the environmental impact report.

The Consortium is confident that because of the inadequacies which it has been able to identify in the DEIR during its initial review while preparing comments, we can substantiate our position that significant new information will have to be added to the DEIR in order to make it adequate under the provisions of CEQA, the CEQA Guidelines, and Title 21, the Environmental Clearance Ordinance of San Jose.

N.

Additionally, as the Consortium pointed out in its written public hearing testimony before the Planning Commission on October 13, 1993, the DEIR is inadequate, will require new information to make it adequate, and will need to be recirculated because:

> The Goals and Policies presented in the DEIR are not the current Goals and Policies approved by the San Jose 2020 General Plan Task Force (which did not complete their review and revisions until October 4, 1993, well after the September 17, 1993 submittal to the State Clearinghouse for Public Review). Sufficient "significant" changes in the Goals and Policies exists, such that adding them to the DEIR will result in the lead agency adding "significant new information" to the DEIR subsequent to public review and inter-agency consultation, but prior to final certification.

The critical importance of having the correct, approved major strategies, and goals and policies lies in the fact that they constitute, and are in essence, the "Project" according to the "Description of the Proposed Project" in the EIR and the "Project Description" in the Notice of Preparation. Therefore, the City has changed the "project" and as the City Attorney did advise the Planning Commission, the changing of the "project" necessitates

that San Jose, as the lead agency, issue a new notice and must recirculate the EIR for additional commentary and consultation as required by Public Resources Code, § 21092.1 and Title 21, Environmental Clearance Ordinance. N.

If you should have any questions, or wish to discuss any portion of this letter, please feel free to contact me at any time.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President
1182recir018.dmd

cc: Planning Commission
City of San Jose

Mr. Les White, City Manager
City of San Jose

Mr. Gary Schoennauer, Director of Planning
City of San Jose

Ms. Linda Latasa
Alum Rock Union School District

Mr. Patrick Allen
Berryessa Union School District

Mr. Paul Fettig
East Side Union High School District

Mr. Hardy Childers
Oak Grove School District

Ms. Cathy Masters
San Jose Unified School District

N. RESPONSE TO COMMENTS FROM COMMUNITY SYSTEMS ASSOCIATES, INC., RECEIVED OCTOBER 18, 1993.

See responses to Comments L.11-L.84.

Community Systems Associates, Inc.

1982 - 1992
10
YEARS OF EXCELLENCE
Community Systems Associates, Inc.

October 21, 1993

VIA CERTIFIED MAIL

Ms. Carol Hamilton
CITY OF SAN JOSÉ
Department of City Planning and Building
801 North First Street
San José, California 95110-1795

SUBJECT: Request for an Extension of Time to Prepare Comments on the San José 2020 General Plan Draft Environmental Impact Report (SCH No. 92123085)

Request from
Alum Rock Union School District
Berryessa Union School District
East Side Union High School District
Oak Grove School District, and
San Jose Unified School District

Dear Ms. Hamilton:

Community Systems Associates, Inc. ("CSA") has been retained by **Alum Rock Union School District, Berryessa Union School District, East Side Union High School District, Oak Grove School District, and San Jose Unified School District** (jointly referred to as the "Consortium") to represent them jointly in reviewing the proposed San José 2020 General Plan Update (referred to herein as either "Project" or "Amendments"), to provide public hearing testimony before the City of San José Planning commission ("Planning Commission") and City Council ("City Council") in order to protect and preserve the Consortium's administrative and legal remedies, to provide the City of San Jose ("CIty") with the information supporting the Consortium's contentions of the impact of the Draft General Plan on the Consortium, and to enable the Consortium to consistently and effectively participate in the Draft General Plan amendments adoption and the environmental review process.

In accordance with provisions of the cover letter attached to the San José 2020 General Plan Draft Environmental Impact Report, SCH No. 92123085 ("DEIR"), we hereby request an extension of time to make comments on the DEIR. Our reasons are two-fold. First, the inadequacy of the DEIR, the failure of the DEIR to provide even a precursory discussion of schools and the impacts on schools, and the overall inaccuracy of the DEIR as exemplified by the existing setting data relative to schools, has necessitated extensive

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and detailed comments from the Consortium. Second, the City of San Jose Planning Commission is still in the process of selecting the preferred alternative, refining the goals and policies, and making other substantial changes to the Draft General Plan which are different than the DEIR contents. These changes, modifications, and refinements in essence are changing the "project" as described in the DEIR. Until a stable, accurate, consistent, and finite project description can be provided by the City, we can not properly provide detailed comments to the DEIR.

0.

Therefore, we are requesting an extension of time to make comments of 45-days from the date of the last public hearing of the Planning Commission on the General Plan scheduled for October 25, 1993, after which the City should be able to provide a proposed General Plan with a proper project description for review and comment. The proposed General Plan must be complete and accurate including all appendices, the actual proposed General Plan Goals and Policies, the preferred alternative in its final proposed form.

Thank you for your consideration of this matter.

Sincerely,

COMMUNITY SYSTEMS ASSOCIATES, INC.

Marshall B. Krupp
President

MBK:dmd:mg
1182extend.dmd

Under separate cover:
Mr. Mark Goss
State Clearinghouse

cc: Mr. Gary Schoennauer, Director of Planning, City of San Jose
Ms. Linda Latasa, Alum Rock Union School District
Mr. Patrick Allen, Berryessa Union School District
Mr. Paul Fettig, East Side Union High School District
Mr. Hardy Childers, Oak Grove School District
Ms. Cathy Masters, San Jose Unified School District

O. RESPONSE TO COMMENTS FROM COMMUNITY SYSTEMS ASSOCIATES, INC., RECEIVED OCTOBER 21, 1993.

See responses to Comments L.11-L.84.

MORGAN HILL UNIFIED SCHOOL DISTRICT
15600 CONCORD CIRCLE • MORGAN HILL, CA 95037-5451 • (408) 779-5272

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CITY OF SAN JOSE
PLANNING DEPARTMENT

November 3, 1993

Mike Flores, Senior Planner
City of San Jose
City Hall, room 400
801 North First Street
San Jose, CA 95110

RE: Draft EIR for the Horizon 2020 General Plan Update

Dear Mr. Flores,

We respectfully request that the potential increase in the student population in the Morgan Hill Unified School District which would result from **any** of the development proposals being proposed for the Coyote Valley be considered as causing a **significant adverse environmental impact.** Your statement regarding the Morgan Hill Unified School District on page 253 of the draft EIR, that "Additional capacity is available in the elementary schools," is in error. In fact, schools at all levels within the Morgan Hill Unified School District are already experiencing overcrowding and various instances of unusual scheduling; each new home which is built contributes to the need for additional school facilities.

Developer fees (which are now being assessed at the maximum rate allowed by law) mitigate only a small portion of the cost of the school facilities that we must provide for the additional students generated by new development. To address this shortfall in funding, the District is currently in the process of creating Mello-Roos Community Facilities Districts within the undeveloped areas of the Morgan Hill Unified School District. This measure is intended to create a funding base for the issuance of bonds to acquire school sites and remodel or construct new school facilities in order to fully mitigate the effects of new construction on future enrollment.

Therefore, the school district contends that the only mitigation measure which will reduce this **significant adverse environmental impact** to an insignificant level is to require that any new development be included within a Mello-Roos Community Facilities District.

Enclosed is documentation demonstrating the current overcrowding of the Morgan Hill Unified School District's school facilities, our facilities needs, and the financial demands to meet those needs.

We appreciate the cooperation of the City of San Jose and the development community in recognizing the need that new development generates for additional school facilities.

Sincerely,

H. James Crow
Superintendent

P. RESPONSE TO COMMENTS FROM MORGAN HILL UNIFIED SCHOOL DISTRICT, RECEIVED NOVEMBER 3, 1993.

See responses to Comments L.11-L.84.

Comment CC

From: Ronja Römer
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: Charcot Avenue Extension Project File No. PP18-044
Date: Monday, November 4, 2019 3:03:53 PM

Dear Sir or Madam,

My name is Ronja and I am writing you today from Germany's capital Berlin.

I have followed the events, decisions and news regarding the Charcot Avenue Extension project for a year and a half. I am impressed by the community's sense of community, safety and justice and even more impressed that they unite themselves to do their very best to ensure the safety of all children living in San Jose.

Being part of a generation that has realized too late the consequences of how we are living today, I kindly would like to ask you to reconsider all environmental and safety issues linking to the Charcot Avenue Extension project. Believing in the suggested alternatives and fair, safe and sustainable options the community has worked on together, I kindly ask you to reconsider your choices.

If there is something left to do for the generations still able to make a change, it is making the right choices for the environment and our children.

German politicians are starting to realize this, too.

Thank you very much in advance for taking the time to read through this.

Yours sincerely,

Ronja Römer

Comment DD

From: Deena Said
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: CHARCOT EXTENSION PROJECT File No. PP18-044
Date: Thursday, October 31, 2019 3:48:36 PM
Importance: High

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

My name is Deena Said and I own and reside in a home that backs up to silkwood lane, and more importantly I'm the mother of a son that will be attending orchard school in the 2021-2022 school year.

I commute to Sunnyvale everyday and sit in traffic from 1-2 hours. I understand that traffic congestion is an issue. However this extension project is not the solution.

I am vehemently against this extension project.

A plan introduced in 1994, nearly 25 years ago, well before the school and homes were built, has no place in 2019.

The potential harm of this extension project has been completely glossed over in the materials provided at the last meeting. It's been reported that commuters will save **17 seconds**. **17 seconds** is laughable in light of the harm that this project will cause through construction to completion.

Air pollution is already a major concern considering the amount of cars on the roads and freeways across the south bay. In the last couple of months a study was published in the Environmental Health Perspectives Journal that found that short-term exposure to high ambient air pollution corresponded with a rise in visits to the children's psychiatric emergency department.

Researchers at the University of Cincinnati and the Cincinnati Children's Hospital Medical Center examined psychiatrist patient visits, and then traced the concentration of PM 2.5 in their residential areas. Researchers found that whenever there were increases in PM 2.5, there would be MORE psychiatric visits within the following few days.

Collectively, these studies contribute to the growing body of evidence that exposure to air pollution during early life and childhood may contribute to depression, anxiety, and other mental health problems in adolescence.

Our children now live in the age of anxiety, the last thing we need is to actively contribute to their potential anxiety by allowing this project to continue. Furthermore, on an even more personal note, my children will be limited as they play in our backyard, due to the pollution and particulate matter.

San Jose calls itself the capital of Silicon Valley, the home of innovation. This plan is the opposite of innovation as it doesn't solve for the problem of traffic congestion, instead it puts

our children in harms way. The focus should be on improving public transportation options , planting additional vegetation to combat current pollution, and looking for solutions that do not impact our most vulnerable population.

Thank you.

Deena Said

From: Zaqloub Said
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: CHARCOT EXTENSION PROJECT File No. PP18-044
Date: Sunday, November 3, 2019 5:11:02 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

My name is Zaqloub Said and I own and reside in a home that backs up to silkwood lane, and more importantly I'm the mother of a son that will be attending orchard school in the 2021-2022 school year.

I commute to Sunnyvale everyday and sit in traffic from 1-2 hours. I understand that traffic congestion is an issue. However this extension project is not the solution.

I am vehemently against this extension project.

A plan introduced in 1994, nearly 25 years ago, well before the school and homes were built, has no place in 2019.

The potential harm of this extension project has been completely glossed over in the materials provided at the last meeting. It's been reported that commuters will save 17 seconds. 17 seconds is laughable in light of the harm that this project will cause through construction to completion.

Air pollution is already a major concern considering the amount of cars on the roads and freeways across the south bay. In the last couple of months a study was published in the Environmental Health Perspectives Journal that found that short-term exposure to high ambient air pollution corresponded with a rise in visits to the children's psychiatric emergency department.

Researchers at the University of Cincinnati and the Cincinnati Children's Hospital Medical Center examined psychiatrist patient visits, and then traced the concentration of PM 2.5 in their residential areas. Researchers found that whenever there were increases in PM 2.5, there would be MORE psychiatric visits within the following few days.

Collectively, these studies contribute to the growing body of evidence that exposure to air pollution during early life and childhood may contribute to depression, anxiety, and other mental health problems in adolescence.

Our children now live in the age of anxiety, the last thing we need is to actively contribute to their potential anxiety by allowing this project to continue. Furthermore, on an even more personal note, my children will be limited as they play in our backyard, due to the pollution and particulate matter.

San Jose calls itself the capital of Silicon Valley, the home of innovation. This plan is the opposite of innovation as it doesn't solve for the problem of traffic congestion, instead it puts our children in harms way. The focus should be on improving public transportation options , planting additional vegetation to combat current pollution, and looking for solutions that do

not impact our most vulnerable population.

Thank you
Zaqloub

Comment FF

From: sharmila shirali
To: Raval, Meenaxi
Subject: Charcot Avenue Extension Project File No. PP18-044
Date: Tuesday, November 5, 2019 7:07:52 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Meenaxi,

I am the resident of San Jose and one of the parent of the Orchard Elementary School.

The Charcot Avenue Extension Project is not going to help in solving the traffic. It infact will affect the children studying in Orchard School. Pollution, speed of the car, flyover close to the classroom, and cutting off the school playground.

We talk about safety and future of our children then why it's been neglected through this project.

We request to rethink over this project. We love our school and we love our children.

Thank you
Sharmila

Comment GG

From: Cecile Wei-Yu-Neng
To: Raval, Meenaxi
Subject: Charcot Avenue Extension Project File No.PP18-044
Date: Monday, November 4, 2019 3:38:12 PM

Dear Meenaxi Raval,

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place.
It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk.

The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood, already so close to a major highway and other major roads. How is it acceptable in 2019 to ignore the scientific data available linking air pollution to negative impact on children and their development? The scientific research is very clear. See the report from the World Health Organization or from the American Lung association to cite only 2.

"Children are society's future. But they are also its most vulnerable members. The immense threat posed to their health by air pollution demands that health professionals respond with focused, urgent action. Although more rigorous research into how air pollution affects children's health will continue to be valuable, there is already ample evidence to justify strong, swift action to prevent the damage it clearly produces. Health professionals must come together to address this threat as a priority, through collective, coordinated efforts. For the millions of children exposed to polluted air every day, there is little time to waste and so much to be gained." (WHO)

And if science is not enough, then please listen to our elected representatives themselves:

San José Mayor Liccardo said when he was in Washington some days ago:

"As I experience children who simply cannot engage in daily activities because of asthma, as I see premature deaths, particularly in low income communities, caused by this kind of air, it makes me furious."

"We know it's a problem when we see much higher rates of asthma in low-income communities in the eastern part of my city where we know there are neighborhoods built closer to freeways. We know it's directly resulting from transportation, particularly automobiles. We know we have much farther to go"

My son who never had an asthma issues before started to get some symptoms some months ago already. He is playing every day soccer at recess, and this what recess is for, Kids need to play, run, be happy...

Councilmember Lan Diep said:
"We can't stay being a car-oriented community any longer, especially as the North San Jose

representative [...]"

- **I agree with this but it seems that this is not in line with this project!**
- Do you realize that this road will bring more trucks closeby our kids class windows?
- Do you realize that an accident, one truck going out of the road could be dramatic?
- Do you realize that these truck just want to save time as your project expects , but to do so, do you think they will go slower where our kids cross the street? And you don't even think of putting a speed bump near the school... this is truly unacceptable.

Our community is primarily low-income, our school is a Title I school. We cannot continue with a project negatively impacting people who need the City's support the most. The harm done to the students at Orchard will be irreparable. The health of the students at Orchard School needs to be more important than increasing the speed of cars or allowing commuters to save a ridiculous 30 seconds (per DEIR) per trip.

Additionally, cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss for the environment. How are we going to achieve the greenhouse gas emission reduction targets of the international Paris Agreement by cutting trees, allowing more cars and trucks on the road and polluting the air during construction? As stated by Climate Smart San José, "Together, we can make San José a better place for our families, children and future generations. Every action, big or small, makes a difference!" Well I believe that you, Meenaxi and team, have a chance to make a big difference by recommending the right thing to do: cancelling the project.

The City needs to take concerns of the community under serious consideration. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. There are much better ways to spend the allocated budget to help the city of San José and its constituents.

Kind regards,
Cecile WEI-YU-NENG

From: Steve Zhou
To: Raval, Meenaxi
Cc: The Office of Mayor Sam Liccardo; District4; District3
Subject: Charcot Avenue Extension Project File No. PP18-044
Date: Sunday, November 3, 2019 11:46:00 AM

Dear Meenaxi Raval,

I am a Dist. 4 resident

I'm writing to you in reference to the Charcot Avenue Extension Project (File No. PP18-044).

This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of tax payer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars.

The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Kind regards,

Late Comments (Comments II-JJ)

Comment II

LS Lozano Smith
ATTORNEYS AT LAW

Harold M. Freiman
Attorney at Law

E-mail: hfreiman@lozanosmith.com

December 3, 2019

City of San Jose
Department of Planning, Building, and Code Enforcement
Attn: Meenaxi Raval
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

Re: Supplemental Comments of Orchard School District on Charcot Avenue Extension Project EIR File No. PP18-044

Dear Ms. Raval:

Our firm represents Orchard School District ("District"). This correspondence is intended to supplement the November 4, 2019 Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044. The District is recently in receipt of documents it had not previously seen from the City of San Jose ("City") with respect to the Charcot Project ("Project) as a result of a Public Records Act Request pursuant to Government Code section 6250, et seq. The District has found documents that further support its position that **this Project has the potential to have a profound, unmitigated negative effect on the District's students, their families, and the residents that reside in the vicinity of the Project.** Some of the relevant documents are enclosed and discussed below. These supplemental comments are organized in the same sections contained in the District comments.

1. The Draft EIR fails as an informational document as it does not address safety issues that will affect the Orchard School.

As referenced in the District Comments, safety of the children who attend Orchard School ("School") is of the utmost concern to the District. The City was made aware of concerns about safety issues on Fox Lane in "City of San Jose Budget Document 68." (See Exhibit A.) In a request for crosswalk improvements on Fox Lane, it was noted that "delivery trucks and automobiles speed down Fox Lane daily including during hours that children are being dropped off and picked up from school...not too long ago, a child was hit by a car here." Based on this information, the School requested an updated, improved crosswalk with more visibility.

As previously stated in the District Comments, the School has dealt with multiple automobile accidents on School grounds, including numerous instances of cars crashing through the School fence. The Draft EIR's Transportation Analysis acknowledged a greater use of the Fox Lane drop-off/pick-up areas under Project conditions. (Draft EIR, Appendix K, p. 50.) The City seeks to introduce this Project into an area that already experiences speeding trucks and automobile

accidents. Through this document, the City was made aware of the dangerous nature of Fox Lane and a catastrophic event in which a child was hit by a car, yet the Draft EIR does not address School safety issues. The Draft EIR does not take this information into account as the Project will work to increase traffic onto an already crowded and dangerous Fox Lane. As such, the District reiterates that the Draft EIR is in violation of CEQA Guidelines in that it fails to inform public agency decision makers of the significant environmental effects of the Project.

9. The Draft EIR errs in finding the transportation impact to be of a less than significant impact.

The District Comments concluded that the Draft EIR's discussion of transportation effects on the Project were unsupported, inadequate, and in violation of CEQA. Specifically, the Draft EIR boasts of efficiencies in travel that would result from the Charcot Extension. (Draft EIR, p. 39-40.) These efficiencies are generally unsupported, as evidenced by an e-mail composed by Zahir Gulzadah, the City's Division Manager for the Department of Transportation, which points to a lack of efficiency with respect to driver travel times. Mr. Gulzadah provided the following analysis: "the proposed extension will provide little to no measurable travel time savings when considering the size of the proposed Charcot extension in relation to the overall roadway system in the Project area and the projected development growth. The minimal time savings, will not sway or induce new trips to be added to the hundreds of thousands of vehicle trips traveling through the area." (See Exhibit B.)

The Draft EIR pointed out negligible increases in speed and an increase in Vehicle Miles Traveled under Project conditions. The lack of time saved referenced above only confirms the inefficiencies that would result from the implementation of this Project. On balance, this lack of efficiency coupled with the potential impacts on student safety outweigh the purported benefits of the Project.

12. The City errs in finding the noise and vibration impact to be of a less than significant impact with mitigation.

The District Comments noted that the Draft EIR applied the wrong noise level standards for the outside School areas. The Draft EIR applied Land Use Category 2, described as "*Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds*" to the exterior areas of the School campus. This is in opposition to the finding of Liza Gonzalez, an Associate Engineer for the City of San Jose, in a discussion about the Project. Ms. Gonzalez stated that "in the event the comment relates to the school (Orchard), it is not a 'park.'" (See Exhibit C.) It does not make sense for the Draft EIR to apply a noise level standard for parks and playgrounds when a City employee with knowledge of the Project appropriately found that the School is <u>not</u> a park. As the Draft EIR applied the incorrect noise standards to the Project for the outside School areas, a recirculated Draft EIR must apply the proper standards.

19. The City has limited public participation in the Project approval process.

The District Comments previously stated that the City violated the spirit of CEQA by limiting public participation in the Project approval process. The District and its parents are frustrated with both the timing and location of meetings regarding this Project. City staff members have

been made aware of these concerns, but have done little to allay those concerns. E-mails sent by City staff on May 7, 2019, show that "the reason that we had the 2nd scoping meeting for the school [sic] because the date we (both departments) picked was conflicting with the school's year-end activities which, according to the Superintendent, prevented most parents from going to the project scoping meeting. Hindsight, we should have coordinated the meeting date with the school." (See Exhibit D.) Councilmember Lan Diep's staff was made aware by the Orchard PTA of concerns with the timing of community meetings (conflict with the last week of school) as well as concerns about the radius of information mailed by the City. (See Exhibit E.) A concerned parent advised City staff on September 5, 2019, that "the community meeting set up by the City will make it very difficult for many community members to attend (Berryessa Library on Noble)." (See Exhibit F.) Numerous members of City staff were aware of community concerns about meetings.

In spite of the City's admitted lack of coordination with the School, and with concerns relayed by both Councilmember Diep's office and a concerned parent, the City scheduled its September 24, 2019, community meeting to conflict with the Orchard School Board Meeting on the same day. As stated in the District Comments, the District wishes to work with the City to make all future meetings accessible to all interested parties and to ensure that public comments are recorded. It is disheartening to the District that the City ignored community concerns and its own internal discussions and scheduled its September 2019 meeting in conflict with School business. This is not the transparency that CEQA envisioned, and it certainly doesn't model cooperation among public agencies who serve the same populations.

Conclusion

In light of the above supplemental information, the District renews its request for recirculation of the Draft EIR to more adequately assess the substantial environmental impacts of the Project.

Sincerely,

LOZANO SMITH

Harold M. Freiman

Harold M. Freiman

HMF/

Enclosures: (A) City of San Jose Budget Document #68

(B) E-mail from Zahir Gulzadah to Stephanie Nguyen, dated October 4, 2019

(C) E-mail from Liza Gonzalez to Inderpreet Singh, dated September 16, 2016

(D) E-mail from Thuy Nguyen to Meenaxi Raval, dated May 7, 2019

(E) E-mail from Stephen Ngo to Zahir Gulzadah, dated May 31, 2019

(F) E-mail from Robin Roemer to District3, dated September 5, 2019

cc: Dr. Wendy Gudalewicz, Superintendent, Orchard School District
Honorable Mayor Sam Liccardo and City Council Members (without enclosures.)

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit A: City of San Jose Budget Document #68

BUDGET DOCUMENT # 68

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: MAYOR LICCARDO

FROM: Councilmember Lan Diep

SUBJECT: BUDGET DOCUMENT

DATE: May 22, 2019

Approved Lan Diep

Date 5/22/19

RECOMMENDATION

That the following recommendation be enacted.

Proposal

Program/Project Title: **Crosswalk improvements at Fox Ln in District 4**

Amount of City Funding Required: **$50,000**

Fund Type (i.e. General Fund, C&C funds, etc.): **General Fund**

This change is:

✓ One-time _____ Ongoing

The Orchard School District resides in an industrial area surrounded by residential housing on one side and low-rise office spaces on the other. The community is currently bracing for the buildout of the Charcot extension, a structure allowing traffic to flyover FWY 880. The community has expressed heightened concern over pedestrian safety and especially that of school children.

Delivery trucks and automobiles speed down Fox Ln. daily including during hours that school children are being dropped off and picked up from school. Not too long ago, a child was hit by a car here. While crosswalks exist on this street, the school has requested – and this council should grant – an updated, improved crosswalk here with more visibility, through neon paint and more of it than just the standard two parallel lines.

Funding Source

☒ Essential Services Reserve ($4 million)

☐ Other (Program/Project/Fund):

Department or Organization: Department of Transportation

Name: Lam Cruz, DOT Division Manager

Phone number: 408-794-1962

E-mail address: lam.cruz@sanjoseca.gov

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit B: E-mail from Zahir Gulzadah to Stephanie Nguyen, dated October 4, 2019

From:	Gulzadah, Zahir
To:	Nguyen, Stephanie
Cc:	Nguyen, Thuy (DOT); Kimura, Josephine; Diep, Lan
Subject:	Charcot Questions
Date:	Friday, October 04, 2019 12:17:04 PM

Hi Stephan,
Below are the responses to the to the comments that were submitted to your office regarding the Charcot Project. We also encourage your constituents and stakeholders to formally submit EIR comments to the Planning Department (Meenaxi.raval@sanjoseca.gov). We will formally respond to those comments in the EIR.

Please let me know if you have any questions. Thanks - Zahir

(1) Will the extension only provide a 17-18 sec travel savings for commuters?

Travel Time Savings - The referenced 17 to 18 seconds travel time savings is not presented in the traffic analysis and I have no knowledge as to how the estimate is being made. Travel time is dependent on origin and destination of trips and there are a multitude of trips of varying origin and destinations that will be made in the project area. Furthermore, to refine travel time savings for thousands of trips on hundreds of lane miles is meaningless.

We did include in the traffic analysis a general review of travel times for various origin and destination points that indicated reduced travel times ranging from 0 to 9 minutes during peak commute periods with the proposed Charcot extension (see pgs. 43-47 of the traffic report).

Highlights of the conclusions of the travel time evaluation are as follows (pg. 44 of traffic study):

- The proposed Charcot extension would provide the greatest reduction in travel times for trips with origins and destinations that are located between Montague Expressway and Brokaw Road. The estimated reduction would vary from one to nine minutes, which equates to a 12 to 60 percent decrease.
- The proposed extension is projected to result in only minimal (i.e., less than three minutes) reductions in travel times for trips with origins and destinations that are located near Montague Expressway and Brokaw Road.

2) Did we assume a 72 mph travel speed through the school?

Calculated 72 mph travel speed – The referenced 72 mph travel speed is calculated by the commenter and is not presented in the traffic analysis. The 72 mph travel speed is calculated using an estimated travel time of 30 seconds to travel the roadway segment between Oakland Road and O-Toole Avenue, stated on pg. 44 of the traffic report, and an estimated Charcot extension distance of 0.6 miles. Using the referenced travel times and distance, the commenter correctly calculates a travel speed of 72 mph. It should be noted that the calculation of travel speed over a short distance is greatly dictated by the distance traveled.
However, the statement on pg. 44 included a typo and should have read: Travel times between the selected origins and destinations were projected assuming that it would take approximately 30 seconds to travel between Silkwood Road and O'Toole Avenue via the proposed extension (not Oakland to O'Toole).

The statement was intended to provide a point of reference for only the missing length of roadway between Silkwood and O-Toole (1,400 feet or 0.25 mile) that would be filled by the proposed extension. Using the corrected roadway segment, a vehicle would travel at a speed of 30 mph to traverse a distance of 0.25 mile in 30 seconds. Similarly a vehicle would travel at a speed of 30 mph to traverse the entire, approx. 0.5 mile Charcot extension, distance between Oakland Road and Paragon Drive in 60 seconds.
Note that the calculation of travel time presented in the traffic analysis (pgs. 43-47) utilized the corrected 60 second travel time.

(3) Will this project "generate" traffic and be a victim of induced demand?

Induced demand is a result of providing a SIGNIFICANT travel time savings for a driver. Considering that the project area is located between other adjacent Cities and within a major employment area, there are currently hundreds of thousands of vehicular trips made through the project area. Thus, providing additional capacity on a major thoroughfare such as Brokaw, Montague, I-880, etc. could potentially create new vehicular trips that may have not otherwise have been made due to the constraints of the unimproved roadway system.

The Charcot Extension project consists of the addition of a 0.5 mile segment of a two-lane roadway. The extension will result in the addition of approx. 1-mile of roadway capacity in an area that currently provides hundreds of lane miles of roadway. Furthermore, the proposed roadway extension is located between, and runs parallel to, two major arterial roadways that provide significantly greater roadway capacity. The proposed roadway extension will be a local-serving roadway that will improve vehicular circulation for residents and employment areas immediately surrounding the roadway.

The proposed extension will provide little to no measurable travel time savings when considering the size of the proposed Charcot extension in relation to the overall roadway system in the project area and the projected development growth. The minimal travel time savings, , will not sway or induce new trips to be added to the hundreds of thousands of vehicle trips traveling through the area. Rather, the proposed extension will provide better connectivity to the roadway system for those in the immediate project area.

Also, the City of San Jose Travel Forecasting Model that was used predict traffic volumes for this project does not account for potentially induced traffic demand. The exact same number of vehicles were modeled with and without the project. Therefore, any increases/decreases on traffic volumes on roadways are due to a redistribution of traffic.
Furthermore, below is an excerpt from the OPR about induced travel:
For some large roadway projects, analysis of induced demand may be appropriate." But there should be reasonable limits. Not every transportation improvement will induce travel, however. The recommendations in the draft Technical Advisory clarify that certain transportation projects are not likely to induce significant new travel. Those projects include, among others, installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, or emergency breakdown lanes, new local or collector streets (such as this project), conversion of general purpose lanes (including ramps) to managed lanes or transit lanes, etc.

Zahir Gulzadah

Division Manager
City of San Jose
Department of Transportation
200 E. Santa Clara Street
San Jose, CA 95113-1905
Phone: 408-975-3257
Fax: 408-292-6090
www.sanjoseca.gov
zahir.gulzadah@sanjoseca.gov

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit C: E-mail from Liza Gonzalez to Inderpreet Singh, dated September 16, 2016

From: Ong, Neil
To: Guizadah, Zahir; Nguyen, Thuy (DOT)
Cc: Nguyen, Joe D; Kimura, Josephine
Subject: FW: Charcot Ave extension
Date: Thursday, July 11, 2019 3:02:00 PM

FYI

Neil Ong, P.E. | Associate Engineer
City of San José | Department of Transportation
Planning and Project Delivery Division | Regional Projects
200 E. Santa Clara St., 8th Floor, San José CA 95113
Phone: (408) 975-3237
Email: neil.ong@sanjoseca.gov

From: Singh, Inderpreet@DOT <inderpreet.singh@dot.ca.gov>
Sent: Thursday, September 22, 2016 10:07 AM
To: Gonzalez, Liza <Liza.Gonzalez@sanjoseca.gov>
Cc: Gordon Sweet <GSweet@BKF.com>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Ong, Neil <neil.ong@sanjoseca.gov>; Saleh, Nick@DOT <nick.saleh@dot.ca.gov>; Zohoury, Fariba@DOT <fariba.zohoury@dot.ca.gov>
Subject: RE: Charcot Ave extension

Hi Liza,

Based on the responses provided below and the information shared by City of San Jose, in earlier team meetings, that this a is non-controversial project and the proposed construction work within State Right-of-Way is estimated at less than $3 million, we are okay with developing this project using the PEER process, at this point of time.

Thanks,

Inder Preet Singh, MS, PE
Project Manager – Santa Clara County
Caltrans District 04
(510) 622-8812

From: Gonzalez, Liza [mailto:Liza.Gonzalez@sanjoseca.gov]
Sent: Friday, September 16, 2016 2:20 PM
To: Singh, Inderpreet@DOT <inderpreet.singh@dot.ca.gov>
Cc: Gordon Sweet <GSweet@BKF.com>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Ong, Neil <neil.ong@sanjoseca.gov>
Subject: Re: Charcot Ave extension

Hi Inder Preet,

As you requested, here are the City's responses:

1. Why does City believe that this project qualifies for IS/MND under CEQA?

   In consideration of the proposed Charcot Ave extension improvements with respect to the project's location, existing environment, and information available today, there is nothing to suggest this Project would have unmitigatable significant impacts. Impacts are not expected to be significant since mitigation measures would reduce any impacts to less than significant. Under CEQA guidelines and the implementation of mitigation measures, such a project falls under the IS/MND qualifications since no significant impact on the environment would be realized under the project (build) conditions.

2. Will the presence of a park/wetland on the east end of the job trigger Cultural Resource issue?

   We are unclear how the presence of parks/wetlands would trigger cultural resource issues. Regardless and based on information available today, there are no wetlands nor parks on the east end of the project, and no culturally sensitive resource locations documented/located within the project footprint.

   - ***In the event the comment relates to the school (Orchard), it is not a "park." It should also be remembered that the Project is locally funded, and so there are no federal dollars involved; Section 4(f) under NEPA is not applicable.***
   - ***Cultural resource issues are more likely along the creek, but the project limits are east of Coyote Creek.***
   - ***Since the area from Paragon Drive to old Oakland Road is built-out (commercial development and the school), wetlands are not anticipated.***

   However, in the event that any such potential issues (park, wetland, cultural resources) are identified during the Initial Study (IS) phase, these impacts would be mitigated and reduced to less than significant as part of the IS/MND.

3. City needs to ensure that the project at a minimum meets Highway Design Manual guidelines for local facilities which within the State right of way and, at the same time, is in compliance with ADA requirements.

Yes - the City ensures that the Project, at a minimum, meets Highway Design manual guidelines for local facilities within the State right of way, and is in compliance with current ADA requirements.

Please let us know if you have any further questions or require any additional information to finalize your assessment and response regarding the City's request to use the PEER process for developing the Charcot Ave extension project.

Thank you.

Liza Gonzalez | Associate Engineer
City of San José | Department of Transportation
200 E. Santa Clara St., 8th Floor, San José CA 95113
Phone: (408) 975-3256
Email: Liza.Gonzalez@sanjoseca.gov

From: Singh, Inderpreet@DOT <inderpreet.singh@dot.ca.gov>
Sent: Friday, September 9, 2016 4:06 PM
To: Gonzalez, Liza
Subject: Charcot Ave extension

Hi Liza,

Last week, we met with our executive staff to discuss City of San Jose's request to use PEER process for developing Charcot Ave extension project. Based on our discussion, City needs to provide clarifications/commitment for the below listed points.

1. Why does City believe that this project qualifies for IS/MND under CEQA?

2. Will the presence of a park/wetland on the east end of the job trigger Cultural Resource issue?

3. City needs to ensure that the project at a minimum meets Highway Design Manual guidelines for local facilities which within the State right of way and, at the same time, is in compliance with ADA requirements.

Let me know if you have any comments.

Thanks,

Inder Preet Singh, MS, PE

Project Manager – Santa Clara County

Caltrans District 04

(510) 622-8812

Confidentiality Notice: This email (including any attachment) is intended only for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this communication in error, please reply to the sender or call 650-482-6300, and then please delete this message from your inbox as well as any copies. Thank you, BKF Engineers 2015

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit D: E-mail from Thuy Nguyen to Meenaxi Raval, dated May 7, 2019

From: Nguyen, Thuy (DOT)
To: Raval, Meenaxi
Cc: Nguyen, Joe D; Kimura, Josephine
Subject: Re: Community Meeting
Date: Tuesday, May 7, 2019 1:46:18 PM

Meenaxi,

First of all, I don't recall Dipa specifically suggested the school as one of the sites for the scoping meeting. Her email below asks that we find a location "*near the project site*" and a date that "*works for DOT, Planning, and Powers*".

DOT worked with Planning to find a site that works for all stake holders, and suggested City Hall or the Berryessa Branch Library. I don't recall any objection to either of these sites from you or Dipa.

Secondly, the reason that we had the 2nd scoping meeting for the school because the date we (both departments) picked was conflicting with the school's year-end activities which, according to the Superintendent, prevented most parents from going to the project scoping meeting. Hindsight, we should have coordinated the meeting date with the school. However, I do not consider our combined efforts to provide the school a second opportunity to comment on the scoping of the project a "mistake".

Thuy

Hi Thuy,

Thank you for sending the charge code.

We have to schedule an evening scoping meeting during the NOP circulation period either the second or third week in May.

Can you please find a location, near the project site that we can use for the meeting and the availability between May 7 - 18, Monday through Thursday. It would be helpful to get a few options so that we can pick on a date that works for DOT, Planning, and Powers.

Thank you,
Dipa

Dipa Chundur, Planner III
Planning Division, PBCE | City of San Jose
200 E. Santa Clara Street, 3rd floor, Tower, San José, CA - 95113
Phone: 408-535-7688 (direct) | www.sanjoseca.gov/planning

From: Raval, Meenaxi
Sent: Tuesday, May 7, 2019 10:47 AM
To: Kimura, Josephine
Cc: Nguyen, Thuy (DOT); Nguyen, Joe D
Subject: Re: Community Meeting

No problem.

Additionally, I recommend reaching out to the Orchard School District for community space/venue as most of the stakeholders are parents of this school children.

The former Env PM, Dipa Chundur had made the same recommendation for the scoping meeting in 2018, which was overlooked resulting in repetition of the scoping meeting. This is for context so same mistakes are not repeated.

Meenaxi Raval, AICP
Supervisor- Environmental Planning

City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

From: Kimura, Josephine
Sent: Monday, May 6, 2019 2:15:34 PM
To: Raval, Meenaxi
Cc: Nguyen, Thuy (DOT); Nguyen, Joe D
Subject: RE: Community Meeting

Meenaxi,

Sorry I meant, 6/26 (Wednesday).

Thanks,

From: Kimura, Josephine
Sent: Monday, May 06, 2019 1:36 PM
To: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>
Cc: Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>
Subject: Community Meeting

Meenaxi,

We are targeting a community meeting for 6/27, which should be within the 45 day commenting period for the Charcot EIR. Will you be able to help us with outreach for this meeting or did you want DOT to manage?

Thanks!

Josephine Kimura
City of San José - Department of Transportation
200 E. Santa Clara St. 6th Floor
San José, CA 95113-1905

Phone: (408)535-1283
josephine.kimura@sanjoseca.gov

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit E: E-mail from Stephen Ngo to Zahir Gulzadah, dated May 31, 2019

From: Gulzadah, Zahir
To: Kimura, Josephine
Subject: FW: Question from Orchard School PTA and speed calming request
Date: Monday, July 29, 2019 9:38:34 AM
Attachments: image001.png
image002.png
image003.png

Hi Josephine,
Please provide me the latest timeline. Thanks - Zahir

From: Cruz, Lam
Sent: Friday, July 26, 2019 5:03 PM
To: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Subject: Re: Question from Orchard School PTA and speed calming request

Hi Zahir,

Do you know what the timeline is for the EIR? Please let me know if the timeline of when we install the enhanced crosswalk in front of the school will help or influence the outcome of the meeting.

Lam Cruz
Division Manager
City of San Jose
Department of Transportation
Transportation Safety Division
(408)794-1962

From: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Sent: Monday, June 3, 2019 3:49 PM
To: Ngo, Stephen <stephen.ngo@sanjoseca.gov>
Cc: Diep, Lan <lan.diep@sanjoseca.gov>; Cruz, Lam <lam.cruz@sanjoseca.gov>; Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>
Subject: RE: Question from Orchard School PTA and speed calming request

Hi Stephen,
Regarding the Charcot community meeting, we can accommodate their request and delay the meeting to mid to late August. We will coordinate a specific date with your office once we pencil that in. For the meeting outreach, we will send out postcards to every address within

.5mile radius of the project site, we will also put it on next door for that neighborhood as well as have it on our DOT Facebook page. In addition, we were also planning to ask your office for help to get the word out by online notification via social media, and double up on the Next Door or Facebook notifications.

I have copied Lam Cruz to follow up with you on the issues on Penitencia Creek toward Alum Rock Park.

Thanks - Zahir

From: Ngo, Stephen
Sent: Friday, May 31, 2019 11:46 AM
To: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Cc: Diep, Lan <lan.diep@sanjoseca.gov>
Subject: Question from Orchard School PTA and speed calming request

Hello Zahir,

Last night, Councilmember Diep and I attended two meetings and felt like you would be the best person to reach out to. The first meeting was with the Orchard School PTA who had concerns about the community meeting about the Charcot EIR report, and it was specifically about the date of the meeting. We recall that in our meeting with you and Director Ristow, DOT was planning to have the meeting sometime after the first week of June. When this was relayed the parents and teachers, they were upset about that date and wanted to know if it would be possible to have that meeting moved up sooner, such as next week, or if not, have it pushed to August. They stated that next week is their last week of school, so no one would be around the week after. Do you think it is possible to either move it up or delay the meeting?

Secondly, some parents had concerns about the radius in which mailers and informational material is mailed out to them. One stated that despite living in the same neighborhood, her neighbors received notices of previous community meetings, but she did not. Do you happen to know the main mode of distribution DOT uses to reach out to people for community meetings? Is there an opportunity online notification where our office can notify them via social media, like Next Door or Facebook?

Outside of Orchard, some residents who live up Penitencia Creek toward Alum Rock Park state that there is a speeding problem along that road. They state that despite there being two speed bumps up there, cars going toward Alum Rock Park speed up right before getting to those bumps, or cars heading down speed after they pass the speed bumps. They say that it is particular dangerous as the residents there like to walk up there and they do not feel that

there is enough signage, or rather, the signage is obscured. Would it be possible to look into this?

Thank you very much!

Stephen Ngo
Council Assistant
Office of Councilmember Lan Diep, District 4
City of San José | 200 East Santa Clara Street, Tower 18th floor
San Jose, CA 95113-1905 | Phone: 408.535.4938
Follow the Councilmember on:

OFFICE OF
COUNCILMEMBER
LAN DIEP
SAN JOSÉ DISTRICT 4

Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit F: E-mail from Robin Roemer to District3, dated September 5, 2019

From:	Robin Roemer
To:	District3
Cc:	Tran, David
Subject:	Charcot Draft EIR
Date:	Thursday, September 5, 2019 10:49:56 AM
Attachments:	Discussion of Draft EIR Charcot Extension.pdf

Hello Councilmember Peralez,

please find attached a summary of the Charcot Draft EIR for your consideration.

Here are a few things I would like to highlight:

- **Project cost: 50+ million USD, including 7.1 million of San José City funds**, most of the remainder will come from VTA Measure B
- Will **cut through a Community of Concern**
- **Average time saved for drivers** going through the area: **0.4 seconds** (four tenth of a second) / mile driven
- Will **induce additional traffic and increase overall VMT** making it harder to achieve Climate Smart San José goals.
- At one point, DEIR **assumes an average speed of 72(!)mph on Charcot** through the school zone during commute peak hours.
- The **two-lane road** will see so much traffic that **sounds walls of 6+ feet are required on either side.**
- **No traffic calming or ban of truck traffic** seemingly possible
- The DEIR identifies **two significant, unavoidable impacts** that will **require City Council to vote on a statement of overriding considerations.** Revisions of the EIR might identify additional impacts.

I would appreciate the opportunity to meet with you or your staff to understand your thinking on the project and answer any questions you might have on the EIR.

As you might be aware the community meeting set up by the City will make it very difficult for many community members to attend (Berryessa Libary on Noble). We are therefore organizing our own community meeting.

I cordially invite you to join us on September 26th at 6pm in the school's MPR to discuss the project with the community.

Kind regards,

Robin Roemer

Comment JJ

LS Lozano Smith
ATTORNEYS AT LAW

Harold M. Freiman
Attorney at Law

E-mail: hfreiman@lozanosmith.com

January 8, 2020

City of San Jose
Department of Planning, Building, and Code Enforcement
Attn: Meenaxi Raval
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

Re: Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project EIR File No. PP18-044

Dear Ms. Raval:

Our firm represents Orchard School District ("District"). This correspondence is intended further to supplement the November 4, 2019 Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044 and the Supplemental Comments submitted on December 3, 2019 ("First Supplemental Comments"; collectively the "District Comments".) The District is recently in receipt of documents it had not previously seen from the City of San Jose ("City") with respect to the Charcot Project ("Project) as a result of a Public Records Act Request pursuant to Government Code section 6250, et seq. The District has found documents that further support its position that **this Project has the potential to have a profound, unmitigated negative effect on the District's students, their families, and the residents that reside in the vicinity of the Project.** Some of the relevant documents are enclosed and discussed below. These supplemental comments are organized in the same sections contained in the District Comments.

1. The Draft EIR fails as an informational document as it does not address safety issues that will affect the School.

In the District Comments, the District has expressed its concerns with respect to the Project's effects on the safety of the Orchard School ("School.") The District discovered additional documentation that demonstrates the City's awareness of traffic safety issues that plagued the School prior to the circulation of the Draft EIR.

As far back as 2016, the City was aware of the heavy traffic usage in the area surrounding the School, particularly Fox Lane. Fox Lane's usage was discussed in an e-mail from Gordon Sweet of BKF Engineers to Liza Gonzales of the City San Jose. The e-mail, dated May 19, 2016, stated: "as Nat and I were driving back to the office yesterday – we chatted about some of the 'unknowns' moving forward, and specifically the superMicro vehicle distribution, and how this may be the elephant in the room. This relates to the rather large numbers currently accessing

Fox, and the anticipated large numbers that would access a Fox/Charcot extension." (See Exhibit A.) This shows that the City and its consultants had concerns about the heavy traffic on Fox Lane, even at the outset of the planning process for the Project and decided to move forward with a Project that would only increase in the traffic on Fox Lane while failing to acknowledge the impact in the Draft EIR.

San Jose City Councilmember Lan Diep met with District Superintendent Dr. Wendy Gudalewicz in early 2018 and discussed safety concerns about Fox Lane. Councilmember Diep relayed these concerns via e-mail to City employee Zahir Gulzadah on February 1, 2018. Councilmember Diep stated:

> "I wanted to reach out to you because I met with the new superintendent of Orchard School and she pressed me on two DOT-related items…there is a crosswalk on Fox Ln, but cars, and especially tankers carrying diesel gasoline do not respect it, creating a dangerous condition in the morning and afternoons when kids come to and from school (about 90 minutes a day). She (Dr. Gudalewicz) is asking for:
>
> a. A crossing guard;
> b. A flashing crosswalk; or
> c. Signage that slows down oncoming traffic"

(See Exhibit B.)

As stated in the District's previous Comments, the Draft EIR's Transportation Analysis acknowledged a greater use of the Fox Lane drop-off/pick-up areas under Project conditions. (Draft EIR, Appendix K, p. 50.) What the Project intends to do is direct greater usage to Fox Lane, an area that is heavily used and already experiences speeding cars and tanker trucks carrying diesel, as discussed in the attached e-mails. Additionally, in his e-mail, the Councilmember singled out that Fox Lane is a dangerous area for children in the pick-up and drop-off time periods.

The Draft EIR again departs from common sense and continues to ignore the safety concerns of the Orchard community with its introduction of this Project into the neighborhood. This Project will introduce new traffic into an area that has already been reported to be heavily used and dangerous. The potential exists for an already dangerous area to become even more dangerous due to the introduction of more traffic. This dangerous area will see additional vehicle trips without the implementation of additional safety measures. The District reiterates that the Draft EIR is in violation of CEQA in that it fails to inform public agency decision makers of the significant environmental effects of the Project, namely its effects on traffic conditions near the School.

2. The District improperly suggests that impacts on the School can be disregarded because the District should have anticipated the Project.

The Draft EIR states that "developments along the alignment have been planned and approved in anticipation of the proposed Charcot Avenue Extension, which was added to the City's General

Plan in August 1994." (Draft EIR, 3.11.2.1.) The developments included both the construction of the Orchard School and the Supermicro Campus. The City contends that the District knew all along that the Project would eventually move forward. However, the City offered no input or analysis of the Orchard School construction's compatibility with the conceptual Project. Further, the District dedicated an easement to the City in 2004 as a result of Summerhill Homes' development of the adjacent residential area, yet the City made no inquiry as to the 0.44 acres currently required for this Project. Conversely, the City was more considerate of the Project and its land needs during its discussions with Supermicro.

In reviewing additional documents, it appears that the City took a more proactive approach with the Supermicro Campus, specifically by earmarking land needed for the Project. An e-mail from Gordon Sweet to Liza Gonzalez of the City of San Jose and Natalina Bernardi of BKF Engineers dated January 11, 2017 stated: "the irrevocable offer of dedication on the Supermicro parcel (before it was owned by supermicro)[sic] was signed in June 1998; the mapping shows "Future Charcot Avenue." Ms. Gonzalez replied on January 13, 2017: "The SJ 2020 General Plan process was initiated in 1992 and concluded in 1993 per history on the City website. Therefore, it was around the mid 1990s that the Charcot Ave extension was first identified in the GP. This GP justified the requirement for the 1998 irrevocable offer of dedication on the Supermicro site that you pointed out." (See Exhibit C.)

Further, Ned Thomas of the City of San Jose referenced additional documents that purport to set aside land for the Project in an e-mail to Natalina Bernardi and Amy Wang of BKF Engineers, stating: "Following up on the discussion from our meeting yesterday, please see the attached Site Development Permit HA89-039-01 for the SuperMicro property located at 871 Fox Lane. This permit was approved on April 27, 2011, and includes a condition of approval pertaining to the temporary use of the Charcot Ave. right-of-way along the northern boundary of the property. Specifically, Condition 7.g (Maintenance and Removal Agreement) references the an [sic] existing Irrevocable Offer of Dedication (for street purposes) for the future extension of Charcot Avenue. This Condition notes that this Offer was made as a requirement of development for neighboring property (APN237-15-197) and provides other stipulations related to the Offer." (See Exhibit D.)

The District is currently not in possession of any documents that purport to reserve or dedicate land for a "Future Charcot Avenue." As stated above, the City has had multiple opportunities to bring the Project to the attention of the District. Yet the City has remained silent towards the District, even though it contemplated a "Future Charcot Avenue" during the dedication of the Supermicro parcel and approved a permit that discussed an Irrevocable Offer of Dedication for the future extension of Charcot Avenue. This exemplifies the City's poor planning with respect to the Project and highlights the inconsistent approach it has taken in communicating with landowners regarding its needs for the Project. There was no reasonable basis for the District to expect the Project was ever likely to come to fruition and judging by the City's inconsistent planning, it has never had a consistent and focused approach towards the completion of the Project. This is exemplified in the discrepancy in the City's approach to the Supermicro parcel as opposed to the District's parcel.

19. The City has limited public participation in the Project approval process.

In the District's previous Comments, it has pointed to numerous instances in which the City has violated the spirit of CEQA by limiting public participation in the Project approval process. A specific point of conflict was the planning of a community meeting on May 21, 2018, that took place at Orchard School. Initially, a community meeting on the Project was scheduled on May 17, 2018, at the Berryessa Noble Library. This led to backlash from the District and concerned parents, who noted the meeting's conflict with the School's Open House activities and the distance of the Library from the School. The community meeting that took place on May 21, 2018, was not originally planned by the City, but came about through the insistence of the District. The District reviewed the following e-mails that document the District's frustration about public participation and how this new meeting came about.

On April 26, 2018, District Superintendent Dr. Wendy Gudalewicz sent the following e-mail to City employee Thuy Nguyen: "Earlier today a parent let me know there was going to be a meeting held to share information about the Charcot Project with the community. Given the greatest impact the project will have is on our school campus, it does not make sense to me that we were not notified directly about the possibility of such a meeting. You chose May 17 for the meeting. May 17 is our school's Open House night. My entire staff and the majority of our community will be at this event. In addition, the meeting is going to be held in the Berryessa community. This also does not make sense. We would have been more than happy to host such an event if asked. We are requesting that the meeting be rescheduled to include our community." (See Exhibit E.)

Thuy Nguyen, senior engineer for the City of San Jose responded on the same day, stating: "sorry for the conflict but the notices for the May 17 meeting have been mailed out along with the Notice of Preparation of an EIR for the project. The project team held one community meeting at the school site on March 22, 2017. We can have another community meeting at the school site in addition to the May 17 meeting." Per the e-mail exchange, the parties agreed to a May 21, 2018, meeting date at the Orchard multi-purpose room. Thuy Nguyen sent a message to Dr. Gudalewicz on May 4, 2018, stating, "I assume you will notify the parents, staff, and school board members." (See Exhibit E.) On May 17, 2018, John Hesler of consultant David J. Powers & Associates, Inc. e-mailed numerous City of San Jose employees stating, "as background, when the team met a week ago Friday, it was decided that any outreach for the Monday meeting (May 21, 2018) would be done by the Orchard School folks since they were the ones who asked for an additional meeting." (See Exhibit F.)

An e-mail sent on May 3, 2018 from concerned School parent Robin Roemer to San Jose's District 4 further informed City staff about the community's frustration with the scheduling and location of community meetings about the Project. Mr. Roemer stated, "As I think your office is aware neither location nor date/time of DOT meeting are very convenient to us parents at Orchard due to the school's long planned open house on the same night. I had complained to the DOT about this event even before the flyers were sent out. I wish Councilmember Diep would address with the city how they can be more inclusive and accommodating to the community. Given that I'm at the moment not likely to attend the May 17 meeting, it would be great to find another time to meet with Councilmember Diep." (See Exhibit G.)

It is very disappointing that the City did not coordinate with the School regarding the scheduling of the Project community meeting in May 2018. As stated by Dr. Gudalewicz, the School has a lot to lose as a result of the Project, and the City should have included the District in its planning process for community meetings. Also disappointing is the fact that the District Superintendent, the District's highest level manager, was not aware of the meeting on May 17, 2018, and had to learn about it from a School parent. It would be expected that the City would contact the highest ranking authority of a stakeholder, like the District's Superintendent, directly about such a meeting.

The eventual meeting that took place on May 21, 2018 at the Orchard School's multi-purpose room only came about through the persistence of the School's Superintendent and would likely have not been scheduled without the Superintendent pushing for the meeting. A burden was then placed on the School both to host the community meeting and notify the parents, staff, and school board members, all on short notice. This confusion and last minute planning could have been avoided had the City involved the District in the planning of community meetings. The District has always been and will continue to be a willing host for community meetings pertaining to the Project as the outcome of the Project could potentially have a great impact on the School. Through this process, the City has demonstrated inaction and indifference with regard to involving the District in community meetings. As was the case in the May 2018 meetings, the District had to insert itself into the process. This is not cooperation amongst public agencies.

Additionally, the City's request for the District to give notice to its parents, staff, and school board members certainly tests the boundaries of the CEQA Guidelines. CEQA Guidelines 15202(e) states: "notice of public hearings shall be given in a timely manner. The notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency." The Guidelines do not contemplate that a public agency other than the responsible agency will have a duty to provide notice of a public hearing. Further, the City and District agreed to the May 21 date on May 3, 2018, giving eighteen days for notice to be given to the public. The City only produced a flyer for the May 21 meeting, as opposed to the official notices and flyer produced for the past meetings.[1] Thus it is likely that notice for the May 21 meeting was not given in the same form and time as notice for other regularly conducted public hearings of the public agency. This would not be surprising as this meeting was not considered by the City until Dr. Gudalewicz expressed the District's concerns about the time and location of the meeting. Due to the City's poor planning, additional resources of both the City and the District were expended to accommodate a meeting on May 21, 2018. Had the City involved the District from the start, the parties could have worked together to prevent a duplication of efforts.

Further, an e-mail from Josephine Kimura to Meenaxi Raval dated May 8, 2019 shed some light on the City's thought process for the location of community meetings. The e-mail stated: "we will manage the community meeting along with the associated outreach…our plan is to not have the meeting at the school, but rather a neutral location." (See Exhibit H.) As stated above, the Berryessa Library, the City's preferred neutral location is difficult for School staff and parents to access. Thus, the location is not truly neutral if it is a hardship for a certain segment of interested

[1] https://mailchi.mp/bkf.com/past_meetings

community to attend. That hardship only increases when community meetings are held in conflict with important School business.

Though the District and its parents have made their concerns about the scheduling of Project community meetings abundantly clear and the City itself has had internal discussions suggesting better coordination of community meetings with the District, it appears that the City has taken nothing from these experiences. The more recent September 24, 2019, Project community meeting was held at the Berryessa Noble Library, which as stated in previous Comments, is at best a twenty minute drive from the School. This meeting also took place at the same time as an Orchard School Board meeting, which led to the planning of another District-initiated community meeting. Mr. Roemer informed Meenaxi Raval of the City of San Jose of this meeting in a September 8, 2019, e-mail, stating: "given the circumstances, we as school community have decided to organize our own meeting to give people in the community as well as interested stakeholders a chance to learn about the project and voice their concerns (Thursday 9/26 @6pm @ Orchard school). City staff is obviously very welcome to attend. We will provide you with a report on what was said in any case." (See Exhibit I.) Thus, the District has twice had to initiate their own community meetings due to the City's indifference towards working with the District and keeping the community served by the District informed and involved. It does not make sense for the District (a key stakeholder that stands to lose 0.44 critical acres if this Project is approved) to encounter such obstacles in being a part of the discussion surrounding this Project.

This is not the wide public involvement envisioned by CEQA. Nevertheless, the District remains willing to coordinate any future Project community meetings with the City to address the serious concerns of the District and its parents.

Conclusion

In light of the above supplemental information, the District renews its request for recirculation of the Draft EIR to assess more adequately the substantial environmental impacts of the Project.

Sincerely,

LOZANO SMITH

Harold M. Freiman

HMF/

Enclosures: (A) E-mail from Gordon Sweet to Liza Gonzales, dated May 19, 2016

(B) E-mail from Lan Diep to Zahir Gulzadah, dated February 1, 2018

(C) E-mails between Gordon Sweet, Liza Gonzalez, and Natalina Bernardi, dated January 11, 2017 and January 13, 2017

(D) E-mail from Ned Thomas to Natalina Bernardi and Amy Wang, dated August 9, 2018

(E) E-mails between Thuy Nguyen and Wendy Gudalewicz, dated April 26, 2018 through May 7, 2018

(F) E-mail from John Hesler to Colin Heyne, Meenaxi Pakal, Josephine Kimura, Chiaming Chi, Natalina Bernardi, and Thuy Nguyen, dated May 17, 2018

(G) E-mail from Robin Roemer to District 4, dated May 3, 2018

(H) E-mail from Josephine Kimura to Meenaxi Raval, dated May 8, 2019

(I) E-mail from Robin Roemer to Meenaxi Raval, dated September 8, 2019

cc: Dr. Wendy Gudalewicz, Superintendent, Orchard School District
Honorable Mayor Sam Liccardo and City Council Members (without enclosures.)

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit A: E-mail from Gordon Sweet to Liza Gonzales, dated May 19, 2016

From: Olay, Amy
To: Gonzalez, Liza
Cc: Nguyen, Thuy (DOT)
Subject: Re: Charcot @ 880 - Additional Services No. 2
Date: Monday, May 23, 2016 3:19:52 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Please print a hard copy for me to review.

Thanks,

Amy C. Olay, P.E.
Division Manager
Planning and Sustainability Division
Department of Transportation
(408) 975-3283

From: Gonzalez, Liza
Sent: Monday, May 23, 2016 2:49 PM
To: Olay, Amy
Cc: Nguyen, Thuy (DOT)
Subject: Charcot @ 880 - Additional Services No. 2

Hi Amy,

As you know, City authorized additional counts for Orchard School and neighboring businesses on 5/18/16.

Right after this authorization, BKF realized that additional counts are needed to specifically capture Supermicro traffic (see string of emails below). BKF requested immediate authorization so the counts could be done this week. Thuy gave BKF a verbal authorization to proceed on 5/19.

I understand that Thuy is out today and tomorrow. Attached is the letter for your review and approval.

Thanks.

Liza Gonzalez | Associate Engineer
City of San José | Department of Transportation
200 E. Santa Clara St., 8th Floor, San José CA 95113

Phone: (408) 975-3256
Email: Liza.Gonzalez@sanjoseca.gov

From: Gonzalez, Liza
Sent: Monday, May 23, 2016 1:20 PM
To: Gordon Sweet
Cc: Nguyen, Thuy (DOT)
Subject: Re: Charcot Fox Lane Alignment

Gordon,

Thank you for verifying the number of locations for the ADT needed to capture the Supermicro traffic.

Liza Gonzalez | Associate Engineer
City of San José | Department of Transportation
200 E. Santa Clara St., 8th Floor, San José CA 95113
Phone: (408) 975-3256
Email: Liza.Gonzalez@sanjoseca.gov

From: Gordon Sweet <GSweet@BKF.com>
Sent: Monday, May 23, 2016 12:29 PM
To: Gonzalez, Liza
Cc: Nguyen, Thuy (DOT)
Subject: RE: Charcot Fox Lane Alignment

Liza

I got word back from Robert. He indicated the traffic tube count is correct as proposed for the 2nd request.

Of the 3 – 1 will be placed on Rock and the other 2 on Fox. He has taken into consideration the ADT #1 at the west side of the Orchard Driveway, but still needs an additional 2 on the southerly end of fox to maximize the identification of traffic that originates or is heading to Supermicro properties.

That said – the total ($2200) should hold. Robert is proceeding with all the counts beginning tomorrow.

-Gordon

GORDON C. SWEET, PE | Vice President
BKF Engineers

BKF
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SURVEYORS
PLANNERS
100+ YEARS

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Pleasanton, CA 94588

d 925.396.7736
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m 408.802.9902
gsweet@bkf.com
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Delivering Inspired Infrastructure

From: Robert Del Rio [mailto:rdelrio@hextrans.com]
Sent: Thursday, May 19, 2016 6:14 PM
To: Gordon Sweet <GSweet@BKF.com>
Cc: Natalina Bernardi <NBernardi@BKF.com>
Subject: Re: Charcot Fox Lane Alignment

Gordon,

ADT location #1 is located on Rock Avenue not Fox.
We are scheduled to complete an ADT count just west of the Orchard driveway. We need two additional counts located at the southerly end of Fox to estimate SuperMicro traffic alon Fox.

Robert

From: Gordon Sweet
Sent: Thursday, May 19, 2016 3:53 PM
To: Liza Gonzales (CSJ) <Liza.Gonzalez@sanjoseca.gov>
Cc: Thuy Nguyen (CSJ) <thuy.nguyen@sanjoseca.gov>
Subject: FW: Charcot Fox Lane Alignment

Hi Liza,

Can you give me a call to discuss. Direct line 408.467.9142?

As Nat and I were driving back to the office yesterday – we chatted about some of the "unknowns" moving forward, and specifically the superMicro vehicle distribution, and how this may be the elephant in the room. This relates to the rather large numbers currently accessing Fox, and the anticipated large numbers that would access a Fox/Charcot extension.

Based on preliminary assessment of those rather large existing numbers on Fox – our focus was

Orchard School as a destination/source. As discussed yesterday – it has evolved into a focus on the traffic and distribution associated with the "businesses" located in the Ridder Park/Fox Lane circle. Hexagon's traffic count proposal (that you approved yesterday) attempts to cover that investigation. However, after developing several alternatives focusing on Orchard School (that we presented yesterday), and realizing our concepts/solution may involve a consolidation of Orchard School and SuperMicro traffic utilizing Silkwood Lane, and in consideration of opportunities to potentially and intentionally redistribute the (SuperMicoro) traffic from Fox to Silkwood, I think we (BKF and Hexagon) are now realizing that understanding the proportionality of the traffic arriving and departing the SuperMicro campus is becoming a huge issue.

I chatted with Robert this morning on options, including tweaking the current locations of the approved ADT, driveway, and intersection counts.

Unfortunately – the strategy of those approved locations/counts serve the purpose of providing the info of (1) Orchard School Traffic and (2) Ridder Park/Fox Lane Traffic, which is still needed. However, to isolate the SuperMicro traffic so as to quantify the effects of the potential Fox/Charcot alignment alternative and any necessary SuperMicro access point adjustments, an accurate assessment of the SuperMicro traffic along Ridder, Fox, and Rock would require that we count each of their access points which includes 11 access points onto their campus. Unfortunately - the driveway counts would not capture on-street parking along Fox associated with Super Micro. In addition, the access points to buildings 1,2,3, and 6 are shared with adjacent buildings that are not SuperMicro. Therefore, we would need to count on-site at each of the driveways serving these buildings. I would suspect that on-site counts would be problematic (authorization from Super Micro) and difficult to schedule.

Though it will not be as accurate as completing driveway counts, we (Hexagon) feel we can just collect ADT count data at two additional locations along Fox and one along Rock (see attachment). We will then extrapolate the SuperMicro traffic along Fox by comparison of the ADT counts. However, we recommend collecting peak hour counts at driveways (see attachment) that serve buildings 1,2,3,5 and 8. These buildings would be most affected by any future SuperMicro access adjustments. The driveway counts at driveways serving buildings 1,2, and 3 would need to be completed from Rock Avenue.

We (Hexagon) would be looking at a total of $2,200 to complete the additional data collection (ADT counts at three additional locations 3X$150=$450 and AM and PM peak-hour counts at driveways 2 X (5 X $175)=$1,750.)

I apologize that we (BKF) could not have rolled this in together in our proposal earlier this week, but our identification of our traffic needs is evolving as we begin to unwrap the variety of issues. The evolution of our design alternatives/solutions have led to some "realizations," and even our conversation yesterday has opened some new issues/questions and reinforced other issues, including the importance of not only understanding Orchard School Traffic and Ridder Park/Fox Lane business traffic, but also SuperMicro traffic specifically.

Understand – we are simply trying to cover all of our contingencies (now) to get accurate and comprehensive data while school is still in session so we are covered with the necessary data when the traffic operation analysis/forecasting is initiated.

That said – once again –we are under a time crunch. Hexagon has indicated the other counts are scheduled for Tuesday (5/24). They determined that school is a minimum day on Wednesday and Orchard has an open house (end of school year) on Thursday evening, so Tuesday is our best shot for any additional counts. That said – they need authorization by end of the day today.

We think this is the right thing to do and believe we should proceed to authorize the additional $2200. It is a relatively small amount considering and will give us the information so we can proceed with the analysis later.

If you can give me a verbal – I will let Hexagon know while you complete the paperwork on your end at your leisure. Will give you a call in about 30 minutes. Sorry again for the short fuse.

-Gordon

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Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit B: E-mail from Lan Diep to Zahir Gulzadah, dated February 1, 2018

From: Diep, Lan
To: Gulzadah, Zahir
Cc: Ristow, John; Wells, Laura; Nguyen, Thuy (DOT)
Subject: RE: Orchard Elementary
Date: Friday, February 2, 2018 10:05:46 AM
Attachments: image001.png
image002.png
image003.png

Dear Zahir,

Thanks so much for your prompt response. Regarding the sound wall, I don't mean to create more work for, you – my aim is to figure out what if anything I can maybe get done in D4 through the budget process. So don't worry about getting me an exact estimate. Just ballpark figures and maybe ideas about smaller things that can be paid for in the budget process to get immediate results in D4.

The new superintendent at Orchard can be contacted at:

[redacted]

I'll let you reach out to her at your leisure and please cc my office in at District4@sanjoseca.gov so we can stay involved as well if possible.

Have a great weekend!

Be well,

Lan

From: Gulzadah, Zahir
Sent: Thursday, February 1, 2018 5:13 PM
To: Diep, Lan <lan.diep@sanjoseca.gov>
Cc: Ristow, John <John.Ristow@sanjoseca.gov>; Wells, Laura <Laura.Wells@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>
Subject: RE: Orchard Elementary

HI CM Diep,
Hope all is well. On Item #1 and #2, I like to propose that we meet with the new superintendent of the school to provide her an overview of the Charcot Extension project and the latest project

update/schedule. We can also discuss the issues at Fox Lane and see how we can help with the safety issue. I think this will help build some rapport with the new superintendent and give us an opportunity to discuss/understand her concerns regarding the Charcot project and the safety issues at Fox lane. I will include your office as we coordinate with the superintendent to setup the meeting and will leave it up to you on your level of participation.

On items #3 and #4, please let me have a few days to work on this and I will provide you a cost estimate for the 680 soundwall and I will also work with our Ops group to provide you a CD4 project list/map and ongoing monthly meeting.

Thanks - Zahir

From: Diep, Lan
Sent: Thursday, February 1, 2018 12:43 PM
To: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Subject: Orchard Elementary

Hi Zahir,

I wanted to reach out to you because I met with the new superintendent of Orchard School and she pressed me on two DOT-related items:

1. There is a crosswalk on Fox Ln, but cars, and especially tankers carrying diesel gasoline do not respect it, creating a dangerous condition in the morning and afternoons when kids come to and from school (about 90 minutes a day). She is asking for:
    a. A crossing guard;
    b. A flashing crosswalk; or
    c. Signage that slows down oncoming traffic

2. She opposes the Charcot extension for reasons you've already heard and would like an update on where we are in the process and an estimate of the timeline of its completion.

Also, since I have you, I want to ask you:

3. Returning to the 680 soundwall question, how much would it cost to conduct a sound study, generally?

4. Who in DOT should I contact to get an update of all the DOT street work happening in District 4 at the moment? I want to create a map of all the construction happening in D4, and I would like monthly updates.

Thank you for your attention to this!

COUNCILMEMBER

LAN DIEP

SAN JOSÉ DISTRICT 4

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit C: E-mails between Gordon Sweet, Liza Gonzales, and Natalina Bernardi, dated January 11, 2017 and January 13, 2017

From: Gonzalez, Liza
To: Gordon Sweet; Natalina Bernardi
Cc: Ristow, John; Nguyen, Thuy (DOT); Ong, Neil
Subject: Charcot Ave extension - General Plan
Date: Friday, January 13, 2017 11:05:59 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Hi Gordon,

We have been and are still searching for the original SJ 2020 GP Land Use/Transportation diagram issued in the 1990s.

The SJ 2020 General Plan process was initiated in 1992 and concluded in 1993 per history on the City website (http://www.sanjoseca.gov/index.aspx?nid=3238). Therefore, it was around the mid 1990s that the Charcot Ave extension was first identified in the GP. This GP justified the requirement for the 1998 irrevocable offer of dedication on the Supermicro site that you pointed out.

With regards to the original plan line, sorry we do not have that in our files.

Liza Gonzalez | Associate Engineer
City of San José | Department of Transportation
200 E. Santa Clara St., 8th Floor, San José CA 95113
Phone: (408) 975-3256
Email: Liza.Gonzalez@sanjoseca.gov

From: Gordon Sweet <GSweet@BKF.com>
Sent: Wednesday, January 11, 2017 1:11 PM
To: Gonzalez, Liza; Natalina Bernardi
Cc: Ristow, John; Nguyen, Thuy (DOT); Ong, Neil
Subject: RE: 880/Charcot - Traffic Focus Meeting

Hi Liza,

Thanks for the info. It is interesting and a little surprising (compared to what we were expecting). The irrevocable offer of dedication on the Supermicro parcel (before it was owned by supermicro) was signed in June 1998; the mapping shows "Future Charcot Avenue."

I admit to not knowing the process well, but would have thought a plan line or GP was in place in the 1990s to require this reservation/dedication of the owner upon redevelopment of the parcel back in the late 1990s. Perhaps it was something done on the side/concurrent (i.e with the understanding

the GP would be updated but the owner agreed to accept the requirements/conditions at that time).

I see there is a gap between 1987 and 2000, in which GP 2020 was amended (in 2000). Do you have the original date for 2020 and was Charcot in the pre-amended version, or are you saying the first time it showed up was the amended version.

Speaking of which – do you have any records/information of a Precise Plan Alignment or Plan Line Study for Charcot? The plan line study or alignment process is often used to study, environmentally clear and ultimately used to formally adopt by a City, which then is often integrated into the General Plan or GP amendment.

Not sure how much it matters – but certainly – every piece of information would be helpful to establish the inception of Charcot. At this moment – we have 2000 as the current answer. Thanks and let me know what else you find out.

-Gordon

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From: Gonzalez, Liza [mailto:Liza.Gonzalez@sanjoseca.gov]
Sent: Wednesday, January 11, 2017 12:44 PM
To: Gordon Sweet <GSweet@BKF.com>; Natalina Bernardi <NBernardi@BKF.com>
Cc: Ristow, John <John.Ristow@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Ong, Neil <neil.ong@sanjoseca.gov>
Subject: 880/Charcot - Traffic Focus Meeting

Hi Gordon,

Thanks for preparing the 12/14/16 meeting minutes. My comments are shown in the attached.

With regards to the question when the Charcot Ave extension over I-880 was first identified in the SJ General Plan, see matrix below.

San Jose General Plan	Diagram	Shows Charcot Extension over I-880
1966 - 2010	Land Use/Transportation (amended in 1971)	No
1975 - 1990	Land Use/Transportation (March 1976)	No
Horizon 2000	Land Use/Transportation (amended in 1987)	No
2020	Land Use/Transportation (amended in 2000)	Yes
Envision 2040	Transportation Network (March 2012)	Yes

Let me know if you have any questions or need additional information.

Liza Gonzalez | Associate Engineer
City of San José | Department of Transportation
200 E. Santa Clara St., 8th Floor, San José CA 95113
Phone: (408) 975-3256
Email: Liza.Gonzalez@sanjoseca.gov

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit D: E-mail from Ned Thomas to Natalina Bernardi and Amy Wang, dated August 9, 2018

From:	Thomas, Ned
To:	Natalina Bernardi; "Amy Wang"
Cc:	Kimura, Josephine; Chiaming Chi; John Hesler; Gulzadah, Zahir; Nguyen, Thuy (DOT); Nguyen, Joe D; Panakkal, Meenaxi; Demetri Loukas
Subject:	RE: Charcot Meeting - Follow up Clarification per City"s Gateway designation
Date:	Thursday, August 9, 2018 6:16:16 PM
Attachments:	Charcot Ave Extention - HA89-039-01.pdf

Hello All:

Following up on the discussion from our meeting yesterday, please see the attached Site Development Permit HA89-039-01 for the SuperMicro property located at 871 Fox Lane. This permit was approved on April 27, 2011, and includes a condition of approval pertaining to the temporary use of the Charcot Ave. right-of-way along the northern boundary of the property. Specifically, Condition 7.g (Maintenance and Removal Agreement) references the an existing Irrevocable Offer of Dedication (for street purposes) for the future extension of Charcot Avenue. This Condition notes that this Offer was made as a requirement of development for the neighboring property (APN237-15-197) and provides other stipulations related to the Offer.

I hope this information is helpful. The Irrevocable Offer of Dedication should have been recorded at the County in relation to development of APN 237-15-197.

Thanks,

Ned

Ned Thomas, AICP
Division Manager
PBCE | Development Review & Environmental Review
Phone: 408.793.5302

-

From: Natalina Bernardi [mailto:NBernardi@BKF.com]
Sent: Thursday, August 09, 2018 4:19 PM
To: 'Amy Wang' <AWang@davidjpowers.com>
Cc: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>; Chiaming Chi <cchi@bkf.com>; John Hesler <jhesler@davidjpowers.com>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; Panakkal, Meenaxi <meenaxi.panakkal@sanjoseca.gov>; Thomas, Ned <ned.thomas@sanjoseca.gov>; Demetri Loukas <dloukas@davidjpowers.com>
Subject: RE: Charcot Meeting - Follow up Clarification per City's Gateway designation

Amy-

The attached scenic corridor does show Charcot west of I-880 as a gateway but not a scenic corridor which may just be a difference in nomenclature and mean the same. I was referring to the attached North San Jose Guidelines (refer to page 105) where the limits of the parkway (tree lined streets) is depicted and shows the parkway to end west of Coyote Creek on Charcot.

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Principal and Vice President
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1730 N. First Street, Suite 600
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d 408.467.9132
m [redacted]
nbernardi@bkf.com
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From: Amy Wang <AWang@davidjpowers.com>
Sent: Thursday, August 09, 2018 9:32 AM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>; Chiaming Chi <cchi@bkf.com>; Natalina Bernardi <NBernardi@BKF.com>; John Hesler <jhesler@davidjpowers.com>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; Panakkal, Meenaxi <meenaxi.panakkal@sanjoseca.gov>; ned.thomas@sanjoseca.gov; Demetri Loukas <dloukas@davidjpowers.com>
Subject: Charcot Meeting - Follow up Clarification per City's Gateway designation

Hi All,

Thanks again for the meeting yesterday.

During the meeting, we had some back and forth about where the City's Gateway designation begins/ends and how it relates to the project.

As you can see in the City's 2040 General Plan Scenic Corridors Diagram (attached), the western alignment of the extension is entirely marked red and is therefore, within the "Gateways" designation – this is the main reason we had the discussion about the visual impact yesterday. We will have our subconsultant finalize the draft visual assessment report based on our discussion at the meeting.

Thank you,
Amy

Amy Wang | Assistant Project Manager
David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200 | San José, CA 95126
Main: 408.248.3500 | Direct: 408.454.3423
awang@davidjpowers.com

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Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit E: E-mails between Thuy Nguyen and Wendy Gudalewicz, dated April 26, 2018 through May 7, 2018

From: [redacted]
To: Nguyen, Thuy (DOT)
Subject: RE: Community Meeting regarding Charcot Project
Date: Monday, May 7, 2018 7:17:30 AM

Thuy

I will notify everyone on our end. WE will meet in our Multi-purpose room(MPR).

[redacted]

From: Nguyen, Thuy (DOT) [mailto:Thuy.Nguyen@sanjoseca.gov]
Sent: Friday, May 4, 2018 9:17 AM
To: [redacted]
Cc: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Subject: Re: Community Meeting regarding Charcot Project

Yes, 5:30PM works.

I assume you will notify the parents, staff and school bard members.

Thank you!

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Thuy Nguyen, P.E., Senior Engineer
City of San Jose
Department of Transportation
200 E. Santa Clara St., T8
San Jose, CA 95113-1905
(408) 975-3213
thuy.nguyen@sanjoseca.gov

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: [redacted]
Sent: Thursday, May 3, 2018 4:56 PM
To: Nguyen, Thuy (DOT)
Subject: RE: Community Meeting regarding Charcot Project

Yes we can do May 21 in our Multi-purpose room. Our community is used to meetings starting at

5:30 p.m. I hope that works for you.

[redacted]

From: Nguyen, Thuy (DOT) [mailto:Thuy.Nguyen@sanjoseca.gov]
Sent: Thursday, May 3, 2018 4:35 PM
To: [redacted]
Cc: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>
Subject: Re: Community Meeting regarding Charcot Project

Hi Wendy,

Does 5/21 work?

Regards,

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Thuy Nguyen, P.E., Senior Engineer
City of San Jose
Department of Transportation
200 E. Santa Clara St., T8
San Jose, CA 95113-1905
(408) 975-3213
thuy.nguyen@sanjoseca.gov

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: Gulzadah, Zahir
Sent: Thursday, May 3, 2018 3:40 PM
To: Nguyen, Thuy (DOT); Wendy Gudalewicz
Cc: Dang, Thulien; District4
Subject: RE: Community Meeting regarding Charcot Project

Hi [redacted]
Thank you for speaking with me today. We are in the process of coordinating availabilities with our consultant and will soon send you a few proposed dates for the community meeting at the school for you to consider. Thuy will follow up with you and finalize the date and location. Thanks - Zahir

---

From: Nguyen, Thuy (DOT)
To: Wendy Gudalewicz; Gulzadah, Zahir
Cc: Dang, Thulien; District4
Subject: Re: Community Meeting regarding Charcot Project
Date: Thursday, April 26, 2018 5:19:31 PM

Hello Wendy,

Sorry for the conflict but the notices for the May 17 meeting have been mailed out along with the Notice of Preparation of an EIR for the project. The project team held one community meeting at the school site on March 22, 2017. We can have another community meeting at the school site in addition to the May 17 meeting. Please give me a couple dates that work best for the school and I will arrange with the project team.

Regards,

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Thuy Nguyen, P.E., Senior Engineer
City of San Jose
Department of Transportation
200 E. Santa Clara St., T8
San Jose, CA 95113-1905
(408) 975-3213
thuy.nguyen@sanjoseca.gov

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: Wendy Gudalewicz <wgudalewicz@orchardsd.org>
Sent: Thursday, April 26, 2018 3:21 PM
To: Nguyen, Thuy (DOT); Gulzadah, Zahir
Cc: Dang, Thulien; District4
Subject: Community Meeting regarding Charcot Project

Thuy, I know I spoke with you earlier today and I think it is important to share my concern in writing. Earlier today a parent let me know there was going to be a meeting held to share information about the Charcot Project with the community. Given the greatest impact the project will have is on our school campus, it does not make sense to me that we were not notified directly about the possibility of such a meeting. You chose May 17 for the meeting. May 17 is our school's Open House night. My entire staff and the majority of our community will be at this event. In addition, the meeting is going to be held in the Berryessa community. This also does not make sense. We would have been more than happy to host such an event if asked.

We are requesting that the meeting be rescheduled to include our community.

Wendy Gudalewicz
Superintendent
Orchard School District
408-944-0397 x201

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit F: E-mail from John Hesler to Colin Heyne, Meenaxi Pakal, Josephine Kimura, Chiaming Chi, Natalina Bernardi, and Thuy Nguyen, dated May 17, 2018

From:	Heyne, Colin
To:	John Hesler; Panakkal, Meenaxi; Kimura, Josephine; Chiaming Chi; Natalina Bernardi; Nguyen, Thuy (DOT)
Cc:	Nguyen, Joe D; Eileen Goodwin; Gordon Sweet; Gulzadah, Zahir; Ristow, John
Subject:	Re: 880/Charcot Scoping Meeting
Date:	Thursday, May 17, 2018 12:36:18 PM

Works for me - thanks.

Colin Heyne
Public Information Manager
City of San José | Department of Transportation
408-975-3705

From: John Hesler <jhesler@davidjpowers.com>
Sent: Thursday, May 17, 2018 10:59:00 AM
To: Heyne, Colin; Panakkal, Meenaxi; Kimura, Josephine; Chiaming Chi; Natalina Bernardi; Nguyen, Thuy (DOT)
Cc: Nguyen, Joe D; Eileen Goodwin; Gordon Sweet; Gulzadah, Zahir; Ristow, John
Subject: Re: 880/Charcot Scoping Meeting

As background, when the team met a week ago Friday, it was decided that any outreach for the Monday meeting would be done by the Orchard School folks since they were the ones who asked for an additional meeting.
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From: Heyne, Colin <colin.heyne@sanjoseca.gov>
Sent: Thursday, May 17, 2018 10:06 AM
Subject: Re: 880/Charcot Scoping Meeting
To: Panakkal, Meenaxi <meenaxi.panakkal@sanjoseca.gov>, Kimura, Josephine <josephine.kimura@sanjoseca.gov>, Chiaming Chi <cchi@bkf.com>, Natalina Bernardi <nbernardi@bkf.com>, Nguyen, Thuy (DOT) <thuy.nguyen@sanjoseca.gov>
Cc: John Hesler <jhesler@davidjpowers.com>, Nguyen, Joe D <joed.nguyen@sanjoseca.gov>, Eileen Goodwin <apexstr@pacbell.net>, Gordon Sweet <gsweet@bkf.com>, Gulzadah, Zahir <zahir.gulzadah@sanjoseca.gov>, Ristow, John <john.ristow@sanjoseca.gov>

Hi All,

Do we want to do any outreach for the 5/21 meeting? I know it's a special engagement.

Colin Heyne
Public Information Manager
City of San José | Department of Transportation
408-975-3705

From: Panakkal, Meenaxi

Sent: Wednesday, May 16, 2018 5:40:38 PM
To: Kimura, Josephine; Chiaming Chi; Natalina Bernardi; Nguyen, Thuy (DOT)
Cc: jhesler@davidjpowers.com; Nguyen, Joe D; Eileen Goodwin; Gordon Sweet; Gulzadah, Zahir; Ristow, John; Heyne, Colin
Subject: Re: 880/Charcot Scoping Meeting

Josephine, I will try to reach by 5:30 but I have to be in Morgan Hill for the Habitat Agency Board meeting prior to this scoping meeting. thanks, Meenaxi

---

From: Kimura, Josephine
Sent: Wednesday, May 16, 2018 3:43:26 PM
To: Chiaming Chi; Panakkal, Meenaxi; Natalina Bernardi; Nguyen, Thuy (DOT)
Cc: jhesler@davidjpowers.com; Nguyen, Joe D; Eileen Goodwin; Gordon Sweet; Gulzadah, Zahir; Ristow, John; Heyne, Colin
Subject: 880/Charcot Scoping Meeting

Hello Team,

We plan to meet 30 minutes before the meeting starts at 530 at the Berryessa Library to get everything in order.

See you there!

Thanks,

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit G: E-mail from Robin Roemer to District 4, dated May 3, 2018

From: District4
To: Nguyen, Thuy (DOT)
Subject: Resident questions about the Charcot Extension
Date: Friday, May 4, 2018 9:58:10 AM
Attachments: image001.png
image003.png
image001.png
image003.png
image001.png
image002.png
image003.png

Hello Thuy,

Our office knows that you will be having a public meeting regarding the Charcot Extension on May 17th, and were wondering if you have been in contact with residents asking about the project. We know that the meeting will be soon, and that if the public has any questions or concerns, they can ask them there.

We have attached e-mails from a resident who has been in frequent contact with our office about this project, and we were wondering if you could give us some input regarding this.

Sincerely,

Stephen Ngo
Council Assistant
Office of Councilmember Lan Diep, District 4
City of San José | 200 East Santa Clara Street, Tower 18th floor
San Jose, CA 95113-1905 | Phone: 408.535.4938
Follow the Councilmember on:

OFFICE OF
COUNCILMEMBER
LAN DIEP
SAN JOSÉ DISTRICT 4

From: [redacted]
Sent: Friday, May 04, 2018 8:39 AM
To: District4 <District4@sanjoseca.gov>
Subject: Re: Meeting with Councilmember?

Dear TL,

I just heard that there is indeed a second meeting supposed to happen. That is great.

I certainly understand the Councilmember's respect for long-term planning efforts. One of my questions that the city's department of transportation has so far refused to answer though (and I am afraid will continue to deflect and refuse at the planned public meetings) goes exactly to that point: what studies have been building the case for this project throughout the years?

I talked with Jared Hart from the city's planning department about the project and from the top of his head he couldn't mention any recent study confirming or even examining the need of the project or reflecting on its impact on the current community. He did refer me to the General Plan 2040 and its EIR but also in there I can find only brief mentions of the project and no detailed rationale.

Trying to trace the origins of this project back even further, I noticed that in the meeting notes for the community meeting last March an effort called "Charcot Extension project study" (http://www.bkf.com/assets/community-stakeholder-meeting-march-17-final-web.pdf, page 2) is mentioned. **I have asked Charcot project manager Thuy Nguyen 4 times for any documents regarding this study but 4 times she refused to provide any information on it or even explain the proper way for me to formally request these documents. Maybe Councilmember Diep would be able get the DoT to locate these documents and all others related to the project and share them with the public so that they can be studied before the community meetings?**

I also do believe that in San José important parameters of the city's planning paradigm have rightfully and with Councilmember Diep's support shifted in the recent months. The "Green San José" strategy and the switch from the outdated LOS to the new VMT-evaluation system come to mind, for example. With all respect for long-term planning, maybe this is an opportun moment to look more closely at the underlying reasoning for projects such as the Charcot extension that were first planned 24 years ago and to understand if they are indeed still a great fit for a 21st century, people-centric San José.

I hope that Councilmember Diep will be able to convince the DoT to share with the public all the necessary information in a timely manner before the My, 17th meeting.

Thank you ,

[redacted]

On Thursday, May 3, 2018, 5:00:13 PM PDT, District4 <District4@sanjoseca.gov> wrote:

Dear [redacted]

The City is aware of the conflict on May 17th due to an event at Orchard. They are working with the Superintendent on another community meeting date at the school. The Councilmember would be happy to speak with you after this future meeting.

The Charcot Extension has been planned decades ago. While the Councilmember of course wants to address concerns raised by residents in the impacted area, he does not intend to prevent City staff from executing long-term plans that have been agreed to through a public process. He would prefer to meet after you and have attended a public outreach session so that the City Staff can address your concerns first, as they are the ones most familiar with the day-to-day specifics of the project.

Best,

TL

Thu Liên Đặng

Office of Councilmember Lan Diep, District 4

San José City Hall

200 E. Santa Clara St., 18th Fl.

San José, CA 95113

Phone: 408.535.4941

Thulien.Dang@sanjoseca.gov

Follow the Councilmember on -

OFFICE OF
COUNCILMEMBER
LAN DIEP
SAN JOSÉ DISTRICT 4

From: Robin Roemer [mailto:robin.roemer@ymail.com]
Sent: Thursday, May 03, 2018 4:31 PM
To: District4 <District4@sanjoseca.gov>
Subject: Re: RE: RE: Meeting with Councilmember?

Hi,

thank you for getting back to me.

As I think your office is a aware neither location nor date/time of DOT meeting are very convenient to us parents at Orchard due to the school's long planned open house on the same night. I had complained to the DOT about this event even before the flyers were sent out. I wish Councilmember Diep would address with the city how they can be

more inclusive and accommodating to the community. Given that I'm at the moment not likely to attend the May 17 meeting, it would be great to find another time to meet with Councilmember Diep.

Also, as my meeting request stated I'm interested in hearing Councilmember Diep's personal thoughts on this matter. Your email referencing the DOT meeting makes it sound as if the Councilmember Diep doesn't form opinions independently from the city's transportation department? I'm almost certain he would personally object to being portrayed in this way.

Thank you again so much for your time and consideration,

Robin

On Thursday, May 3, 2018, 12:57:12 PM PDT, District4 <District4@sanjoseca.gov> wrote:

Hello Robin,

Thank you for your response. At this time, Councilmember Diep would like to meet after the community meeting stated for May 17th. The Department of Transportation will be there to give their presentation and may be able to address any concerns or questions you may have. After the meeting, if you still have any concerns, I'd love to help you schedule in a time to meet with Councilmember Diep.

Best,

TL

Thu Liên Đặng

Office of Councilmember Lan Diep, District 4

San José City Hall

200 E. Santa Clara St., 18th Fl.

San José, CA 95113

Phone: 408.535.4941

Thulien.Dang@sanjoseca.gov

Follow the Councilmember on -

OFFICE OF
COUNCILMEMBER
LAN DIEP
SAN JOSÉ DISTRICT 4

From: Robin Roemer [mailto:robin.roemer@ymail.com]
Sent: Tuesday, May 01, 2018 4:19 PM
To: District4 <District4@sanjoseca.gov>
Subject: Re: RE: Meeting with Councilmember?

Hi TL,

thank you for getting back to me. Please find my responses below.

1) I was hoping to be able to meet with Councilmember Lan Diep to hear his thoughts and plans for the Charcot Overpass and Extension.

2) Robin Roemer, parent at Orchard Elementary

3) Provide us with all necessary information to inform ourselves about the project and advocate for the children at our elementary school

4) Councilmember Diep advocates for the children at our elementary school

5) All documents related to the project, I guess.

6) There is a public meeting by the city planned on the project for May 17.

Kind regards,

Robin

On Tuesday, May 1, 2018, 3:17:43 PM PDT, District4 <District4@sanjoseca.gov> wrote:

Good Afternoon Robin,

To better facilitate your request to meet with Councilmember Diep, please provide our office with the following information:

1) The purpose of the meeting;
2) Names and titles of individuals who would be in attendance;
3) A summary of your "ask" or explanation of your position if it's regarding a policy item;
4) Any outcome you wish to happen after the meeting; and
5) Any documents you feel may be helpful for our office to review before the meeting so that the time can be spent on substance.
6) Is this an issue coming before Council for a vote soon? If so, do you know when?

We will get back to you with possible meeting dates after we receive your response.

Thank you for your prompt attention to this matter.

Best,

TL

Thu Liên Đặng

Office of Councilmember Lan Diep, District 4

San José City Hall

200 E. Santa Clara St., 18th Fl.

San José, CA 95113

Phone: 408.535.4941

Thulien.Dang@sanjoseca.gov

Follow the Councilmember on -

<image001.png> <image002.jpg>

<image003.png>

From: Robin Roemer <robin.roemer@ymail.com>
Sent: Thursday, April 26, 2018 9:54 PM
To: District4 <District4@sanjoseca.gov>
Subject: Meeting with Councilmember?

Hello,

I'm a parent at Orchard Elementary School and I recently learned about the planned Charcot Extension and Overpass Project.

I was hoping to be able to meet with Councilmember Lan Diep to hear his thoughts and plans for the project.

When does he next have a spot open in his schedule?

I'm very much looking forward to hearing back from you.

Kind regards,

Robin Roemer

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit H: E-mail from Josephine Kimura to Meenaxi Raval, dated May 8, 2019

From: Kimura, Josephine
To: Raval, Meenaxi
Cc: Nguyen, Thuy (DOT); Nguyen, Joe D
Subject: RE: Community Meeting
Date: Wednesday, May 8, 2019 1:30:48 PM

Meenaxi,

Wilson's comment on the EIR document were minor. His comments were on the traffic analysis and those should be addressed. Since you are managing the review of this document and soliciting comments, we were under the assumption that you would coordinate this timeline with all reviewers (PW/DOT/Attorney/Planning) and collect/compile comments from all necessary parties by 5/20. When Zahir met with Robert he indicated he would not be reviewing this document. Has he assigned another person in Planning to look over this document for the first time in addition to yourself?

We are really just trying to nail down the schedule so we can communicate with Orchard School well before school gets out and coordinate everyone's schedule for the community meeting.

Thanks,

From: Raval, Meenaxi
Sent: Wednesday, May 08, 2019 11:07 AM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>; Villanueva, Arlyn <Arlyn.Villanueva@sanjoseca.gov>; Tam, Wilson <wilson.tam@sanjoseca.gov>
Cc: Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>
Subject: Re: Community Meeting

Hello Josephine, Regarding the schedule below:

- City Review of 2nd Administrative Draft EIR: 4/23-5/20: I am ***super expediting*** the review at my end. Also convinced Johnny to do a concurrent review so it saves time. Since the 2nd Admin has to be reviewed by the Dep Director or his designee, David is also looped into the concurrent review. The challenge is going to be in combining all these comments as multiple staff is reviewing it concurrently. Are Arlyn and Wilson going to complete their review in the same timeframe?
- DPA prepares draft EIR: 5/20-5/23:
- City prepares for Public Circulation: 5/23-6/7: City has to prepare and file a Notice of Availability with the County and Notice of Completion with a 2-page summary form with the State Clearinghouse. Mercury News or Legal Notices need a week in advance for publication. In addition to 15 hard copies +disks, emails have to be sent to all

stakeholders-neighboring cities, responsible agencies, etc. It takes full two-days just to prepare the mailings.

If there was a way to reduce the 10-days, I would. This is just the synopsis. There are multiple prescribed steps. For more information,
see http://www.opr.ca.gov/clearinghouse/ceqa/document-submission.html

- CEQA Document Submission - Office of Planning and Research

  www.opr.ca.gov

  Office and Delivery Hours. Monday – Friday (excluding holidays) 9:00AM – 5:00PM. Filing Deadlines. Public Resources Code Section 21091(c)(3) allows for "three working days from the date of receipt" for the SCH to start the state review period and distribute the draft documents to state agencies for review and comment.

- Hope this clarifies the process.

Thank for your consideration.

Meenaxi

Meenaxi Raval, AICP

Supervisor- Environmental Planning

City of San Jose

200 East Santa Clara Street, 3rd Floor

San Jose, CA 95113-1905

From: Kimura, Josephine
Sent: Wednesday, May 8, 2019 9:42 AM
To: Raval, Meenaxi
Cc: Nguyen, Thuy (DOT); Nguyen, Joe D
Subject: RE: Community Meeting

Hello Meenaxi,

We will manage the community meeting along with the associated outreach. Our plan is to not have the meeting at the school, but rather a neutral location. The reason the scoping meeting was repeated last time was because the school had an open house the same night, not because of the venue choice. We are trying to coordinate everyone's schedule and book a room at the library so would like to confirm the schedule with you before doing so. Please see below.

City Review of 2nd Administrative Draft EIR: 4/23-5/20
DPA prepares draft EIR: 5/20-5/23
City prepares for Public Circulation: 5/23-6/7

I am using working days, not calendar days per your request, but was curious if you really needed 10 days to prepare the doc before release.

If you can agree to this schedule, we will plan for the community meeting accordingly.

Thanks!

From: Raval, Meenaxi
Sent: Tuesday, May 07, 2019 10:43 AM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Cc: Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>
Subject: Re: Community Meeting

Josephine, Thank you for sending the schedule. This was prepared by DJPA in Dec and I had responded to them. I forwarded you that email. Nothing has changed in terms of staffing at my end.

Ideally, the community meeting should be 3-weeks after the start of the 45-day public review period so the community has had time to read the DEIR and ask relevant questions. DOT can do the outreach and manage the community meeting. I would have liked to offer help for the outreach but the report who was managing this Project has not yet been replaced.

Meanwhile, I am expediting the review at my end.

As expressed in an earlier email, it is a top priority this and next week.

Thanks for your understanding.

Meenaxi

Meenaxi Raval, AICP

Supervisor- Environmental Planning

City of San Jose

200 East Santa Clara Street, 3rd Floor

San Jose, CA 95113-1905

From: Kimura, Josephine
Sent: Monday, May 6, 2019 1:35:53 PM
To: Raval, Meenaxi
Cc: Nguyen, Thuy (DOT); Nguyen, Joe D
Subject: Community Meeting

Meenaxi,

We are targeting a community meeting for 6/27, which should be within the 45 day commenting period for the Charcot EIR. Will you be able to help us with outreach for this meeting or did you want DOT to manage?

Thanks!

Josephine Kimura
City of San José - Department of Transportation
200 E. Santa Clara St. 8th Floor
San José, CA 95113-1905
Phone: (408)535-1293
josephine.kimura@sanjoseca.gov

Second Supplemental Comments of Orchard School District on Charcot Avenue Extension Project Draft EIR File No. PP18-044

Exhibit I: E-mail from Robin Roemer to Meenaxi Raval, dated September 8, 2019

From:	Nguyen, Joe D
To:	Raval, Meenaxi; Natalina Bernardi; Kimura, Josephine
Cc:	Gulzadah, Zahir; Nguyen, Thuy (DOT); "John Hesler"; Robert Del Rio; "Eileen Goodwin - Apex Strategies (Business Fax)"
Subject:	RE: Charcot community meeting
Date:	Wednesday, September 11, 2019 4:47:54 PM

Hi Meenaxi,

Since 9/23 is a day before the meeting, we'll have our dry run meeting on 9/17 @ 2:30pm and queue you in at a later time.

Thanks,

Joe Nguyen
City of San José | Department of Transportation
200 E. Santa Clara St. 8th Floor
San José, CA 95113
P: (408) 794-7514
E: joed.nguyen@sanjoseca.gov

From: Raval, Meenaxi
Sent: Wednesday, September 11, 2019 9:24 AM
To: Natalina Bernardi <NBernardi@BKF.com>; Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Cc: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)' <IMCEAFAX-+28831+29+20460-1420@bkf.com>
Subject: Re: Charcot community meeting

I am out most of next week attending the APA Conference, followed by a day off. I will be back in the office on 9/23.

Meenaxi Raval, AICP
Supervisor- Environmental Planning

City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

From: Natalina Bernardi <NBernardi@BKF.com>
Sent: Tuesday, September 10, 2019 2:11 PM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir

<Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)' <IMCEAFAX-+28831+29+20460-1420@bkf.com>
Subject: RE: Charcot community meeting

Josephine-

We surveyed our team and Eileen is on vacation next week so we will just need to queue her in on Monday the 23rd. She is a seasoned pro so I have no worries that it will work. Other team members (minimum 1 per firm being represented - Robert, John and myself) are available as follows:

1. Tuesday, Sept 17th starting at 2:30 pm
2. Thursday, Sept 19th 10:00 am – noon

Please let us know if the above works.

NATALINA V. BERNARDI, PE, LEED AP
Principal and Vice President
BKF Engineers
4670 Willow Rd, Suite 250
Pleasanton, CA 94588
d 925.396.7737

1730 N. First Street, Suite 600
San Jose, CA 95112
d 408.467.9132
m 408.398.8686
nbernardi@bkf.com
www.bkf.com

From: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Sent: Monday, September 09, 2019 11:59 AM
To: Natalina Bernardi <NBernardi@BKF.com>
Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)'
Subject: Re: Charcot community meeting

That works! Can you provide me with some availabilities next week for the dry run?

Thanks,

Josephine Kimura

City of San José - Department of Transportation
200 E. Santa Clara St. 8th Floor
San José, CA 95113-1905
Phone: (408)535-1293
josephine.kimura@sanjoseca.gov

From: Natalina Bernardi <NBernardi@BKF.com>
Sent: Monday, September 9, 2019 11:58 AM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)' <IMCEAFAX-+28831+29+20460-1420@bkf.com>
Subject: RE: Charcot community meeting

Josephine-

I actually have a pre-draft almost done; planning to complete today. I will circulate that internally to our team for edits and then provide to the City for input. Aiming to deliver to you on Thursday. Let me know if that works for you.

NATALINA V. BERNARDI, PE, LEED AP
Principal and Vice President
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4670 Willow Rd, Suite 250
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San Jose, CA 95112
d 408.467.9132
m 408.398.8686
nbernardi@bkf.com
www.bkf.com

From: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Sent: Monday, September 09, 2019 11:48 AM
To: Natalina Bernardi <NBernardi@BKF.com>
Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)'

Subject: Re: Charcot community meeting

Natalina,

Agreed. Did you know when you will have the PP completed by? We're hoping to have a meeting and do a dry run early next week. Does that work for you and team?

Let me know,

Josephine Kimura
City of San José - Department of Transportation
200 E. Santa Clara St. 8th Floor
San José, CA 95113-1905
Phone: (408)535-1293
josephine.kimura@sanjoseca.gov

From: Natalina Bernardi <NBernardi@BKF.com>
Sent: Monday, September 9, 2019 11:43 AM
To: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; 'John Hesler' <jhesler@davidjpowers.com>; Robert Del Rio <rdelrio@hextrans.com>; 'Eileen Goodwin - Apex Strategies (Business Fax)' <IMCEAFAX-+28831+29+20460-1420@bkf.com>
Subject: RE: Charcot community meeting

+Eileen Goodwin
+Robert Del Rio

Josephine-

Thank you for sharing this. I actually think the powerpoint that Robin prepared helps the team to understand and have some insight on what type of items in the DEIR are of interest/being criticized so that we are prepared to answer some of the potential questions with proper references to the document.

NATALINA V. BERNARDI, PE, LEED AP
Principal and Vice President
BKF Engineers
4670 Willow Rd, Suite 250
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nbernardi@bkf.com
www.bkf.com

From: Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>
Sent: Monday, September 09, 2019 11:15 AM
To: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; John Hesler <jhesler@davidjpowers.com>; Natalina Bernardi <NBernardi@BKF.com>
Subject: Re: Charcot community meeting

Thank you Meenaxi. We are aware of this meeting, but are moving forward with our scheduled meeting on 9/24. Please also see Robin's comments on the DEIR attached.

Josephine Kimura
City of San José - Department of Transportation
200 E. Santa Clara St. 8th Floor
San José, CA 95113-1905
Phone: (408)535-1293
josephine.kimura@sanjoseca.gov

From: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>
Sent: Monday, September 9, 2019 10:32 AM
To: Gulzadah, Zahir <Zahir.Gulzadah@sanjoseca.gov>; Nguyen, Thuy (DOT) <Thuy.Nguyen@sanjoseca.gov>; Kimura, Josephine <Josephine.Kimura@sanjoseca.gov>; Nguyen, Joe D <joed.nguyen@sanjoseca.gov>; John Hesler <jhesler@davidjpowers.com>
Subject: Fw: Charcot community meeting

See this email about this community meeting on 9/26th.

Meenaxi Raval, AICP
Supervisor- Environmental Planning

City of San Jose
200 East Santa Clara Street, 3rd Floor

San Jose, CA 95113-1905

From: Robin Roemer <robin.roemer@ymail.com>
Sent: Sunday, September 8, 2019 11:04 PM
To: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>
Subject: Charcot community meeting

Hi Meenaxi,

as you might/hopefully have heard there have been concerns about that location of the Charcot community meeting. I spoke at the Rules committee and emailed with John Ristow about it.

I understand it is too late for you to change the meeting or add another one.

Given the circumstances we as school community have decided to organize our own meeting to give people in the community as well as interested stakeholders a chance to learn about the project and voice their concerns (Thursday 9/26 @6pm @ Orchard school). City staff is obviously very welcome to attend. We will provide you with a report on what was said in any case.

See you soon,

Robin

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