

# Communications Hill 2 Project

First Amendment to the Draft Subsequent Environmental Impact Report



August 2014

State Clearinghouse # 2001062119

## PREFACE

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This document together with the Subsequent Environmental Impact Report (SEIR) constitutes the Final Environmental Impact Report (FEIR) for the Communications Hill 2 project. The SEIR was circulated to affected public agencies and interested parties for a 45-day review period from June 13, 2014 to July 18, 2014. This volume consists of comments received by the Lead Agency on the SEIR during the public review period, responses to those comments, and revisions to the text of the SEIR.

In conformance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR is intended to be used by the City and any Responsible Agencies in making decisions regarding the project. The CEQA Guidelines advise that, while the information in the FEIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the SEIR by making written findings for each of those significant effects.

According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
  - (1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.
  - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with CEQA and the CEQA Guidelines, the FEIR will be made available for 10 days prior to certification of the EIR. All documents referenced in this FEIR are available for public review at the City of San José Department of Planning, Building, and Code Enforcement, 200 E. Santa Clara Street, 3<sup>rd</sup> Floor, San José, CA 95110, on weekdays during normal business hours.

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## **SECTION 1.0 LIST OF AGENCIES AND ORGANIZATIONS TO WHOM THE DRAFT SEIR, NOTICE OF COMPLETION, OR NOTICE OF AVAILABILITY WAS SENT**

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### **State and National Agencies**

California Department of Fish and Wildlife  
California Public Utilities Commission  
Caltrans District 4  
Caltrans Division of Transportation Planning  
Association of Bay Area Governments  
California Native American Heritage Commission  
California Air Resources Board  
California Highway Patrol  
California Department of Education  
California Department of Toxic Substance Control  
California Department of Parks and Recreation  
California Department of Conservation  
California Department of Water Resources  
U.S. Army Corps of Engineers

### **Regional Agencies**

Bay Area Air Quality Management District  
San Francisco Regional Water Quality Control Board  
PG&E  
Valley Transportation Authority  
Santa Clara County Office of Education  
Santa Clara County Roads & Airports Department  
Metropolitan Transportation Commission  
Caltrain

### **Local Agencies**

City of Campbell  
City of Cupertino  
City of Los Gatos  
City of Milpitas  
City of Morgan Hill  
City of Santa Clara  
City of Saratoga  
City of Sunnyvale  
County of Santa Clara  
Franklin-McKinley School District  
East Side Union High School District  
San Jose-Evergreen Community College District

**Organizations/Businesses**

Santa Clara Valley Audubon Society  
Greenbelt Alliance  
Sierra Club - Loma Prieta Chapter  
California Native Plant Society – Santa Clara Valley Chapter  
Guadalupe-Coyote Resource Conservation District

**Individuals**

In addition to the agencies, organizations, and individuals listed above, the Notice of Availability was published in the San José Mercury News and posted on the City’s website. E-mail notices were also sent to individuals and groups that requested notice of the project’s public scoping meetings. The SEIR was available for review at the City’s Department of Planning, Building, and Code Enforcement during normal business hours, and at the MLK and Pearl Avenue branch libraries.

## **SECTION 2.0 LIST OF COMMENT LETTERS RECEIVED ON THE DRAFT SEIR**

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Copies of written comments on the Draft SEIR that were received during the public review period are provided in **Section 5.0 Copies of Comments Received on the Draft SEIR.**

<b>Comments Received From</b>	<b>Date of Letter</b>	<b>Response on Page</b>
A. State of California Governor's Office of Planning & Research	July 18, 2014	5
B. Santa Clara County Department of Environmental Health, Hazardous Materials Compliance Division	July 16, 2014	5
C. Robert J. Bettencourt	July 17, 2014	6
D. Caltrans District 4	July 17, 2014	8
E. San Francisco Bay Regional Water Quality Control Board	July 17, 2014	17
F. Jean Dresden	July 18, 2014	29
G. Millpond Mobile Home Community	July 18, 2014	39
H. Santa Clara Valley Audubon Society	July 18, 2014	43
I. Valley Transportation Authority	July 18, 2014	50
J. Dave Fadness	July 18, 2014	53
K. County of Santa Clara, Roads & Airports Department	July 25, 2014	54

## **SECTION 3.0      RESPONSES TO COMMENTS RECEIVED ON THE DRAFT SEIR**

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The following section includes all the comments on the SEIR that were received by the City in letters, emails, and public meetings during the 45-day review period. The comments are organized under headings containing the source of the letter and the date submitted. The specific comments from each of the letters, emails, or transcripts are presented as “Comment” with each response to that specific comment directly following. Each of the letters and emails submitted to the City of San Jose are attached in their entirety (with any enclosed materials) in Section V. of this document.

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I. of this document lists all of the recipients of the SEIR.

Five of the comment letters received are from public agencies, four of whom may be Responsible Agencies (Santa Clara County Department of Environmental Health, California Department of Transportation, San Francisco Bay Regional Water Quality Control Board, and Valley Transportation Authority) under CEQA for the proposed project. The CEQA Guidelines require that:

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state that:

Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decisions, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

The CEQA Guidelines state that the lead agency shall evaluate comments on the environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response to those comments. The lead agency is also required to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. This FEIR contains written responses to all comments made on the SEIR received during the advertised 45-day review period. Copies of this FEIR have been supplied to all persons and agencies that submitted comments.

### 3.1 COMMENT LETTERS

#### A. RESPONSES TO COMMENTS FROM STATE OF CALIFORNIA GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, DATED JULY 18, 2014

The letter received from OPR is a cover letter for the comments received from responding agencies. It states that the City has complied with the State Clearinghouse review requirements for draft environmental documents. No response to this letter is required.

#### B. RESPONSES TO COMMENTS FROM SANTA CLARA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH, HAZARDOUS COMPLIANCE DIVISION, DATED JULY 16, 2014

**Comment B.1:** It is advisable to carefully consider the proximity of a large propane storage and retail facility along the northeast corner of the proposed development. The facility is subject to the State's Hazardous Materials Business Plan (HMBP) Program, which is enforced by our office within the City of San José. According to the HMBP submitted via the California Environmental Reporting System (CERS), they store up to 51,000 gallons of propane in aboveground tanks as large as 30,000 gallons in capacity. We used the Environmental Protection Agency's RMP\*Comp to estimate off-site consequences in the event of a worst case release resulting in a vapor cloud explosion. The software estimates that a catastrophic failure and explosion involving the largest tank (30,000 gallons or 126,000 pounds) would result in damage to humans and property up to 0.4 miles away. The nearest residential property appears to be within the damage radius at approximately half that distance.

The information in CERS is available for review by emergency responders so that they may adequately prepare for and respond to emergencies involving these facilities. All but the chemical storage maps are available for review by the public, upon request.

**Response B.1:** The facility (Suburban Propane on Monterey Road) referenced in this comment was included in the Phase I Environmental Site Assessment for the project (Appendix G-1). The probability of a worst-case catastrophic event would be low based on the fact that multiple failures [earthquake or aircraft/truck accident and ignition (fire)] would need to occur simultaneously and the tanks would need to be filled at a specific level. As stated in this comment, the aforementioned propane tanks have been identified in the CERS, are highly regulated, and are known to emergency responders. For these reasons, the presence of the aforementioned propane tanks has been taken into account in the environmental analysis.

**C. RESPONSES TO COMMENTS FROM ROBERT J. BETTENCOURT, DATED JULY 17, 2014**

**Comment C.1:**            2.2.1            Residential Development

“It is assumed that at least 15 percent of the proposed housing would be affordable to households of low- and moderate-income, consistent with City policies and goals.”

Comment: Residential development within the CHSP area has been exempted from participated with the City’s BMR programs “without a sunset”. The extraordinary infrastructure cost of development cited by the City Council as a reason for exemption, remains relevant today. (City Council, January 12, 2010, Agenda Item 4.2)

**Response C.1:** The comment is correct that the project is exempt from providing affordable housing. The provision of affordable housing is not an environmental issue; therefore, the comment does not refer to environmental impacts or the conclusions of the SEIR. Please refer to Section 4.0, *Revisions to the SEIR Text*, for the necessary text amendment included in this Final SEIR.

**Comment C.2:**            2.2.6            Existing Mercury Mine/Former Quarry

“Reclamation efforts were undertaken in 1995 under an approved Reclamation Plan to restore vegetation to the quarried areas. Although these efforts ceased in 2009 due to a lack of funding, most of the former quarry area has been revegetated, with the exception of areas occupied by existing recycling operations.”

Comment: The County and State have certified that the majority of the former quarry site, with the exception of three minor areas, has been reclaimed in accordance with the approved reclamation plan. According to OMR staff’s recommendation, when the rough grading has been accomplished as planned by KB Home, OMR can certify final reclamation and closure for the remainder of the site. (CA Department of Conservation, Office of Mine Reclamation, May 6, 2014).

**Response C.2:** Please refer to Response H.5. The responder is the current project property owner. The comment updates information contained in the SEIR. Certification of the Reclamation Plan will occur when rough grading has been completed on the site. The comment does not refer to the conclusions of the SEIR and no further response is required.

**Comment C.3:**            4.2.2.10        Parking

“Retail use requires one space per 400 square feet of space... the retail uses would require approximately 169 spaces.”

Comment: The parking ratio approved for the CHSP, is one parking space per 500 square feet of building area for retail uses. Upon full build-out of the Village Center, a total of 135 parking spaces would be required. (A Specific Plan for Communications Hill, page 65, adopted by the City Council on April 7, 1992)

**Response C.3:** The comment correctly states the contents of the CHSP. The comment does not refer to environmental impacts or the conclusions of the SEIR. Please refer to Section 4.0, *Revisions to the SEIR Text*, for the necessary text amendment included in this Final SEIR.

**Comment C.4:**      4.2.2.11      Consistency with Plans and Policies  
Envision San José 2040/CHSP

“...65,700 square feet of commercial/retail/office...”

Comment: The area planned for commercial/retail/office uses, is “up to 67,500 square feet”. Draft SEIR, June 2014, 2.1 Introduction and Overview, page 8.

**Response C.4:** Please refer to Section 4.0, *Revisions to the SEIR Text*, for the necessary text amendment included in this Final SEIR.

**Comment C.5:**      4.6.3.7      Quarry Reclamation Fill

“Reclamation was accomplished by spreading serpentine-based topsoil over the quarried areas...”

Comment: The Year One monitoring report evaluating reclamation implementation observed “The topsoil used for the Azevedo Quarry reclamation comes from a wide variety of soils, many of which appear to be non-serpentine.” Continued utilization of non-serpentine-based soils was subsequently approved by the County. (H.T. Harvey & Associates, February 29, 1996, page 9; Azevedo Quarry, March 27 and July 17, 1996; County of Santa Clara, July 31, 1996)

**Response C.5:** Please refer to Response H.5. The 2009 *H.T. Harvey & Associates Azevedo Quarry Year-14 Reclamation Monitoring Report* states the following on page 1:

“The reclamation was to be accomplished by spreading serpentine-based topsoil over the quarried areas and seeding with “locally favorable” native grasses and forbs using an unquarried portion of the site as a reference area.”

As stated in Section 4.6.3.7 of the SEIR, the Phase II Environmental Site Assessment for the site notes that the source(s) of the topsoil used for reclamation was not documented and has not been tested for the presence/absence of serpentine. The topsoil ultimately used may have had a less than anticipated serpentine component, however, serpentine soils may be present as this is the existing natural condition of the site.

The serpentine characteristics of the soil on-site are well documented throughout the SEIR (Sections 4.4 *Air Quality*, 4.6 *Hazards and Hazardous Materials*, 4.7 *Biological Resources*, and 4.8 *Geology and Soils*) and mitigation measures are included in the project for all impacts related to these conditions. The text of the SEIR has been revised to more accurately reflect the Reclamation Report language; however, this comment does not change the conclusions of the SEIR.

**D. RESPONSES TO COMMENTS FROM CALIFORNIA DEPARTMENT OF TRANSPORTATION, DATED JULY 17, 2014**

**Comment D.1:** Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. Please also refer to Caltrans' comments regarding the Proposed Transportation Impact Analysis (TIA) Work scope in our letter dated July 5, 2007. We have reviewed the DSEIR and have the following comments to offer.

Traffic Impacts (Operations)

One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance potential adverse impacts by local development on State highways. Regarding Appendix B Traffic Impact Analysis, the TIA should:

1. State who will be financially responsible for the mitigation of the following intersections: (1) Intersection #3 Monterey Road/Curtner Avenue; (2) Intersection #22 Communications Hill Boulevard/Curtner Avenue; (3) Intersection #13 Almaden Expressway/Foxworthy Avenue; (4) Intersection #32 Vistapark Drive/Capitol Expressway; and (5) Intersection #33 Snell Avenue/Capitol Expressway.

**Response D.1:** As stated in Section 4.2.2.5 of the SEIR, the Vistapark Drive/Capitol Expressway intersection was analyzed for vehicle queuing during high-demand movements. There are no thresholds of significance related to vehicle queues at intersections, and, as a result, any potential queuing impacts resulting from the project are not considered significant under CEQA (Section 4.2.2.5 of the SEIR).

The TIA determined that the proposed project would result in significant impacts under background plus project conditions at the other four intersections noted in this comment. However, only the physical improvements at the Communications Hill Boulevard/Curtner Avenue intersection are included in the CHSP Area Development Policy (ADP) to reduce those impacts to a less than significant level.

As discussed in Section 4.2.2.4 of the SEIR, it was determined by the City, however, that physical improvements at the other three intersections would be infeasible due to cost, the required acquisition of rights-of-way from other private landowners, significant infrastructure improvements, and inconsistency with City transportation policies. Therefore, impacts at these intersections would be significant and unavoidable.

The City has determined that the project offers a tremendous opportunity to advance the goals of the City's General Plan in terms of multimodal travel and smart growth. For these reasons, the project includes implementation of an Area Development Policy consistent with City goals and policies.

The CHSPADP is included as Appendix C of the SEIR. Optimizing the existing transit opportunities surrounding the site by improving bicycle and pedestrian access would reduce

non-vehicular travel distances and make them more convenient and inviting. Maximizing transit opportunities also has a high potential to reduce automobile travel and increase transit use. The roadway improvements included in the ADP would facilitate reductions in both vehicle miles traveled and traffic congestion by improving access to freeways and reducing roadway segment congestion. The project applicant or applicants will be conditioned to contribute to or complete the identified ADP improvements or pay the identified fees consistent with Table 1 of ADP. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.2:**

2. Address if there will be a separate project report for the proposed improvement projects on the northbound (NB) State Route (SR) 87/Curtner Avenue and NB SR 87/Narvaez Avenue.

**Response D.2:** The proposed improvements at the NB SR 87/Curtner Avenue and NB SR 87/Narvaez Avenue on-ramps will require review, approval, and encroachment permits from Caltrans. All reports necessary to construct the improvements will be acquired. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.3:**

3. Include conclusive statements whether the project has significant impacts or not on SR 82, SR 85, Interstate (I-) 280, I-680, and U.S. Highway (U.S.) 101.

**Response D.3:** The TIA completed for the project (Appendix B of the SEIR) includes an analysis and discussion of impacts on each of the freeways noted in the comment above, with the exception of SR 82 (Monterey Road), which is a four-lane roadway, and not a freeway. A total of fifty-six directional freeway segments were analyzed on the remaining freeway segments referenced in the comment. The TIA states that the project will result in impacts to mixed-flow lanes on 10 directional freeway and HOV lanes on two directional segments. Impacted segments are identified in Table 12 of the TIA and include one segment of I-280, one segment on I-680, and eight segments on SR 87.

**Comment D.4:**

4. State if there will be a Traffic Demand Management (TDM) program such as a shuttle bus for the residents and future industrial employees to go to nearby train stations, malls, schools, and other industrial development facilities in order to mitigate project trips generated by this project.

**Response D.4:** Please refer to Response D.1. The project includes a shuttle service as described in the SEIR and the ADP (Appendix C of the SEIR). Possible TDM measures for both the residential and industrial components of the project are included in the CHSPADP. These include the shuttle, VTA ecompasses, transit amenities, bicycle parking and storage, and showers and lockers, to name a few. Please refer to Appendix A of the CHSPADP for a

complete list of possible project TDM measures. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.5:**

5. In addition to the NB SR 87/Narvaez Avenue diagonal on-ramp and the NB SR 87/Curtner Avenue diagonal on-ramp, the proposed project is likely to have impacts on the operations of the SB SR 87/Curtner Avenue diagonal on-ramp and the SB SR 87/Capitol Expressway diagonal on-ramp. During the ramp metering hours, the existing on-ramp queues will likely be lengthened with the additional traffic demand by this project, and they may impede onto the local streets affecting their operations. Caltrans recommends storage on the on-ramps/local streets for the freeway on-ramp traffic to avoid such impacts.

**Response D.5:** The referenced southbound ramps are metered during the PM peak hours. Observed maximum vehicular queues were no more than 10 vehicles at each of the ramps and did not extend back from the meter to the local arterial. The project will result in the addition of trips to each of the ramps. However, it is projected that the project will result in the addition of no more than 11 peak hour trips to each of the southbound ramps during the PM peak hour. This small amount of additional trips will have a minimal effect on existing delays and queues at the southbound ramps and local streets.

**Comment D.6:**

6. Caltrans recommends removing or modifying the last part of the first paragraph on page 58 of the TIA because the statements are incorrect, *“The ramp operations and delays are dictated by the ramp meter service rate. In order to reduce delay time at the ramp, the meter would have to be adjusted to provide a higher service rate and traffic flow onto the freeway...”* High on-ramp traffic demand, on-ramp geometry and capacity, and the freeway capacity contribute to freeway on-ramp operations. When the freeway segment is operating at capacity or in queue as indicated by the LOS F in Table 4 (p. 23), increasing ramp metering rate would not improve or reduce wait time at the on-ramp.

**Response D.6:** The comment highlights that ramp metering rates are dictated by demand on the ramps as well as capacity and operations of the freeway mainline. Though this is true, delays and queues at the ramp meter itself are a direct effect of the ramp metering rate. Therefore, the evaluation and projection of delay and queues at the ramps are based on the ramp metering rate. The ability to increase the metering rate and reduce delays and queues on the ramps is dependent on the freeway mainline operations. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.7:**

7. The queuing analysis and impact assessment for the NB SR 87/Curtner Avenue diagonal on-ramp should be based on existing metering rates. Existing metering rates will not be increased to accommodate additional traffic demand from new development and any proposed metering rate

adjustment will require analyses for their effects on the entire freeway corridor. Therefore, Table 14 and the second paragraph on page 58 of the TIA should be modified to reflect the existing metering rates.

**Response D.7:** The queuing analysis presented in Table 14 of the TIA assumes an increase in metering rate at the northbound SR 87 on-ramp from Curtner Avenue along with the improvement of the on-ramp that includes the addition of a second mixed-flow lane and new HOV lane. The improvements will require the preparation of a Project Study Report (PSR) to study the effects of the improvements and potential increase in metering rate on the overall freeway system. Therefore, the TIA is correct and revisions to Table 14 are not required.

**Comment D.8:** Traffic Impacts (Forecasting)

1. Table 9 *Trip Generation Estimates Based on Standard City of San Jose Trip Rates* (p. 36): of the TIA shows double counts on internalization reduction for retail-residential land use as 90 percent and 15 percent. The TIA assumes the retail would primarily serve the existing and proposed residential units. However, Caltrans considers the 90 percent internalization reduction over estimated and should be a lower percentage, unless the retail proves to be constrained only to existing and proposed residential units.

**Response D.8:** The proposed project consists of the addition of up to 2,200 residential units to approximately 733 existing units on Communications Hill. The hill is relatively steep and separated from the surrounding land uses due to the topography (refer to Photos 1-18 in the SEIR). There are no supporting retail uses at the top of the hill and residents must drive either north or south down the hill to access such uses. Surrounding residential neighborhoods at the base of the hill would also take advantage of the retail opportunities north and south of the site and would not be expected to drive to the top of the hill to access the proposed retail uses, which are anticipated to be similar in nature to retail uses in the surrounding area. Therefore, it is not unreasonable to assume that the majority of the patrons of the proposed retail uses would originate from the existing and proposed project residents of Communications Hill. The trip estimates presented in the referenced Table 9 do not “double count” the internalization of retail-residential trips. The estimated trips for the proposed 2,200 residential units were reduced by only 15%. The 15% reduction in residential trips is considered part of the 90% reduction in retail trips.

**Comment D.9:**

2. Please clarify what type of retail business is identified as being 64,800 square feet. If this retail is not a regional mall, then Caltrans recommends that the 90 percent internalization reduction be eliminated altogether for a conservative analysis. Instead, Caltrans recommends the TIA apply single retail-residential internalization reduction within a reasonable range. An average of 33 percent is used for most Bay Area projects for AM (PM) peak hour generated traffic trips.

**Response D.9:** Please refer to Response D.8.

**Comment D.10:**

3. Table 9 shows AM (PM) peak hour generated trip rates of 0.15 (0.13) for industrial. However, the ITE Trip Generation 9th edition shows AM (PM) peak hour trip rates of 0.82 (0.85) for industrial park and AM (PM) peak hour trip rates of 0.92 (0.97) for light industrial, indicated the AM (PM) peak hour trip rates given in Table 9 are under estimated. Therefore, Caltrans recommends the TIA clarify whether the industrial in Table 9 is industrial park or industrial light and adopt the appropriate ITE Trip Generation 8th edition AM (PM) peak hour trip rates of 0.82 (0.85) for industrial park or AM (PM) peak hour trip rates of 0.92 (0.97) for light industrial.

**Response D.10:** Trip estimates presented in Table 9 for the project are based on the trip rates recommended and required for use in the City of San José. The referenced 0.15 AM and 0.13 PM peak hour trip rates are those recommended by the City for office park development and are a percent of total traffic generated by the project. The referenced ITE rates are expressed as trips per 1,000 square feet of development. Therefore, the direct comparison of City of San José and ITE peak hour trip rates is not correct. The 0.15 AM and 0.13 PM peak hour trip rates correlate to 1.73 AM and 1.50 PM peak hour trips per 1,000 square feet of development. Similarly, the referenced ITE rates of 0.92 AM and 0.97 PM correlate to 0.08% of total daily traffic. Thus, the use of the City of San José's trip rates for office park land uses results in a greater estimate of peak hour trips than would be estimated using either San José or ITE rates for industrial uses.

The decision to use trip rates that are reflective of office land uses was consciously made by City staff to reflect the current uses of industrial park space. The use of trip rates commonly associated with office space results in a conservative (greater) estimate of trips that may be generated by the proposed industrial space given that the office trip rates are as much as three times greater than those used for industrial space. Per VTA and CEQA Guidelines, the City of San José is defined as the lead agency responsible for determining facilities to be included in the analysis, defining the scenarios, determining the proper method for analysis, and certifying the environmental document.

**Comment D.11:** Traffic Impacts (Safety)

All curb ramps and pedestrian facilities located within the limits of this project must be brought up to current Americans with Disabilities Act (ADA) standards. Pedestrian access through the construction zone of this project must be in accordance with ADA guidelines.

**Response D.11:** It is the City's policy that ADA standards be implemented both within developments and during construction. As this comment does not refer to the environmental effects of the project or conclusions of the SEIR, no further response is required.

**Comment D.12:** Lead Agency

As the lead agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the City work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see the end of this letter for more information regarding encroachment permits.

**Response D.12:** The City will require implementation of all transportation mitigation measures identified in the SEIR as well as the CHSPADP which includes execution of a construction agreement between the developer(s) and the City, issuance of bonds guaranteeing the construction, and issuance of public improvement plans. A Mitigation Monitoring and Reporting Program (MMRP) will be prepared for the project and approved as part of the project. The City will obtain all necessary Caltrans encroachment permits and will continue to discuss the project with Caltrans. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.13:** Transportation Management Plan (TMP)

If it is determined that traffic restrictions and detours are needed on or affecting State highways, a TMP or construction TIS may be required of the developer for approval by Caltrans prior to construction. Traffic Management Plans must be prepared in accordance with Caltrans' *Manual on Uniform Traffic Control Devices*. Further information is available for download at the following web address: <http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/pdf/camutcd2012/Part6.pdf>

Please ensure that such plans are also prepared in accordance with the transportation management plan requirements of the corresponding jurisdictions. For further TMP assistance, please contact the Office of Traffic Management Plans at (510) 286-4647.

**Response D.13:** As on-ramp improvement plans are developed, it may be determined that minor traffic restrictions and/or detours are required on Caltrans facilities. The City will ensure that TMPs, as necessary, are prepared in accordance with TMP requirements of Caltrans and other jurisdictions, as appropriate. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.14:** Cultural Resources

Caltrans requires that a project's environmental document include documentation of a current archaeological record search from the Northwest Information Center of the California Historical Resources Information System if construction activities are proposed within State ROW. Current record searches must be no more than five years old. Caltrans requires the records search, and if warranted, a cultural resource study by a qualified, professional archaeologist, and evidence of Native American consultation to ensure compliance with California Environmental Quality Act (CEQA), Section 5024.5 and 5097 of the California Public Resources Code, and Volume 2 of Caltrans ' Standard Environmental Reference (<http://www.dot.ca.gov/ser/vol2/vol2.htm>).

These requirements, including applicable mitigation, must be fulfilled before an encroachment permit can be issued for project-related work in State ROW; these requirements also apply to National Environmental Policy Act (NEPA) documents when there is a federal action on a project. Work subject to these requirements includes, but is not limited to: lane widening, channelization, auxiliary lanes, and/or modification of existing features such as slopes, drainage features, curbs, sidewalks and driveways within or adjacent to State ROW.

**Response D.14:** The City and project applicant(s) will adhere to the appropriate Caltrans requirements for encroachment permits. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.15:** Freeway Monument Signage

Sign plans for any proposed freeway monument signage should be provided to Caltrans for review and, depending on proposed sign location, approval. The plans should depict the layout, roadway setback, orientation, glare intensity, and sign size. Caltrans is required by law to enforce the Outdoor Advertising Act and Regulations regarding the placement of advertising along the highways. That document is available on the internet at:  
[http://www.dot.ca.gov/hq/oda/download/ODA\\_Act\\_&\\_Regulations.pdf](http://www.dot.ca.gov/hq/oda/download/ODA_Act_&_Regulations.pdf).

**Response D.15:** The project is not anticipated to require any freeway monument signage. As this comment does not refer to the environmental effects of the project or conclusions of the SEIR, no further response is required.

**Comment D.16:** New Connection to Local Streets

Any new connection of local streets or roads to an existing State freeway will require a revision to the existing freeway agreement.

**Response D.16:** The project is not anticipated to require any new connections of local streets or roads to existing State freeways. A revision to the existing freeway agreement will not be required. As this comment does not refer to the environmental effects of the project or conclusions of the SEIR, no further response is required.

**Comment D.17:** Traffic Impact Fees

Please identify traffic impact fees to be used for project mitigation. Development plans should require traffic impact fees based on projected traffic and/or based on associated cost estimates for public transportation facilities necessitated by development. Scheduling and costs associated with planned improvements on State ROW should be listed, in addition to identifying viable funding sources correlated to the pace of improvements for roadway improvements, if any.

**Response D.17:** Please refer to Response D.1. The project includes implementation of the CHSPADP which includes specific roadway, on-ramp, bicycle, and pedestrian improvements as well as the payment of fees as described in Table 1 of the ADP. The fees are anticipated to be paid during Phase IV of development, which is the final phase of the project. No further information is known at this time. While the ADP will advance the City's goals in terms of multimodal travel and smart growth, it is not considered to be CEQA mitigation. As this comment does not refer to conclusions of the SEIR, no further response is required.

**Comment D.18:** Voluntary Contribution Program

State Route 87 and other State facilities near the site are critical to regional and interregional traffic in the San Francisco Bay region. They are vital to commuting, freight, and recreational traffic and are among the most congested regional facilities. Given the scale and location of the proposed project and the traffic generated, along with other projects in the vicinity, this project will have a cumulative significant regional impact to the already congested State Highway System.

Caltrans encourages the City to participate in Santa Clara Valley Transportation Authority's (VTA) voluntary contribution program and plan for the impact of future growth on the regional transportation system. Contributions would be used to help fund regional transportation programs that improve the transportation system to lessen future traffic congestion, improve mobility by reducing time delays, and maintain reliability on major roadways throughout the San Francisco Bay Area. Reducing delays on State facilities will not only benefit the region, but also reduce any queuing on local roadways caused by highway congestion.

**Response D.18:** Please refer to Response D.1 and D.17. The project's ADP serves to improve access to transit and to the nearest on-ramps to SR 87. It is anticipated that any contributions to voluntary programs and/or plans, which is not considered to be mitigation under CEQA, would be made during implementation of Phase IV of the ADP (Table 1). One of the main purposes of the ADP is to improve access to SR 87 in proximity to the project site. This includes major improvements at the Capitol Expressway/Narvaez Avenue and Curtner Avenue on-ramps. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment D.19:** Transportation Permit

Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, a completed transportation permit application with the determined specific route(s) for the shipper to follow from origin to destination must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. See the following website for more information: <http://www.dot.ca.gov/hq/traffops/permits>.

**Response D.19:** If required, a transportation permit shall be obtained from Caltrans. As this comment does not refer to the environmental effects of the project or conclusions of the SEIR, no further response is required.

**Comment D.20:** Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See this website for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits>.

Should you have any questions regarding this letter, please contact Brian Brandert of my staff at (510) 286-5505 or [brian.brandert@dot.ca.gov](mailto:brian.brandert@dot.ca.gov).

**Response D.20:** Please refer to Response D.12.

**E. RESPONSES TO COMMENTS FROM THE SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD, DATED JULY 17, 2014**

**Comment E.1:** San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the *Communications Hill 2 Project, Draft Subsequent Environmental Impact Report* (SEIR). The SEIR assesses potential impacts associated with implementing the Communications Hill 2 Project (Project). The Communications Hill Specific Plan Area comprises roughly 900 acres of hilly land located approximately four miles south of downtown San José. The Plan Area is bounded by Curtner Avenue to the north, Monterey Road to the east, Capitol Expressway, Snell Avenue, and Hillside Avenue to the south, and Guadalupe Freeway (SR 87) to the west. The proposed project site is within the Specific Plan Area near the top of the hill adjacent to the existing Tuscany Hills development. The approximately 331.6-acre site is generally bounded by the Caltrain/Union Pacific railroad tracks on the north, Old Hillsdale Avenue to the east, the Tuscany Hills development to the south, and the Millpond and Dairy Hill residential neighborhoods to the west.

The Communications Hill 2 Project proposes the development of the remaining 2,200 residential units in the Communications Hill Specific Plan (CHSP), along with 67,500 square feet of retail uses and 1.44 million square feet of industrial uses. The project includes rezoning and annexation of unincorporated lands within the project site, rezoning, minor amendments to the Envision 2040 General Plan, and formation of an Area Development Policy for the CHSP area.

The EIR for the Communications Hill 2 Project is a Subsequent EIR (SEIR) to the previously certified *Communications Hill Specific Plan (CHSP) Environmental Impact Report* (City of San José, 1992). The CHSP serves as the action guide for development activities in the Plan Area, including the project site. The proposed project is within the boundaries of the approved Communications Hill Specific Plan Area (Plan Area) and would result in the construction of the remaining residential units included in the Specific Plan. Other land uses proposed, consistent with the Specific Plan, are commercial/retail, industrial park, a future school, parks, trails, open space, and stormwater filtration/detention facilities. Therefore, the Communications Hill 2 Project EIR tiers off the *Communications Hill Specific Plan EIR* to the extent possible. Water Board staff have the following comments on the SEIR.

**Comment 1. Section 4.6 Hazards and Hazardous Materials**

Based on review of the Draft SEIR, as well as Phase I and Phase II reports for the Project site, Water Board staff in the Groundwater Protection and Waste Containment Division believe that remediation of the mine may be necessary prior to development of the Project site. Initial investigations of the Project site indicate that mercury and other metals are present in soils at elevated concentrations. Some detected levels of mercury and other metals are above standards for the protection of human health due to direct exposure and some detected concentrations are above hazardous waste thresholds. Elevated concentrations of metals have also been detected in water discharging from mine adits at the Project site (Note: The SEIR refers to the adits as “springs”).

It is unclear how the plans to develop the property will “safely eliminate much of the mine” as is asserted in section 4.8 of the SEIR. In the absence of a thorough site investigation, excavation and grading activities on the Project site may expose additional sources of mercury and result in the

dispersal of mining wastes. These mining wastes may include calcines, which contain a relatively labile and, therefore, mobile form of mercury (in comparison to cinnabar ore). The unintentional dispersal of calcines may increase impacts associated with mercury-contaminated waste materials, rather than reducing those impacts.

A more thorough investigation of the mine area, and any other area containing elevated metals concentrations, is necessary to evaluate the potential impact of Project activities on water quality. In particular, Water Board staff is concerned about any potential increases in the loading of mercury to the Guadalupe River, which drains a large portion of the site, because the Guadalupe River is listed as impaired due to mercury on the Clean Water Act 303(d) list of impaired water bodies.

Prior to development of the Project site, the property owners are required to contact Water Board staff (Lindsay Whalin, [lindsay.whalin@waterboards.ca.gov](mailto:lindsay.whalin@waterboards.ca.gov)) to discuss initiating a site investigation under the oversight of the Water Board. Investigation (and potentially remedial activities) at the Project site may be conducted under a Water Board order (Site Cleanup Requirements, also known as a Cleanup and Abatement Order). This type of Order should be added to the list of permits required for the Project.

***Response E.1:*** As described in Section 4.8.2.2 of the SEIR, the project includes a Mine Backfill Work Plan. A full copy of the Work Plan is included as Appendix I-2 to the SEIR. As outlined in the Work Plan, the mines would be filled with a slurry material and then excavated along with other soils during grading activities. Any hazardous materials from the mines would be contained in the excavated soils. The project includes measures to prevent contaminated soils, including soils potentially containing mine wastes, from entering waterways during construction:

- MM HAZ-2.1 requires preparation of a Soil Management Plan prior to issuance of the PD permit for the project;
- MM HAZ-3.1 requires the project to comply with NPDES requirements during dewatering activities; and
- Standard Project Conditions require the project to comply with NPDES requirements for construction activities, including the preparation of a Stormwater Pollution Prevention Program and implementation of BMPs.

Implementation of the mitigation measures and standard project conditions identified in the SEIR would reduce impacts related to contaminated soils to a less than significant level.

In April 2008, Strategic Engineering & Science (SES) prepared a response to the proposed Guadalupe River Watershed Mercury TMDLs on behalf of the property owner. This letter is included in Appendix A of this First Amendment to the SEIR. The response letter included an analysis showing that the portion of the property that contains the mines does not drain to the Guadalupe River. It drains to Coyote Creek, which is impaired due to diazinon (an agricultural pesticide) and trash, not mercury.

The comment regarding the requirement that the property owners contact the Water Board prior to development is noted. Please refer to Section 4.0, *Revisions to the Text of the SEIR*, where a Cleanup and Abatement order from the RWQCB has been added to the list of potential discretionary actions associated with the proposed project. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment E.2:** Comment 2. Section 4.7 Biological Resources, 4.7.1.2 *Existing Conditions On-Site, Regulated Habitats*.

This section of the SEIR contains the following text:

A formal wetland delineation and waters of the U.S. analysis was completed for the site in 2013. Potentially jurisdictional waters are presumed to be present on the site in the form of four seeps, an intermittent drainage channel, manmade drainage ditches, a quarry pond, and two detention basins. Because the seeps, intermittent drainage channel, manmade drainage ditches, and quarry pond are hydrologically isolated from known waters of the U.S. and lack a significant chemical, physical, or biological nexus to such waters, they do not fall under the USACE's jurisdiction. The two detention basins are manmade impoundments constructed as part of the neighboring Tuscany Hills development and connect into the public stormwater system. These features do not impound waters otherwise defined as waters of the U.S. and, therefore, should also be disclaimed from the USACE's jurisdiction.

In 2000, a 1.42-acre wetland was mapped in a swale along Hillsdale Avenue and verified by the USACE (File No. 24975S). This jurisdictional determination expired on March 1, 2005. In 2007, 2009, and 2012, *Live Oak Associates* surveyed this area and did not find positive indicators of wetlands. Therefore, it is believed that this area no longer meets the technical criteria for wetlands and should be disclaimed from the USACE's jurisdiction. Despite this preliminary analysis of the extent of agency jurisdiction, it is important to note that the agencies are the final arbiters and could claim jurisdiction over some or all of these features. Should the USACE disclaim jurisdiction over all of the features on the site, the RWQCB will likely exert jurisdiction over the natural aquatic features, and the CDFW will likely exert jurisdiction over the natural aquatic features supporting a defined bed and bank. All three agencies would likely disclaim jurisdiction over the manmade drainage ditches and two detention basins.

This section of the DEIR lacks a discussion of the Water Board's authority under the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). The DEIR notes that impacts to wetlands and other waters are subject to the jurisdiction of the Army Corps of Engineers (ACOE) and the California Department of Fish and Wildlife (CDFW). However, the discussion of Water Board jurisdiction is limited to the certifications of ACOE permits that are issued by the Water Board pursuant to Section 401 of the Clean Water Act. The DEIR should be revised to include the Water Board's independent jurisdiction over wetlands and other waters, including wetland and waters that may not be subject to ACOE jurisdiction, under the State of California's Porter-Cologne Water Quality Control Act.

**Response E.2:** Table 2.6-1 in the SEIR lists RWQCB as a responsible agency in its role of issuing Section 401 Clean Water Act Certification for the Army Corps of Engineers Permit. Also, the SEIR states in Section 4.7.3.2: “In addition to compliance with the HCP, the project will be required to comply with all state and federal regulations related to disturbance to jurisdictional waters that are not covered by the HCP. Therefore, the applicant may be required to obtain a CWA Section 401 water quality certification from the RWQCB for impacts to waters of the State (totaling approximately 2.4 acres) and a Section 1602 streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank (i.e., the intermittent drainage channel, which totals approximately 0.04 acres and 612 linear feet).”

As described in SEIR, all of the aquatic features on the site are believed to be isolated and, therefore, do not require a Clean Water Act section 404 permit from the USACE. However, should the USACE take jurisdiction over these features, a CWA Section 404 individual permit would be necessary. These permits will be acquired as areas of the site are graded and wetlands are impacted. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment E.3:** The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California’s Porter-Cologne Water Quality Control Act. Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in conjunction with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, seasonal streams, intermittent streams, channels that lack a nexus to navigable waters, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs).

The regulatory status of the “manmade drainage ditches” cannot be assessed on the basis of the information presented in the SEIR. If these channels have a supporting watershed, it is possible that they may be considered jurisdictional by the Water Board, as well as the CDFW. If the State agencies determine that these channels are jurisdictional, then mitigation will be required for any unavoidable impacts to these channels.

The regulatory status of the detention basins will be a function of the extent to which they have been constructed and maintained in compliance with the NPDES permit for municipal separate storm sewer systems (MS4s). Post-construction stormwater treatment basins that are designed, constructed, and maintained in conformance with the Municipal Regional Permit (MRP) for MS4s, or one of the prior permits regulating MS4s, are not subject to regulation as waters of the State.

**Response E.3:** Please refer to Response E.2. Section 4.7.3.2 of the SEIR describes the potential RWQCB and CDFW jurisdiction over aquatic features on the project site. MM BIO-2.1 includes mitigation measures typically required by RWQCB. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment E.4:** Comment 3. Section 4.7 Biological Resources, 4.7.3.2 *Impacts to Sensitive Habitats, Aquatic Habitat/ Wetlands*

This section of the SEIR contains the following text:

Sensitive habitat present on the site is limited to aquatic features, including four seeps, an intermittent drainage channel, and a quarry pond. Three of the four seeps and a reach of the channel also meet the USACE's criteria for wetlands. While the quarry pond supports a breeding population of CTS, it is a manmade feature that was constructed adjacent to the railroad tracks in association with historic quarrying operations on the site. The seeps and intermittent drainage channel all developed in reclaimed parts of the site that had previously been mined. All of the aquatic features on the site are isolated from known waters of the U.S. The project would result in permanent fill of these features, including all four seeps (approximately 0.87 acres), the quarry pond (approximately 1.53 acres), and the intermittent drainage channel (approximately 0.04 acres and 612 linear feet). In total, approximately 2.4 acres of aquatic habitat, including wetlands, would be permanently impacted.

In accordance with the HCP, the project proponent shall implement avoidance, minimization, and/or compensation measures to reduce impacts to aquatic habitats, including wetlands, to a less than significant level. These measures are described below.

Due to constraints posed by the site's topography and by vehicular connection requirements between the lower and upper parts of the site, the project cannot be achieved without extensive grading (i.e., cut and fill) over the entire site, including all of the aquatic habitats described above. Therefore, both avoidance and minimization of impacts to these features likely is not feasible. In lieu of implementing avoidance and minimization, the project may instead implement the measures below.

And:

In addition to compliance with the HCP, the project will be required to comply with all state and federal regulations related to disturbance to jurisdictional waters that are not covered by the HCP. Therefore, the applicant may be required to obtain a CWA Section 401 water quality certification from the RWQCB for impacts to waters of the State (totaling approximately 2.4 acres) and a Section 1602 streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank (i.e., the intermittent drainage channel, which totals approximately 0.04 acres and 612 linear feet).

As described previously, all of the aquatic features on the site are believed to be isolated and, therefore, not requiring a Clean Water Act section 404 permit from the USACE. However, should

the USACE take jurisdiction over these features, a CWA Section 404 individual permit would be necessary. As such, mitigation to satisfy the USACE would fall outside the purview of the HCP (i.e., wetland mitigation through the payment of wetland fees or in-lieu mitigation could not be completed via the HCP to satisfy any mitigation requirements by the USACE).

At the time this SEIR was prepared, the CDFW and RWQCB also do not have a mechanism to permit projects impacting jurisdictional waters in conjunction with the HCP. If they are deemed necessary, these permits must be obtained prior to initiating any ground disturbance within jurisdictional waters. Typical mitigation measures required by these agencies are provided below; however, additional or slightly different measures may be required by the agencies during the permit process to be completed at some point in the future. Implementation of all measures required by the agencies during the permit process would reduce impacts to a less than significant level.

Based on the information provided in the SEIR, it is likely that the Project will be required to obtain CWA Section 401 Certification and/or Waste Discharge Requirements (WDRs) for the fill of most, if not all, aquatic features present at the Project site.

When the Water Boards receives an application for certification and/or WDRs, staff reviews the project to verify that the project proponent has taken all feasible measures to avoid impacts to waters of the State (these impacts usually consist of the placement of fill in waters of the State). Where impacts to waters of the State cannot be avoided, projects are required to minimize impacts to waters of the State to the maximum extent practicable (i.e., the footprint of the project in waters of the state is reduced as much as possible). Compensatory mitigation is then required for those impacts to waters of the state that cannot be avoided or minimized. Avoidance and minimization of impacts is prerequisite to developing an acceptable project and identifying appropriate compensatory mitigation for an approved project's impacts. Avoidance and minimization cannot be used as compensatory mitigation. After avoidance and minimization of direct impacts to waters of the State have been maximized for the proposed project, the necessary type and quantity of compensatory mitigation for the remaining impacts to waters of the State are assessed on a case-by-case basis.

Under both the Clean Water Act and the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), projects are required to avoid impacts to waters of the U.S. and waters of the State, in conformance with U.S. Environmental Protection Agency's CWA 404(b)(1) Guidelines (Guidelines). The Guidelines provide guidance in evaluating the circumstances under which wetlands filling may be permitted. Projects must first exhaust all opportunities, to the maximum extent practicable, to avoid, and then to minimize impacts to jurisdictional waters. Only after all options for avoidance and minimization of impacts have been exhausted, is it appropriate to develop mitigation for adverse impacts to waters of the U.S. and waters of the State.

The Water Boards only allow compensatory mitigation to be implemented for those impacts to waters of the State that cannot be avoided and/or minimized; "avoidance and minimization" in the context of reviewing applications for Clean Water Act (CWA) Section 401 certification and/or Waste Discharge Requirements (WDRs) refers to minimizing the proposed project's footprint in waters of the State. The current Project proposes to fill all waters of the State that are present at the Project. It

is unusual for the Water Board to issue permits for projects that include no avoidance or minimization of impacts to waters of the State.

The SEIR refers to the Santa Clara County Habitat Conservation Plan's (HCP's) "standardized avoidance and minimization measures". The use of the term "avoidance and minimization" in the HCP is not consistent with the way the term "avoidance and minimization" is used in the Water Board's permitting process. The HCP has several lists and tables of "avoidance and minimization measures." Most of these measures are best management practices (BMPs) implemented during the construction process, rather than actual avoidance and minimization measures. In fact, the HCP contains very little mention of the actual avoidance and minimization measures as these terms are used by the Water Boards; measures which reduce a project's footprint within waters of the State.

**Response E.4:** As stated in Section 4.7.3.2 of the SEIR, and repeated in this comment, the project proponent will implement avoidance, minimization, and/or compensation measures to reduce impacts to aquatic habitats, including wetlands, to a less than significant level. The SEIR lists the following standard project condition relating to avoidance: "To the maximum extent feasible, the project shall avoid all on-site waters by designing the project so that it avoids the placement of fill within potential jurisdictional waters."

The City of San José adopted the Communications Hill Specific Plan (CHSP) in 1992. The CHSP established a framework for development of a mixed-use, high density, pedestrian-oriented, urban neighborhood with supporting public facilities and infrastructure. Additionally, the CHSP includes required densities and unit counts for residential development. The topography and natural features of the Communications Hill site limit the areas available for development. In order to fulfill the goals and requirements of the CHSP, including required densities and unit counts, the proposed project was designed to accommodate the required number of units in the limited space available. In addition, to not allow the development consistent with the General Plan could put development pressure on outlying cities which would require longer commutes and reductions in air quality.

As noted in the comment, the SEIR states: "Due to constraints posed by the site's topography and by vehicular connection requirements between the lower and upper parts of the site, the project cannot be achieved without extensive grading (i.e., cut and fill) over the entire site, including all of the aquatic habitats described above. Therefore, both avoidance and minimization of impacts to these features likely is not feasible." To retain the existing profile of the hill, special consideration was given to the grading and, in general, has been kept to a minimum where feasible. To facilitate building, however, there are locations within the site where significant grading will occur. The placement and orientation of the streets to one another involves a sensitive relationship among cut and fill quantities, intersection design, maximum slope of streets and efficiency of block size. Streets have been designed as steep as traffic safety and public works standards permit in order to retain existing slopes. Even slight modifications to the grading plan need to consider the overall plan and possible ramifications beyond a particular area. Streets have been designated as fixed or flexible in terms of their right-of-way width and alignment/location to allow for unknown conditions of the topography and provide a small degree of flexibility within the Plan. Therefore, while

future phases may allow for some minor configuration changes, it is not expected given all of the project objectives of developing this site, avoidance of the majority of those features under the jurisdiction of the RWQCB and CDFW are not feasible.

The project has identified areas on the site to integrate in-kind compensation for some of the regulated aquatic features. Overall, the mitigation approach of the project will be to pay an aquatic/wetland surcharge to the Habitat Agency for the creation of suitable wetlands within the CHSP area, create in-kind on-site mitigation that will function as wetland habitats they are intended to replace, and then compensate any residual impact at a suitable off-site location within the regional watershed. The purpose of this three-prong approach to compensate for aquatic/wetland impacts will be to reduce impacts to these regulated features to a less than significant level and to satisfy any permit conditions of the RWQCB and CDFW.

In conclusion, because it is not feasible to avoid the aquatic features referenced in the comment, the project will implement mitigation measures and standard project conditions, as described in Section 4.7.3.2 of the SEIR, and further elaborated in this response, to reduce impacts resulting from the loss of these features to a less than significant level, in accordance with HCP and permitting requirements. All necessary permits will be acquired as grading occurs.

**Comment E.5:** Comment 4. Section 4.7 Biological Resources, 4.7.3.2 *Impacts to Sensitive Habitats, Aquatic Habitat/ Wetlands, Mitigation*

This section of the SEIR acknowledges that the HCP does not currently provide mitigation that meets the regulatory requirements of the Water Board or the ACOE, and proposes Mitigation Measure Bio-2.1:

MM BIO-2.1: *Regulatory Agency Mitigation.* If required by the pertinent regulatory agencies, the applicant shall satisfy agency mitigation requirements by compensating for aquatic impacts at a 1:1 replacement-to-loss ratio either onsite or offsite, in addition to payment of wetland fees via the HCP.

Should the applicant choose to complete its own mitigation on-site, several areas within designated open space on the site may have the potential to accommodate such mitigation. Potential opportunities for wetland/aquatic creation or restoration include, but are not limited to, an aquatic/wetland feature along the proposed water quality and detention basins, and creation of one or more aquatic/wetland features in the eastern part of the site designated as open space. These areas could offset some of the required wetland fee and/or may also satisfy a portion of the anticipated mitigation requirements by the CDFW and RWQCB.

An on-site mitigation and monitoring plan (MMP) would need to be developed to mitigate for impacts to these features. At a minimum, the MMP shall:

- Define the location of all restoration/creation activities;
- Provide evidence of a suitable water budget to support any created aquatic and riparian habitats;

- Identify the species, amount, and location of plants to be installed in the aquatic and riparian habitats;
- Identify the time of year for planting and method for supplemental watering during the establishment period;
- Identify the monitoring period. This should be not less than 5 years for aquatic restoration.
- Define success criteria that will be required for restoration efforts to be deemed a success;
- Identify adaptive management procedures that accommodate the uncertainty that comes with restoration projects. These include, but are not limited to, measures to address colonization by invasive species, unexpected lack of water, and excessive foraging of installed plants by native wildlife;
- Define management and maintenance activities (weeding of invasive plants, providing for supplemental water, repair of water delivery systems, etc.); and
- Provide for surety in funding the monitoring and ensuring that the created aquatic and riparian habitats fall within lands to be preserved and managed into perpetuity.

Any remaining mitigation required by these two agencies to satisfy the additional 1:1 replacement-to-loss ratio would need to be obtained offsite (e.g., via the purchase of credits from an approved mitigation bank).

Since the SEIR acknowledges that the payment of HCP fees will not meet the permitting requirements of the ACOE and Water Board, more detail should be provided to demonstrate that adequate mitigation for the Project's impacts can be provided at the Project site.

**Response E.5:** MM BIO-2.1 includes a discussion of the areas on the site where mitigation could be implemented. The project engineer has identified several areas on site that are expected to replace impacts to aquatic/wetland features on site at a 1:1 ratio. This combined with the wetland surcharge the project will pay for creation of similar wetlands within the CHSP Area, along with any residual mitigation needs being accommodated off-site within the regional watershed would reduce impacts to a less than significant level and satisfy any permit conditions from the RWQCB and CDFW. Additionally, the mitigation measure requires the development of a mitigation and monitoring plan that includes a list of measures and requirements to ensure the mitigation is adequate. The SEIR also states that mitigation can be located off-site.

**Comment E.6:** In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The SEIR lacks concrete proposals for the

mitigation of impacts to waters of the State that will be required in a Certification and/or WDRs for the Project.

**Response E.6:** As stated previously, MM BIO-2.1 includes a discussion of the areas on the site where mitigation could be implemented. Additionally, MM BIO-2.1 requires the development of a mitigation and monitoring plan that includes a list of measures and requirements to ensure the mitigation is adequate. The SEIR also states that mitigation can be located off-site. Because the exact measures that will be required by the RWQCB are not currently known, and will not be known until the permitting process concludes, the SEIR includes mitigation typically required by the RWQCB. During the permitting process, the RWQCB may require mitigation other than what is listed in the SEIR. Since the project requires permits from the RWQCB, the project's impacts to waters of the State will be mitigated according to the requirements of the RWQCB. For these reasons, the mitigation identified in the SEIR is adequate and would reduce impacts to a less than significant level.

**Comment E.7:** The SEIR also states that:

If on-site mitigation is not feasible or cannot adequately compensate for all of the impacts, the applicant may also choose to purchase appropriate mitigation credits from a mitigation bank in the permit area that has been approved by the USFWS and CDFW and pre-approved to service the Habitat Plan.

At this time, Water Board staff is not aware of a mitigation bank with wetland credits that includes the Project location in its service area. When project impacts occur within the San Francisco Bay Regional Water Quality Control Board's jurisdictional boundaries, mitigation for those impacts must also be within the San Francisco Bay Regional Water Quality Control Board's jurisdictional boundaries. In other words, a mitigation bank that is located within the jurisdictional boundaries of the Central Coast Regional Water Quality Control Board cannot be used to provide mitigation for this Project's impacts to waters of the State.

**Response E.7:** MM BIO-2.1 states: "Any remaining mitigation required by these two agencies to satisfy additional 1:1 replacement-to-loss ratio would need to be obtained offsite (e.g., via the purchase of credits from an approved mitigation bank)." The mention of a mitigation bank is intended as an example of one method for obtaining offsite replacement. Other methods for replacement exist, such as the purchase of mitigation lands on the private market by the project applicant. Additionally, although Water Board staff is not aware of current mitigation banks with available wetland credits, at such future time mitigation efforts are undertaken, there may be wetland credits available in mitigation banks within the San Francisco Bay RWQCB jurisdiction.

**Comment E.8:** Comment 5. Section 4.9 Hydrology and Water Quality, 4.9.3.2 *Hydrology and Drainage Impacts, Drainage Patterns*

This section of the SEIR includes the following text:

Currently, 11.6 acres of the Tuscany Hills development drains to the Mill Pond and Canoas Garden drainage system, which discharges to the Guadalupe River. This is achieved through a lifting station and force main. The proposed project would remove the lifting station and force main, and this area would now drain to the Hillsdale Avenue drainage system, restoring the natural drainage pattern of the area. As a result, the project would increase by 11.6 acres the drainage area which drains to the Hillsdale Avenue drainage system. This system discharges to Canoas Creek, a tributary of the Guadalupe River. The diversion of the drainage area to Canoas Creek may increase the potential erosion in the unlined stream channel. However, the overall drainage to the Guadalupe River watershed would remain unchanged.

The SEIR should include measures for preventing additional erosion of the unlined stream channel, since the additional erosion may have a negative impact on water quality in the Guadalupe River watershed.

**Response E.8:** The comment omits text from the SEIR that immediately follows the paragraph cited above, which states: “The project includes a modification of the existing Tuscany Hill detention basin to increase the basin capacity and modify the outlet structure to utilize the detention basin as an HMP basin for the project’s drainage area. The proposed basin would detain the runoff from the larger developed project drainage area to meet the HMP flow duration requirements for the existing condition runoff for the smaller existing drainage area. Therefore, the project would have a less than significant impact on erosion and scour in Canoas Creek or Guadalupe River.” As evidenced by this text from the SEIR, measures included in the project would prevent significant impacts associated with erosion and scour in Canoas Creek and Guadalupe River.

**Comment E.9:** This section of the SEIR also includes the text:

The portion of the project site on the north side of Communications Hill is located within the Coyote Creek watershed. The project would not divert additional drainage area from the Guadalupe River watershed. However, the operation of the quarry on the project site has modified the historic drainage conditions for the area. Prior to construction of the UPRR and the quarry, runoff from the north side of the hill drained overland toward Coyote Creek to the north. The railroad originally included cross culverts to allow drainage under the railroad. During the quarry operation period, drainage from the quarry area was retained on-site, and the cross culverts were abandoned or blocked. Therefore, the historic flow pattern with drainage to Coyote Creek was interrupted. The project would restore the drainage discharge from the site and therefore would increase the runoff to Coyote Creek which may slightly increase erosion or siltation in the Creek, but not at significant levels.

The SEIR should have provided more support for the assertion that Project impacts to Coyote Creek would not be significant.

**Response E.9:** The SEIR text cited above is a condensed version of the analysis contained in the Hydrology and Water Quality Analysis completed for the project, which is included as Appendix J to the SEIR. The Hydrology and Water Quality Analysis contains the following language, which explains in more detail why the project would have a less than significant

impact to Coyote Creek: “The applicant and the City of San Jose has reviewed the Project with the RWQCB staff to clarify the HMP requirements for the Project. The connection of the Project to the City stormdrain system which discharges to Coyote Creek would be considered a restoration of the historic natural condition and would not be considered a diversion or increase in drainage area. The Project would be required to meet water quality and HMP requirements for new development as described in the NPDES permit. The Project includes HMP basins for the residential area and industrial areas which drain to Coyote Creek to detain development runoff to the flow duration conditions of the pre-development conditions.” The project includes measures, such as compliance with HMP requirements in the NPDES permit, to ensure the project would not result in significant water quality impacts to Coyote Creek.

**Comment E.10:** Comment 6. Section 4.9 Hydrology and Water Quality, 4.9.3.2 *Hydrology and Drainage Impacts, Stormwater Drainage Capacity*

This section of the SEIR includes the following text:

As described above, the project would modify the existing Tuscany Hill detention basin to detain runoff from the larger drainage area to control the peak flow from the project site to be less than the undeveloped runoff condition for the 10-year and 100-year design storms for both the Tuscany Hills development and the project development.

Please note that the hydromodification control requirements of the MRP require that flow duration controls be designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations from 10 percent of the pre-project 2-year peak flow up to the pre-project 10-year peak flow. Controls that address only the 10-year and 100- year design storms are not sufficient.

**Response E.10:** The reference to 10-year and 100-year storm flows in the SEIR text cited in the comment relates to the existing drainage system per the original design criteria for the Tuscany Hills detention basin. The project proposes to modify this basin to accommodate drainage from the proposed project. During preparation of the Hydrology and Water Quality Analysis for the project, which is included as Appendix J to the SEIR, an analysis was completed that determined the modified detention basin proposed by the project would adequately mitigate for the increased flows for the project per the current MRP requirements. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**F. RESPONSES TO COMMENTS FROM JEAN DRESDEN, DATED JULY 17, 2014**

**Comment F.1:** Thank-you for the opportunity to review this environmental document. I especially appreciate that staff posts the supplemental reports as I am very interested in their contents. Regularly, I review the historic reports to learn content that I do not know or is difficult to obtain.

This historic report is not up to the high standards that the City of San Jose expects of its contributing consultants. This entire report should be reviewed by another consulting historian with special emphasis on the native period since the potential for loss of historic information is so great. I reviewed the Historic Period and found many deficits. I can't review the archeological data since the database is kept restricted. However, the deficits in the historic period report are so great that it casts doubt on the quality of the rest of the report.

**Response F.1:** Section 4.5.1 of the SEIR describes an overview of the prehistoric and historic resources located on the site and in the project area. Additional detail can be found in Appendix F of the SEIR including an overview of previous property owners of local and regional importance. Archaeological data is available for review at the City offices and is not included in environmental documents due to their sensitive nature.

The report for the project was completed according to the requirements of the City and CEQA and is considered to be an overview of the history of the site. The level of detail provided in the report is what is required to determine if the project has the potential to result in significant impacts to historic resources that may still be present on the site. The California Historic Resources Information System, Northwest Information Center at Sonoma State University is considered by professional historians to be the most comprehensive sources of historical information in northern California.

Historical resources are recorded at the Northwest Information Center; therefore, the information provided is used to determine the potential to encounter physical historical sites during construction. As described in the SEIR, the only historic era dwellings in the project site area were structures associated with the American Dairy Company Farm. These dwellings were not determine to be historically significant and have been removed.

The evaluation of the site for historic resources was conducted according to the requirements of the State Office of Historic Preservation, the City's Historic Preservation Ordinance, and the CEQA Guidelines. As stated in Section 4.5.2.3 of the SEIR, there are no historic structures on the site; however, there is a potential that the project could affect at yet unknown subsurface historic resources. Mitigation measures are included in the project to reduce these potential impacts to a less than significant level. The amount of information contained in the historic evaluation supports this conclusion. Further historic details are not needed to meet the requirements of CEQA. This comment does not refer to the CEQA conclusions of the SEIR and no further response is required.

**Comment F.2:** Several factors raised my concern immediately, among them:

The bibliography cites Wikipedia as a source for Lewis Manly. Citing Wikipedia is sufficient cause for high schools, colleges and universities, and all professional historic journals to reject a paper— unless the research paper is an analysis of the inaccuracies in Wikipedia or sociological behavior of crowd-sourced Wikipedia. Wikipedia has no place in a professional paper. The city should reject any comment in this report derived from Wikipedia. The city should remove from the accepted consultant list anyone who uses Wikipedia as a source.

The bibliography contains no reference to the most important printed Santa Clara document of the 1880s---Horace S. Foote’s Pen Pictures from the Garden of the World-Santa Clara County, containing 672 pages of history and biographies of the eminent persons of Santa Clara County. This book is widely available throughout the county and more importantly, it is fully searchable online in Google Books. The comments within the narrative of the report made clear the author didn’t search this book as many details that the consultant dismisses or claims are “not available” can be found in this book!

The 1886-7 Brainard Maps apparently were not consulted.

The paucity of newspaper references. The San Jose Mercury archives from the 1880s to 1922 are fully searchable in a free online database. Fully searchable online articles from San Francisco newspapers and other communities around California covering from the 1850s to 1922 are available for free through the UC Riverside Digital Collections. Further, additional newspapers are available at charge. Importantly, the people and situations the consultant dismisses as unknown are found in these newspapers. One of them was a state legislator!

The number of suppositions contained within the report---“probably” this or that without any apparent effort to check the supposition using the free databases and online resources, not to mention hard copy materials in local archives.

The apparent non-use of the extensive holdings of History San Jose, the County Archives (operated by but separate from the County Recorder), the California Room, the Sourasseau Society, and San Jose State’s Special Collections, specifically on mining. Nor does it appear that the University of Santa Clara’s holdings on the Spanish and Mexican periods were consulted as evidenced by claims such that the San Juan Bautista Hills were not used for running cattle.

**Response F.2:** Please refer to Response F.1. The Northwest Information Center incorporates information recorded during historic evaluations completed by historic professionals, including some of the sources listed in the comment above. It is the opinion of the commenter that Wikipedia is an unreliable information source and its use has no place in a professional paper. Wikipedia is often utilized by professionals for preliminary research and to clear up the misspelling of person’s names, which can be very problematic in historical research, as the commenter notes in Comment F.5, below. Its use, which was supplemented with a myriad of other sources, has not affected the SEIR’s conclusion that impacts to historical resources will be less than significant with mitigation incorporated.

**Comment F.3:** Some Environmental Concerns:

The report contains relative lack of detail about the Mines, other than they were low volume. Not all the names of the mine were mentioned for the mine as recorded in Mining literature. There was a furnace on site and at least 4 entry tunnels scattered over the hillside from roughly opposite Estahan Court's terminus to Pullman Way. Considering all the planned grading, I hope the geological report goes into further detail about the stability of those tunnels, as well as other tunnels with locations that would be more clear if searches were made under all of the names. Wouldn't the geotechnical consultants depend on the historic consultants to find all the names of the mining firms on this hill? Also, I hope the geotechnical report integrates the Water Resource Board comments about the site and the tailings that were not visible on the surface according to the water board. Perhaps, the tailings were used to fill the mines and shouldn't someone check that—I hope that is in the geotechnical report. The maps in the history report indicate possible quarries but not the mine entries.

**Response F.3:** The history of the mine on the site and their geophysical characteristics are discussed in Sections 4.5.1.3 and 4.8.3.2, respectively. While the mine may have had different names over time, as the commenter notes in Comment F. 5, below, there is just one mine located on the site. A detailed analysis (Appendix I) of the mines has been completed including underground mapping, excavation work to identify portal locations, directional drilling, and geophysical analysis. Four mine portals have been identified. The analysis was completed to determine the potential for mine collapse and develop a Mine Backfill Work Plan.

It is anticipated that mine tailings are spread throughout the mine area, given quarry reclamation efforts over the past 20 years. Soil sampling conducted on-site is described in Section 4.6.3.2 of the SEIR. Contaminated soils have been identified and a Soil Management Plan will be developed during the PD Permit phase of the project that describes soil remediation measure and procedures. This comment does not refer to the conclusions of the SEIR and no further response is required.

**Comment F.4:** Schuetzen Park operated from 1903 to at least World War I as a picnic grounds and competitive shooting range. It is mentioned as a well-known location until at least the 1930s, so it may have been operational at that time. The users fired into the hillside and onto the hill that is about to be developed. There may be live unexploded ammunition in the hillside. Although historian Clyde Arbuckle referred to a "Farewell Club" party in 1912, it was not the closing of the park to shooting. Likely, World War I brought about the need to call the park something other than a German word. In addition, when the park changed hands in 1903, a plan was made to build a scenic cable train to the hilltop of the proposed development. The California Room database shows there is additional information on the operating of the park and the possible train.

**Response F.4:** It is doubtful that live unexploded ammunition is located on the project site, as none has been found during any of the field surveys (biological, cultural, geotechnical, hydrological, hazardous materials, etc.) conducted on the site over the past 20 years. In addition, bullets were not found during the quarry remediation activities. The small caliber rifles that were used in the early 1900s used lead bullets that would have been inert, not live.

If the shooting occurred, the projectiles would be small pieces of lead imbedded in the dirt and would not be of concern during future development. This comment does not refer to the conclusions of the SEIR and no further response is required.

**Comment F.5:** Some details and corrections that should have been in the report

In this section, I highlight a few things the consultant couldn't find or mis-stated that I discovered in the past 3 days using free online primary sources and secondary sources from the time period, eg Pen Pictures from the Garden of the World. This is not meant to be comprehensive but suggestive of the inadequacy of the consultant's report. I did not search everything because I started this project too late and there is a July 18 deadline. I'm confident more could be found on items the consultant says "there is no data." Who knows what would be discovered with more comprehensive analysis.

Clemente Colombet. (See page 12 of report)

The consultant wrote that the properties were owned by Charles T. Colombet. However, the two subject properties were owned by Pioneer Clemente Colombet in 1876. After his death, in 1885, his lands were dispersed among his children. One parcel on the Northwest next to MD Kell became Clem Colombet's property. The western property transferred Charles Thomas Colombet. The Brainard Atlas of 1886 makes clear how the properties were dispersed.

Note that the consultant's comments don't make sense. He wrote that Charles Thomas Colombet was a prominent stock dealer according to Sawyer 1922, but in the next sentence he wrote that Charles Thomas Clemente is not included in local histories or biographical sketches and includes Sawyer 1922 as an example of a place where there is no reference to him. It can't be both.

Pioneer Clemente Colombet's biography is in Pen Pictures of the Garden of the World. The Thompson and West map of 1876 refers to pioneer Clemente Colombet (1817- 1885) who owned the subject land and lived on it until his paralytic stroke of 1878. Shortly thereafter and before 1880, he moved into town, with his second son Thomas C. Colombet living on the property and farming.

Pioneer Clemente Colombet operated a San Jose store and then married Ann Kell in 1851. Ann Kell was grand-daughter to Martin Murphy Senior. Colombet built the brick block on the west side of Market Street and called it the San Jose Hotel which was renamed the Cosmopolitan by 1888. His wife's kin, Martin Murphy built the brick buildings across the street. In the late 1850s, the Colombet family moved to Mission San Jose where he had an award winning winery and a store. After living in the Mission San Jose and Warm Springs area, he returned to San Jose in 1869, having at some point purchased the subject land from his in-laws Thomas and Margaret Murphy Kell. Margaret Murphy Kell was a member of the large and famous Martin Murphy Senior family, making Mrs. Ann Kell Colombet the grand-daughter of Martin Murphy Senior. A map of Colombet's and Kell's property is also available on the 1886 Brainard map of Almaden Road.—available online in Digital Online Archives of California. (A map of the Catholic Cemetery donated by the Kells is available from the Archdiocese. This cemetery was relocated for the freeway.) Eldest son Joseph Clemente was the City Treasurer and executor of his father's estate. Colombet's estate was valued at \$112K. At the time of

Pioneer Clemente Colombet's death in 1885, there were 7 living adult children and a widow; the estate did not settle for many years.

The Thompson and West 1876 map shows the property "Kelty & Ryan." According to Pen Pictures, Michael Ryan was Colombet's tenant farmer for the 110 acres next to the Kell's from 1877 but Ryan also raised grain on his own acreage on Foxworthy Avenue—across the Guadalupe River from J.W. Pearl's property. Mr. Thomas Kelty's biography is featured in Pen Pictures. He partnered with Michael Ryan for the property adjacent to the Colombet's.

Milus Gay (See page 13 of the report)

Milus Gay (1811-1878)

Milus H. Gay (1842-1894)

Henry Milus Gay MD (1873-1939)

Contrary to the consultant's claim that little is known of Milus Gay—quite a bit is known about him, his son, and his grandson.

Note: some documents have these men listed as Milius Gay, some list Milus Gay, some list Miles Gay.

First, Milus Gay senior's papers about his gold rush experiences are advertised as collectibles and are quoted in a various gold rush histories and books. I don't know where they are archived nor how extensive a collection he left behind.

Mr. Milus Gay (1811-1878) and his son Milus H. Gay (1841-1894) were featured prominently in the book *Pen Pictures from the Garden of the World*. They came across the plains in the early 1850s, buying the first part of the subject ranch in 1853—eventually expanding to 500 acres. A chain of title is available at History San Jose from 1850 for the first 24.35 acres. Forty acres was withheld from the 500 acre piece to become Oak Hill cemetery. The elder Milus Gay died in 1878; his wife in 1874. Their son Milus graduated from University of Pacific in 1865, taught in Los Gatos, became the chair of the languages department at UOP, read law, became a deputy clerk, then founded a bank in Ventura County, serving as manager and cashier. When his dad died, he came home and took over the ranch. In 1880 Milus H. Gay was nominated then elected to the California State Assembly. Also, he served on the Franklin School Board from 1878. In 1882, the City bought the cemetery lands from Milus H. Gay and in 1883, Miles H. Gay became the Superintendent (Sextant) of Oak Hill Cemetery. In 1884, Milus H. Gay served as the secretary of the Republican convention, too.

By 1886, about 175 acres of the Milus Gay holdings were sold to Tyler Beach and his "Beach Hill Farm."

When Milus H Gay's estate was settled in 1895, he had the quarry and 500 shares of the cemetery. While he had a lot of land in Santa Clara and Santa Cruz counties, his estate owed a large sum of money, too. His son, Henry M. Gay purchased the "Quarey Plant" in 1895 from his father's estate. According to newspaper reports from 14 May 1901, HM Gay et al sold 71.176 acres part of the 500

acre lot 3 S for \$2750 to Charles Doerr et al who immediately sold it to San Jose Schuetzen Park. “Charles Doerr et al” referred to members of the Turn Verein, German benevolent association. Charles Doerr was a baker who rose to prominence in his benevolent association, downtown investments, civic affairs, and sat on the city council.

William H Hall – page 13

The name “William Hall” is a very common name and the consultant seems to be creating one person from citations that are “William Hall”, “WH Hall”. They may not be the same person.

By way of explanation, there was a William H. Hall who was a partner with Warren Hall of the stagecoach company in 1854. Arbuckle wrote this was William Henry Hall. Warren Hall left the area when they closed the local company and reconfigured soon thereafter. By 1860, Warren is in San Diego County.

In 1870 Census there were three adults: William G, William H, and William S. William H Hall was 47 and a county supervisor living in Ward 2 of the City of San Jose. William S. Hall was in Redwood Township and could have been the William Hall of the Cupertino area vineyard contracts mentioned by the consultant’s report. Sawyer [page 141] referenced William Hall only. The southern part of present-day Cupertino is in Redwood Township.

In the 1880 Census, there were four adult Halls, William in Alviso, William in Ward 1 and living as a boarder (probably in a hotel), William S. in Redwood Township and William Henry Hall—but recorded under his nickname “Bud”. Bud’s biography is featured in the 1922 Sawyer history book—page 1286. Soon after he married in 1873 he acquired property 4 miles south of San Jose. Notably, “Bud” Hall [William Henry Hall] was reared by his extended Cottle kin after his father died. And there are large Cottle holdings just south of the WH Hall property in the 1876 Thompson and West property. Since Bud’s biography in Sawyer explains that he sold the land about 4 years later, a quick search of County Recorder records could resolve the issue.

The consultant claimed the wealthy Mr. Hall owned 4000 acres with citations from Arbuckle page 96 and Sawyer page 163, I can’t find evidence of this 4000 acres on those pages. His self-reported worth in the Census is too small for an owner of that much land.

There’s no doubt that there was a wealthy William H. Hall but was he the owner of the subject property? Or was the younger William Henry Hall the owner of the property in the 1870s?

M. D. Kell page 14

The consultant wrote that M.D. Kell may have been related to Thomas Kell. Had the consultant used Pen Pictures and freely available online census records, the relationships would have been clear.

M. D. Kell is Martin D. Kell the son of Thomas Kell. Martin Kell’s biography appears in Pen Picture from the Garden of the World. Martin’s mother was a Margaret Murphy, and his grand-father was Martin Murphy Senior, the famous patriarch of California’s famous Murphy family.

Thomas Kell, Martin's father, died in 1878 after a long period of invalidism. His mother Margaret Murphy Kell died in 1881. Martin's younger brother Thomas B. became owner of the old homestead and the property is clearly labeled "T.B Kell" in the Brainard Atlas of 1886.

Martin D. Kell was prominent of civic affairs, serving from 1875 to 1878 as Deputy Roadmaster. He served as a county supervisor starting in 1878 and was undersheriff for 4 years. He owned 88 acres as of 1888 mostly general farm, but 5 acres was orchard.

William Lewis Manly page 14

Contrary to the consultant's claim, WL Manly is in local history books. He is featured in Foote's 1888 Pen Pictures from the Garden of the World, but more is available from local searchable free online historic newspapers. Certainly, there is no need to depend on the crowd-sourced Wikipedia that can be changed on a whim by anyone.

Although there are variations of the spelling of his name in sources such as Wikipedia—he signed his name as "Manly" in the photo in Pen Pictures and both his tombstone and his wife's tombstone in Woodbridge California used "Manly."

Manly purchased his property in 1849 and kept ownership until the time of his death in 1903. The 1880 Census still has him at the old homestead. At some point after 1880, he retired from active farming and moved to the College Park neighborhood---Stockton Avenue near Elm.

Manly served as a director for the Union Flour Mill which was established in 1887. From at least 1891 to 1900, he was a director of the Farmer's Union, a major political force in San Jose. His wife's passion was the floral fair.

When Manly died in 1903, his executor AC Manly sold his properties: 205.6 acres went to Glenn Lombard (Glenn Lombard) and 44 acres to Elizabeth [Elisabette] Kohrs.

Tyler Beach page 15

Tyler Beach's biography is also given in Pen Pictures... The Brainard Atlas of 1886 shows that he called the subject property "Beach Hill Farm," having acquired the land from Milus Gay. As the consultant mentioned, Beach was the owner of the St James Hotel. By the mid-1880s, it was the pre-eminent facility, having been expanded twice. His advertising explained that guests received fresh milk and meat from his property south of town—Beach Hill Farm. At his stock fair, he kept 50 varieties of poultry and 20 milch cows.

In 1887, his biography appeared in the Pacific Rural press. It included a reference to a quicksilver mine on his property that he was not working due to low prices of Quicksilver. This refers to the property on Communication Hill.

Beach also is featured in Oscar Tully Shuck's 1875 book Sketches of leading and representative men of San Francisco. At that time, Mr. Beach also operated a large paint manufacturing company, California Chemical Paint Company.

Beach retired from St. James Hotel in 1899, but his manager died shortly thereafter. Beach died in 1904.

Oscar Promis and G. Promis page 15

The consultant did not know the relationship between Oscar and G. Promis. Oscar Promis was born in 1854 in San Francisco to Geraud Promis, a French immigrant. The family moved to Victoria British Columbia in 1858 where Geraud became a grocery retailer. The family lived there until 1873 acquiring downtown Victoria property. Oscar moved to San Jose when he was 18 and eventually became a real estate developer making many trips to Victoria in his lifetime. His name appears on many hotel guest lists published in old newspapers.

One of Oscar's developments, the "Promise Block" in Victoria is on the Canadian National Historic Register. It is a downtown retail block.

Oscar Promis and his father operated a crockery and glassware shop in downtown San Jose. Geraud Promis died in November 1896.

In 1911 Oscar Promis was the president of the United States Laundry. By 1922, he was part of the ownership team for San Jose Foundry.

A mining bulletin, Volume 22 referred to Oscar's mine as the "Chapman Mine."

Scheutzen Park

Scheutzen Park was a recreation facility and shooting range acquired by the Turn Verein, a German social and political group. Their first mention of their park that I found is July 1896. They acquired 71.75 acres from H.M. Gay in 1901 according to newspaper reports. More likely, this is when they recorded the deed, since HM Gay bought the property from his dad's estate in 1895.

Although Arbuckle claims the park ran until 1912, this is an error. A newspaper article refers to the "Farewell Club" as the last picnic of the year. Yet, subsequent newspaper articles show that the park operated thereafter, including January 1913 for a shooting contest. The park had pavilions and shooting ranges. Many shooting contests were held at the park.

In 1903, ownership/operation of the park was transferred to Jungblat and Doll (Boll?). They had plans to build a tram to the top of the hill suggesting that they had cooperative agreements with the hillside property owner, eg, the mine owner.

With the advent of World War I, other San Jose German companies changed their names to be less German. Perhaps, the park also did making it hard to track its operation in free online databases that

only cover up through 1922 due to copyright restrictions. It is not known when it ceased operations. However, a published court case from 1932 includes Schuetzen Park as a geographic location of an auto accident.

#### Hillsdale Quicksilver Mines

There's no doubt that this is a small mine. This mine was operated under many many different names and details about its shafts, adits, and furnances are buried in many different reports under those different names.

Some of the names I have discovered:

Shaboya, Chaboya, Hillsdale, San Juan Mine, San Juan Bautista Mine, Bell Mine, Harper Mine, Beach Mine, Chapman, New Discovery Quicksilver Company.

A state mining bulletin indicates that it has more than 4000 ft of underground works. The reduction plant had two 12 pipe retorts.

From the same report, it was worked to 1874 and idle from 1874 to 1892 when R. H. Harper took it over until 1907. It was taken over in 1915 and a little bit of production. By 1922, newspaper articles showed it was arrears for unpaid taxes.

R.H. Harper is really Captain Robert Bailey Harper. Sawyer has a biography of Captain Robert B. Harper who worked in the mining industry, including the Almaden Quicksilver mines. Sawyer reports that he purchased the "old Chapman mine" and operated it for three years. Harper's biography as a mining specialist is very extensive in the Sawyer book.

So somehow, RB Harper became RH Harper in a mining bulletin obscuring its history.

The report does not mention the analysis of the California State Resource Board although it does mention other mining reports.

#### Elizabeth Kohrs

Elizabeth Kohrs is mentioned in different spots of the report and mentioned as an unknown. She is the wife of Frederick Kohrs. She is also known as Elisabette and her husband was Frederick Kohrs. She died in 1921 and he died in 1922. Some newspaper articles indicate property sales in and around her. A mining book has her as the owner of the mine in 1921.

Other than that, I didn't find anything of significance for the family.

#### Joseph Barba

The consultant wrote that nothing was known about Joseph Barbo. Perhaps, a search for "Joseph Barba" would have been more productive. He was a well-known rancher with property on Stone Avenue. In 1919, his daughter was the accused murderer of a man who gave her unwanted sexual

entreaties. Barba is shown on a county map dated Dec 1, 1914 with Joseph Barba, Eliz Kohrs, and Warren Cottle.

#### John Quincy Pearl

John Quincy Pearl was an early pioneer. Pearl arrived in the valley in 1852 buying 500 acres. He traveled via the Isthmus. He was part of the Young Men's Social Club organized in 1858. He was a member of one of the city's first volunteer fire fighting companies and he was a founder of the Pioneer Irrigation Ditch Company and active in the Santa Clara County Agricultural Society.

At first, he raised cattle, then moved into dairying, by the 1890s it was mostly fruit and grain. At some point, he moved to town with a home on 256 North 4th Street.

Pearl died there in 1913 after a six month lingering illness. His obit referred to him as a respected pioneer. The California pioneers took charge of his funeral and he is buried at Oak Hill.

He was married to Sophie Hanks and had 5 children. Pearl Avenue is named for him.

Information about his farming operations can be found in both the Thompson and West Atlas and the Brainard Atlas.

#### Summary

The historic section of the report is inadequate and used flawed sources (OMG! Wikipedia!!). The consultants didn't use important sources nor did they use free high quality online databases. It is not possible to evaluate the pre-history portion of the report due to the secure databases. A separate consultant should evaluate this report for the Native American data.

The mining history and the Scheutzen park history suggest possible concerns to the property.

I'd be pleased to share with the consulting company the sources of the free online high quality resources that they could use for this and future reports.

**Response F.5:** Please refer to Responses F.1-F.4. The information contained in this comment is a valuable supplement to the information in the Archaeological Evaluation prepared for the SEIR (Appendix F). However, additional details related to persons with some connection to the project site do not constitute significant additional information that would have resulted in different impacts to cultural resources than those identified in the SEIR. The report prepared for the SEIR was prepared according to the requirements of the City of San José, State Office of Historic Preservations, and the CEQA Guidelines. The information provided in this comment can be added to the San José History Room, which maintains individual files of various personages important to San José History.

**G. RESPONSES TO COMMENTS FROM MILLPOND MOBILE HOME COMMUNITY, DATED JULY 18, 2014**

**Comment G.1:** In the bidding process on this Project, KB Homes has the absolute responsibility of awarding bids to Sub-contractors that will follow the regulations set forth by the City, State and Federal governments regarding grading, dust, asbestos, mercury findings and blasting if required. By KB Homes following these regulations it will protect the residents of Millpond Mobile Home Community (for those 55 and older).

**Response G.1:** It is the intention of KBHome and the City of San José that reputable subcontractors will be utilized for construction of the project. The project will be required to implement all mitigation measures identified in the SEIR, including those pertaining to construction-related air quality, noise and vibration, and hazardous materials impacts (MM NOI-3.1, MM AIR-1.1 and 2.2, and MM HAZ-1.1, 1.2, and 2.1). As the comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment G.2:** The following issues are of very great concern to the residents of Millpond Mobile Home Community. We request that your attention be directed to the following items:

**#1 FENCING**

The fencing is necessary to provide security and privacy to the residents of Millpond Mobile Home Community. Minimum of eight feet, solid, interlocking, no maintenance material similar to the fencing along the railroad tracks to the east of Millpond. Landscaping and Evergreens similar to the east of Millpond should also be used. The fence would ensure the security of the residents as well as provide a sound barrier during construction and after. We would request this fence be installed prior to KB Homes breaking ground on Communications Hill.

**Response G.2:** It is assumed that appropriate fencing consistent with City requirements and design guidelines will be included in the proposed project. The specific design details of the fencing will be determined during the PD permit stage of development on a phase by phase basis. KBHome will work with the City and residents to design and construct appropriate fencing as development proceeds. As this comment does not refer to the environmental effects of the project or the conclusions of the SEIR, no further response is required.

**Comment G.3:** #2 TRAILS

The proposed trails should be 30- 40 feet away from the perimeter fence. Landscaping installed between the fence and trail. Surface should not create dust when used. Trail should be limited to pedestrians and bicycles. Trails posted, stating no motor bikes, scooters or horses allowed. Closed at sunset.

**Response G.3:** The proposed trails have not yet been precisely located or designed. Once the alignments are determined, they will be constructed consistent with all City trail policies. Class I (road separated) trails in the City are paved and do not allow motorized vehicles, except for motorized mobility devices. The hours of operation of

trails is one hour before sunrise and one hour after sunset. A complete list of trail hours and rules can be found at [www.sanjoseca.gov/index.aspx?NID=2885](http://www.sanjoseca.gov/index.aspx?NID=2885).

All City rules of trail operations would be enforced on the proposed trails on and near Communications Hill. This comment does not refer to the conclusions of the SEIR or environmental effects of the project. No further response is required.

**Comment G.4:** #3 TRAFFIC

You are well aware of the current traffic congestion in the Curtner Avenue Canoas Garden area between Old Almaden and Monterey Road. With the vehicle and foot traffic on Friday evenings from the Mobile Gourmet Dining Trucks at the VTA parking lot and the Cathedral of Faith traffic Friday and Sunday, traffic from the apartments, the residents of Millpond Community have to plan 30 minutes to 1 hour ahead to be able to get to their destinations on time during these times. We virtually feel trapped in the Millpond Pit! Hillside to the South, Curtner Avenue to the North, Railroad and Hwy. 87 to the East and the VTA tracks to the West. Each of these items create even more congestion and more dust, thus more poor air quality.

**Response G.4:** The traffic analysis completed for the proposed project (Appendix B of the SEIR) evaluated intersections in the project area according to the requirements of the City's Level of Service Policy. Intersections are evaluated for the weekday AM (typically between 7:00 and 9:00 AM) and the PM (typically between 4:00 and 6:00 PM) peak hours. Friday evenings during the peak hour are not evaluated specifically; however, the traffic during these hours is included in the overall traffic analysis. Saturdays and Sundays are not included in the analysis because traffic is typically reduced during non-commute days.

The conditions described in this comment are existing conditions. Traffic generated by the proposed project and levels of service at area intersections during the weekday PM peak hour were evaluated, including the intersection nearest the location described above (Canoas Garden Avenue/Curtner Avenue). Impacts at this intersection are estimated to be less than significant with the addition of traffic generated by the proposed project.

Traffic-generated air quality impacts of the project traffic were analyzed in the air quality report (Appendix E of the SEIR). The project would result in long-term air quality impacts (Impact AIR-2) related to traffic emissions. Implementation of mitigation measures identified (AIR-2.1 and 2.2) would reduce air quality emissions, but not to a less than significant level. This same impact was identified previously in the Envision San José 2040 General Plan Final EIR.

For the reasons listed above, traffic and air quality impacts have been accurately identified in the SEIR. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment G.5:** As we mentioned at the meeting with KB Homes, Curtner between Old Almaden and Monterey Road needs to be studied very carefully. There are too many traffic lights, too many freeway exits dumping onto Curtner and too many on-ramps for HWY. 87 to absorb in such a short distance. Increasing on-ramp lanes to get onto Hwy. 87 while removing maybe 30 cars off Curtner is not nearly enough, since KB Homes is planning on building over 2,000 residences.

**Response G.5:** Please refer to Response G.4. Traffic impacts were evaluated based on the City's Level of Service Policy, including impacts on Curtner Avenue. The CHSPADP includes improvements to Curtner Avenue and the on-ramps to SR 87 between the locations described in the comment to reduce traffic congestion related to freeway access. The City believes these improvements will reduce overall traffic congestion and vehicle miles traveled consistent with General Plan policies. Additionally, the project will continue to have access from Communications Hill Boulevard to the south of the site at Hillsdale Boulevard. For these reasons, the City believes Curtner Avenue was adequately studied.

**Comment G.6:** #4 RIDGELINE VIEW

We have requested and would like to see renderings of the ridgeline above the Millpond Community hillside homes. We are told that the homes were anywhere from 20 to 30 feet above the ridgeline, but KB Homes is rethinking that. We would like to see the view of the completed Phase IV, and how much of the homes will be visible. At this juncture KB does not have an answer for us. Because it impacts the privacy of all the residents of Millpond Mobile Home Community, we are requesting the Phase IV be pushed back so that only the rooflines will be visible.

**Response G.6:** Based upon the current site and grading plans, residential units constructed as part of the project would be visible to the Millpond neighborhood as shown on Figures 4.17-8 and 9. As stated in Section 4.17.3.2 of the SEIR, the proposed project would be designed consistent with the City's design guidelines and applicable General Plan policies to reduce visual impacts. However, the development of the site would significantly change and degrade the existing visual character and quality of the site as compared to existing conditions. This impact was identified in both the original CHSP (1992) and the Envision San José General Plan EIRs. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment G.7:** #5 GRADING

We wish to know how much grading is anticipated on the ridgeline above Millpond Mobile Home Community. We are told the project will take 10 to 15 years to complete. We need to know if all the grading will be done at one time, or will we be exposed to the construction dust and asbestos dust for the next 10 to 15 years. Given the state of some of our resident's health, this is a serious concern to us. KB could not answer that for us at this time, but we feel it should be answered before the project is allowed to move forward. We are aware the residents living up there have signed waivers, however, none of the residents of the Millpond Mobile Home Community have signed any waivers and the quality of our life in the final years is paramount to us.

**Response G.7:** Please refer to Response G.6. The construction-related air quality impacts of the project are described in Section 4.4.2.3 of the SEIR and assume a first mass grading with additional grading occurring on a phase by phase basis. Since the SEIR circulated, the applicant has determined that a first mass grading may not occur and land would be graded as phases are constructed, thus reducing the number of years over which grading would occur. Therefore, the air quality analysis over-estimates impacts during construction.

Impacts have been identified related to fugitive dust, construction exhaust, and toxic air contaminants. Mitigation measures are included in the project to reduce these impacts, although impacts associated with fugitive dust and construction exhaust would not be reduced to a less than significant level. Impacts associated with toxic air contaminants (cancer risk) would be reduced to a less than significant level. These measures are included in the project and will be required as a condition of approval. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment G.8:** #6 CITY PROPERTY AT THE ENTRANCE OF MILLPOND

After much discussion, we feel this should be left as open space. A garden, park or dog walking area would only become an attractive nuisance. We, the residents of Millpond Mobile Home Community would be responsible for the clean-up. As it is now, we pick up a lot of trash every couple of weeks. With the Jack-in-the-Box in close proximity and the Mobile Gourmet Dining Trucks every Friday night, we would be picking up wrappers and food containers as well as dog feces constantly.

As residents we have also noted the presence of police and arrests being made every Friday night, and we fear the violence will find its way to our residents and make it unsafe for them to take their dogs out to walk in the evenings.

**Response G.8:** The property described in this comment is, in fact, owned by the City. The project applicant has no control over the uses or development of this site. The City has no imminent plans to develop the property and will take the opinions of the Millpond residents regarding uses and safety under advisement. As this comment does not refer to the environmental effects of the project or the conclusions of the SEIR, no further response is required.

**Comment G.9:** The Communications Hill development that is completed has the very bad reputation of attracting outside visitors that are destructive, noisy and abusive to the residents. We fear that the trails will attract the same individuals to the Millpond side of the hill. We need assurances that you are finding a solution to this problem immediately.

**Response G.9:** The comment is the opinion of the Millpond representatives. The CHSPADP includes trails that would be constructed according to the requirements of the City of San José taking into account access locations and safety features. As this comment does not refer to the environmental effects of the project or the conclusions of the SEIR, no further response is required.

**H. RESPONSES TO COMMENTS FROM THE SANTA CLARA VALLEY AUDUBON SOCIETY, DATED JULY 18, 2014**

**Comment H.1:** The Santa Clara Valley Audubon Society (SCVAS) has reviewed the Draft Subsequent Environmental Impact Report (DSEIR) for the Communications Hill 2 Project (Project). The proposed project site is currently an island of open space that provides habitat to common and rare plants, birds and wildlife. It is adjacent to designated and occupied burrowing owl habitat on Dairy Hill.

SCVAS' mission is to preserve, to enjoy, to restore and to foster public awareness of native birds and their ecosystems, mainly in Santa Clara County. As stewards for avian species and their environmental resources, we are always concerned with any development that may consume wildlife habitat and/or access to surface water. We are also concerned with the diminishing opportunities for city dwellers to access nature near their homes. We see the Communications Hill 2 Project as one that sprawls into remnant habitat, and should result in a great loss to wildlife and to San Jose residents.

Please accept the following comments:

Water Supply Assessment Pursuant to Section 10912 of the California Water Code, a Water Supply Assessment (WSA) is required for this Project. CEQA Guidelines also require that a Water Supply Assessment be conducted for projects of this scale, and that projects that do not have adequate water supply not be approved. No Water Supply Assessment has been conducted for this project. Instead, the project appears to be deferring to the City-wide Water Supply Master. This deferral is impermissible and leaves the EIR without an adequate water supply analysis. It also results in a project that apparently has an inadequate water supply and, therefore, cannot be approved without conflicting with state law. These decisions require an EIR to evaluate potential sources of new water if supplies are found to be inadequate. This EIR fails to do so. A WSA must be prepared for the project and evaluated in the EIR. If supplies are found to be inadequate, then the EIR must discuss "possible replacement sources or alternatives and the environmental consequences of those contingencies." (*Vineyard*, p. 432). *Vineyard* (p.431) goes on to say, "An EIR may not ignore or assume a solution to the problem of supplying water to a proposed project."

**Response H.1:** A Water Supply Assessment (WSA) was prepared by San José Water Company (SJWC) in 2010 for use by the City in preparing the WSA for the city-wide Envision San José 2040 General Plan. SJWC is the water retailer for the project area, including the project site. The SJWC's WSA determined the projected water demands of the growth assumed in their service area for residential uses (service population) and jobs. The past and projected service population for 2035 is estimated to be 1,049,502 and the jobs are estimated to be 566,695 (Tables 3 and 5 of the WSA). The development proposed by the CHSP 2 project (2,200 dwelling units, 67,500 square feet of commercial, and 1.45 million square feet of industrial park development), which has been part of the General Plan since 1992, is included in the overall growth assumed.

California Water Code Section 10910(h) provides that a project that was included in a prior WSA meeting the requirements of Section 10910 may rely on that prior WSA if it concluded water supplies would be sufficient to meet projected demand, unless one or more of the following changes occurs: (1) changes in the project that result in a substantial increase in water demand for the project, (2) changes in circumstances substantially affecting the public water system or city to provide sufficient water supply for the project, or (3) significant new information becomes available that could not have been known at the time the WSA was prepared. The project does not propose substantial changes to the General Plan that would increase water demand for the project. Additionally, no significant new information has become available that could not have been known at the time the WSA was prepared. For these reasons, the information and analysis in the SEIR is consistent with State law and is adequate for the purposes of SB 610.

In accordance with SB 610, the SJWC WSA evaluated the long-term (2005 – 2035) projected water supply and demand during normal, single-dry, and multiple-dry year droughts utilizing all their available sources and conservation techniques. SJWC determined that they will be able to meet water demand under all drought scenarios until at least 2035 (Tables 16, 17, and 18). The current drought conditions were therefore anticipated in the Water Supply Assessment (included in Appendix A to this First Amendment to the SEIR) and are not considered to be changes in circumstances that would substantially affect the public water system or city's ability to provide sufficient water for the project.

**Comment H.2: Sections 1.2-1.3 and section 2 - Project Location and Project Description**

Please include the Dairy Hill Open Space and Dairy Hill Burrowing Owl Habitat mitigation areas in Project description and project maps. Please refer to the November 14, 2013 Memo by San Jose City Attorney Richard Doyle to the City of San Jose Rules and Open Government Committee regarding “City Property Adjacent to Oak Hill Cemetery and Summerhill Residential Development” (pages 4-7 in <http://www.sanjoseca.gov/DocumentCenter/View/23974>).

**Response H.2:** The Dairy Hill Open Space and Dairy Hill Burrowing Owl Habitat mitigation areas mentioned in the above comment are not part of the proposed project, and therefore, are not included in the project description or project maps. The Santa Clara County Habitat Plan does not designate the Dairy Hill or project site as modeled occupied burrowing owl habitat. The proposed project would not affect this area. As this comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment H.3: Section 2.2.4. Parks Trails Open Space and Landscaping**

The SEIR proposes “*The precise location, size, and shape of parks and trail alignments are subject to modification and variation during the development review process.*” – Since the location, size, and shape of parks and trail alignments can have significant impacts on Biological Resources, the SEIR should disclose precise information for public review.

**Response H.3:** The parks and trail alignments mentioned in the comment above would be located within the project footprint. The SEIR analyzed impacts of development activities

occurring throughout the entire project footprint. Therefore, impacts of developing parks and trails within the project footprint are included in the SEIR analysis.

**Comment H.4: Section 2.5 – General Plan Amendment**

Please provide the exact acreages for each land use in the Envision 2040 General Plan and in the proposed Project amendment land use designations. Please provide visual depictions of deviations of the proposed development from the existing General Plan.

Looking at the maps provided in section 2.5 – it seems that the Project would have a larger footprint of development than what is allowed by the existing General Plan, and that open space will diminish. We are opposed to this change, as we consider natural open space in central San Jose to be vital to migrating birds, wildlife, and residents of the city. The City should require the development to remain within the existing general Plan designation boundaries as illustrated in the Environ 2040 General Plan land use designation maps.

The General Plan Amendment requested by the Project increases sprawl into the undeveloped open space lungs of the City of San Jose, and stands against policies that focus residential growth along transportation corridors. It goes against a stated objective of the project, “*Integrate existing land uses with new land uses, ensuring the viability and compatibility of both*”. Increasing the development footprint while decreasing the footprint of existing land use (natural open space which supports native plants and wildlife) eliminates the possibility of accomplishing this objective.

**Response H.4:** Table 2.5-1 lists the acreages of existing land use designations in the 2040 General Plan alongside the land use designations proposed by the project. The project footprint of 312 acres is the same under both existing and proposed conditions, although the project would result in approximately 44 fewer acres of open space than the originally envisioned CHSP.

As described in Section 4.1.4.2 of the SEIR, the amount of open space now proposed was determined using current, detailed topographic information that has been refined using actual site boundary locations and calculations of the amount of acreage needed to build the number of units in the CHSP. Wider trails, streets with bike lanes, pedestrian-friendly sidewalks, and traffic-calming features require additional acreage that would not have been calculated in 1992 for the site. Incorporating these beneficial design amenities increased the amount of “development” acreages internal to the plan, thereby reducing the perimeter open space areas. In addition, the steep topography requires terracing which reduces the amount of land that is considered useable in the traditional open space sense.

The reduction in open space areas was a trade-off to allow implementation of General Plan policies including those related to providing safe, attractive, and accessible pedestrian and bicycle connections within neighborhoods and to transit. For these and other reasons described in Section 4.1.4.2 of the SEIR, impacts related to the loss of 44 acres of what is considered unusable open space would be less than significant.

The project is the construction of jobs and housing on an infill site within the Urban Growth Boundary of the City of San José and is not considered to be sprawl. To not allow the development consistent with the General Plan, could put development pressure on outlying cities which would require longer commutes and reductions in air quality. The project integrates compatible land uses within the City while still providing open space areas, parks, and trails. No further response is required.

**Comment H.5:** Section 2.7 – Lead and responsible agencies

Table 2.6-1 CEQA Responsible and Trustee Agencies

- Under the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2774 (c), local lead agencies are required to submit reclamation plans and plan amendments to the Director of the Department of Conservation (i.e., OMR) for review prior to approving such documents. Please include the Department of Conservation in the list of Responsible agencies, and provide a Reclamation Plan for public review.

**Response H.5:** Reclamation efforts at the former quarry on the site occurred until 2010, when the quarry operators went out of business and the County of Santa Clara took over responsibility for the quarry reclamation. Roughly 88 percent of the quarry area has been reclaimed. Section 4.16.1.1 of the SEIR describes the status of reclamation efforts at the former quarry. In a letter received by the County on May 6, 2014, the State Department of Conservation noted that they have received documents from the County indicating which areas of the Azevedo Quarry have been certified as reclaimed and what remains. This letter is included in Appendix A to this First Amendment.

Because the proposed project includes the grading and filling of much of the remaining quarry area, the Department of Conservation has agreed to postpone the reclamation of the remainder of the site. If and when the rough grading has been accomplished as planned, OMR can certify final reclamation and closure for the remainder of the site. The reclamation plan is available from OMR. It should be noted that the environmental review for the reclamation efforts was completed as part of the CHSP EIR (October 1991) and the Department of Conservation OMR was a responsible agency at that time. OMR will continue to be involved in the reclamation of the quarry and for this reason, has been added to the list of responsible agencies as described in Section 4.0 of this Final SEIR.

**Comment H.6:**

- The project proposes to fill a stream and requires a Section 1602 streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank (i.e., the intermittent drainage channel, which totals approximately 0.04 acres and 612 linear feet). Thus, the California Department of Fish and Wildlife should be recognized as a responsible agency.

**Response H.6:** Please refer to Section 4.0, *Revisions to the Text of the SEIR*, where CDFW has been added as a responsible agency. As the comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment H.7: Section 4.7.1.2 - Habitat Types / Aquatic and loss of aquatic habitat**

The SEIR describes: *“Aquatic habitats were identified within the site in the form of a manmade quarry pond, four freshwater seeps, a defined natural drainage channel between one of the seeps and the quarry pond, seasonal manmade drainage ditches, and two detention basins constructed as part of the Tuscany Hills development.”*

“Freshwater seeps” should be recognized as springs, and a “natural drainage channel” should be defined as a creek and indeed host riparian vegetation and wetland species. As stated in the SEIR, *“Aquatic sources on the site provide drinking water for resident and migratory wildlife through most or all of the year and often support invertebrate populations upon which wildlife may forage. They provide breeding habitat for the Pacific treefrog and western toad, which were observed in these areas.”* We believe that these freshwater features are critical to the survival of native plant and animal species onsite and of migratory birds, especially in drought years.

Indeed, Impact BIO-2: The project would result in the loss of 2.4 acres of aquatic habitat, including wetlands” is considered a Significant Impact.

The SEIR recognizes that “intermittent stream channel on the site may be considered a “Category 2” stream under Condition 11 of the Habitat Plan”. Furthermore, it recognizes that a streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank will be required. Obviously, this is a creek (and it has a developed riparian vegetation).

General Plan Policy ER-2.2 states, “Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.”

Elimination of springs (seeps), wetland and the stream/creek (“natural drainage channel between one of the seeps and the quarry pond”) would impose a significant impact to local and migratory wildlife. Please avoid filling these natural water features. Furthermore, please implement the 100-ft setback from the spring and the creek as indicated in the General Plan Policy ER-2.2.

Please consider that compliance with the Habitat Conservation Plan (HCP) cannot fully mitigate for loss of wetlands and surface freshwater features, which are regulated under the Porter- Cologne Water Quality Control Act administered by the Regional Water Quality Control Board.

A Clean Water Act section 404 permit is required. Thus, Compliance with HCP provisions would NOT reduce impacts to wetlands to a less than significant level.

We maintain that if *“both avoidance and minimization of impacts to these features likely is not feasible”* hold true, then the project must change to allow protection of freshwater features on the project site by avoiding the fill of these features, and by implementing setbacks to any development.

**Response H.7:** Impact BIO-2 identifies the loss of the aquatic features on the site as a significant impact, and MM BIO-2.1 identifies measures to mitigate this impact to a less than significant level, including mitigation to satisfy the requirements of the RWQCB. The drainage is not a creek as defined by the City of San José. Therefore, a riparian corridor setback is not applicable.

As described in the SEIR, Communications Hill was recognized as a suitable location for development of a high-density urban community due to its proximity to major transportation facilities and employment centers in the San José Horizon 2000 General Plan adopted in 1984. In 1992, the City of San José adopted the CHSP, which established the framework for development of a mixed-use, high density, pedestrian-oriented, urban neighborhood with supporting public facilities and infrastructure.

The topography and natural features of the Communications Hill site present a challenge for development. Steep slopes on the site limit the areas available for development. In order to fulfill the goals and requirements of the CHSP, including required densities and unit counts, the proposed project was designed to accommodate the required number of units in the limited space available for development. Due to their locations, avoidance of the existing water features on the site would reduce the amount of developable areas to a level that would make the project inconsistent with the CHSP and General Plan. As a result, the project proposes to fill these water features and mitigate the resulting impact via on-site mitigation, compensation, or off-site mitigation, consistent with the HCP and other regulatory requirements.

To not allow the development consistent with the General Plan, could put development pressure on outlying cities which would require longer commutes and reductions in air quality. In addition, lands in outlying areas that could potentially support Burrowing Owl habitat on a greater scale with higher habitat values could be impacted.

**Comment H.8:** Burrowing Owls (CA Species of Special Concern)

The SEIR states, “*Historic sightings of overwintering burrowing owls or their evidence (i.e., white wash and pellets) have been observed a total of four times on or immediately adjacent to the site since 1992. All four sightings were of breeding owls utilizing the site as overwintering habitat or as a stopover for transient individuals on their way to another location. While the site has never been utilized for breeding in the past, suitable foraging habitat is present for owls moving through the area.*”

Burrowing owl activity in the vicinity of the project site at Dairy Hill (at the terminus of Communication Hill Blvd.) was identified in late spring of 2012 and reported by SCVAS to the Habitat Agency. We consider the presence of owls during the nesting season to be nesting activity. Part of Dairy Hill is also designated Burrowing Owl Mitigation land. In winter, spring and summer 2014 SCVAS conducted and found one solitary owl in January, and additional signs of burrowing owls in spring and summer (owl pellets, whitewash, and warning calls).

The Burrowing Owl Conservation Strategy of the Habitat Conservation Plan is the best available science for the biology of the burrowing owls in our region and it offers the only meaningful mitigation measures. It identifies all lands within 0.5 miles of a nesting site as essential foraging habitat. Since Dairy Hill is a functioning and occupied burrowing owl habitat, project lands within 0.5 miles from this designated habitat must pay all burrowing owl impact fees.

Thank you for the opportunity to comment on the proposed project. Please keep SCVAS on the notification list for the proposed project site and any updates or public meetings related to this project.

**Response H.8:** Please refer to Response H.2. Currently, the Dairy Hill site referenced in the comment is not identified as Burrowing Owl nesting habitat in the Habitat Conservation Plan, and no portions of the project site are included in a burrowing owl fee zone. Extensive studies done on the project site and the Dairy Hill site have determined that burrowing owls have been occasional visitors; however, neither property is considered to be occupied modeled habitat. As described in Section 4.7.3.2 of the SEIR, the project will be required to comply with provisions in the HCP relating to burrowing owls, including payment of all applicable development-related fees. Should the HCP be updated to include portions of the project site in the burrowing owl fee zone, the project would be required to pay the applicable fees.

**I. RESPONSES TO COMMENTS FROM SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, DATED JULY 18, 2014**

**Comment I.1:** Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR (DEIR) for 2,200 residential units, 70,000 square feet of commercial development, and 1.4 million square feet of industrial development for a site bounded by Curtner Avenue, Monterey Road, Capitol Expressway, Snell Avenue, Hillsdale Avenue, and SR 87. We have the following comments.

**Land Use**

VTA supports the proposed land use intensification on this site, strategically located on the regional transportation network and served by the VTA Curtner Light Rail station, Capitol Caltrain station, and VTA bus service along Monterey Road. These locations are identified in VTA's Community Design & Transportation (CDT) Program Cores, Corridors and Station Areas framework, which shows VTA and local jurisdiction priorities for supporting concentrated development in the County. The CDT Program was developed through an extensive community outreach strategy in partnership with VTA Member Agencies, and was endorsed by all 15 Santa Clara County cities and the county.

**Response I.1:** The comment states that VTA supports the land use intensification proposed by the project. As the comment does not refer to environmental effects or the conclusions of the SEIR, no further response is required.

**Comment I.2: Transportation Demand Management - Transit Incentives**

VTA encourages the City to work with the applicant to explore Transportation Demand Management (TDM) measures that would reduce the number of single-occupant vehicle trips generated by the project and increase transit ridership. VTA encourages the City to require the project applicant to provide transit fare incentives to residents of the development, such as free or discounted transit passes on a continuing basis, as a Condition of Approval of the project.

**Response I.2:** Please refer to Response D. 13 of this Final SEIR. Potential TDM measures to be implemented as part of the CHSPADP are included in Appendix A of Appendix C of the SEIR. As the comment does not refer to environmental effects or the conclusions of the SEIR, no further response is required.

**Comment I.3: Freeway Analysis and Mitigation Measures**

The TIA and DEIR note that the project will have a significant impact on eight directional freeway segments of SR 87 and one directional segment each on I-280 and I-680 (TIA pgs. 50- 51, DEIR pg. 115). The TIA notes that, "The Valley Transportation Authority *VTP 2035* identifies improvements to regional facilities, including freeways, for which a regional funding plan could be used to fund... The project along with other projects within Santa Clara County could contribute towards the funding of the improvements." However, the TIA and DEIR do not propose any mitigation measures for the impacts, and find them "significant and unavoidable."

VTA agrees with the statement that the project could contribute funding to regional improvements as a way to mitigate or offset these significant impacts. VTA notes that certain cities in Santa Clara County have identified contributions to regional improvements as mitigation measures for significant freeway impacts. One improvement included in *VTP 2040* that was not mentioned in the TIA and DEIR is the Guadalupe Express Light Rail Improvement Project, which will relieve congestion on SR 87. VTA recommends that the City include voluntary contributions to this project and/or operating funds for light rail service as a mitigation measure for these significant impacts. Please see the March 6, 2014 Report to the VTA Board of Directors (Agenda Item 6.18) for further information about Voluntary Contributions to Transportation Improvements.

**Response I.3:** Please refer to Responses D.1, D.12, and D.18 of this Final SEIR. No further response is required.

**Comment I.4: Freeway Segment Analysis**

VTA recommends including the freeway segments on SR 87 north of Julian Street to determine if project trips exceed one percent of the freeway capacity in the AM and PM peak periods for both the northbound and southbound directions. In addition, TIA must include analysis of other freeway segments to determine whether they meet the one percent threshold. This recommendation is based on *Section 2.2.2 Freeway Segments* of the VTA TIA guidelines.

**Response I.4:** The freeway segments evaluated as part of the completed traffic study consist of 56 directional freeway segments along SR 87, I-280, I-680, and US 101. Segments included in the traffic study along SR 87 include segments into Downtown San Jose, which is located approximately four miles north of the project site. Based on the distribution and assignment of project traffic, which assumes that the majority of project trips are bound for or originate from destinations north of the project site, it can be presumed that SR 87 will serve as the primary link to the north and other regional freeways.

The interchange of SR 87 at I-280 provides access to several regional freeways including I-280, I-680, and I-880. The amount of traffic to be added to each of the freeway segments can be estimated with some certainty along SR 87 up to its interchange with I-280. Though the traffic study presents an estimation of projected trips that may be added to each of the study freeway segments, it becomes increasingly difficult to predict the amount of trips that will be added to freeway segments as distance from the project site increases. This is due to factors such as congestion on the freeways, location of employment centers, and displacement of traffic that is currently on the freeways. Therefore, the freeway segments evaluated and impacts identified within the traffic study present a representative estimation of effects of project traffic on surrounding freeways. To attempt to determine the effects of project traffic on additional freeway segments farther from the site would be speculative and inconsistent with the CEQA Guidelines.

**Comment I.5: Freeway Ramp Operations Summary**

Table 14 of the TIA report shows reduction in wait time at SR 87 NB on-ramps with increased volume. VTA concurs with Caltrans comments on basing the queuing analysis and impact assessment on existing metering rates.

**Response I.5:** Please refer to Response D.5, D.6, and D.7. No further response is required.

**Comment I.6:** Capitol Expressway/Narvaez Avenue/SR 87 On/Off Ramps Improvement - Impact to VTA Property

The DEIR and TIA describe a proposed improvement to the SR 87 ramps at Capitol Expressway and Narvaez Avenue (DEIR pg. 23, TIA pg. ix). VTA recommends coordinating the addition of lanes to the on-ramp with VTA and Caltrans.

VTA notes that there is a discrepancy in the descriptions of this improvement between the TIA and DEIR. The TIA notes that "These improvements may require additional right-of-way between the SR 87 ramps and Capitol Expressway at the VTA parking lot (approximately ½ acre)," but the DEIR does not include this comment. The description of the project in the DEIR should be revised to clarify whether VTA property would be required for the project.

In addition, VTA notes that any proposal to use VTA's property for this improvement would only proceed at the discretion of VTA, and would be evaluated for consistency with VTA's development plans for this location.

***Response I.6:*** The SEIR does not include the estimate of the amount of acreage required to construct the improvements at the Capitol Expressway/Narvaez Avenue/SR 87 On-Ramp. This is not a discrepancy because the information is included in Appendix B of the SEIR. Please refer to Section 4.0 for a text amendment that adds this estimate to the text of the Final SEIR.

**J. RESPONSES TO COMMENTS FROM DAVE FADNESS, DATED JULY 18, 2014**

**Comment J.1:** As a member of the original Communications Hill Task Force and long-time advocate for transportation improvements in surrounding communities, I offer the following remarks on subject EIR.

In recent months, I have met several times with CSJ's, Public Works, DOT, KBHOME, and the landowner. These meetings focused on proposed transportation mitigations at Highway 87/Curtner and Highway 87/Capitol.

Peak traffic conditions at northbound Highway 87 and Capitol/Narvaez have been LOS F and worse since the 80s. Although large scale development has occurred nearby, no mitigation has been required for this northbound approach. Concerned residents of VEP and other community associations south of Capitol Expressway were able to add this northbound freeway approach to VTA's project list; however, no funding has been identified into the foreseeable future.

An enormous relief to me is that KBHOME and the property owner have included mitigation for that notorious freeway approach in their Comm Hill buildout proposal. They are doing so despite any demonstrated need for mitigation owing to their project. Moreover, they have advocated and I now understand that the city agrees that this mitigation should occur as a priority in their project improvement schedule.

I applaud their recognition and generous willingness to solve a long standing community need.

Success in completing buildout of the proposed Comm Hill plan is, I believe assured by the thoughtful features and amenities on site as well as the developer team's transportation improvements overall. I have followed the developer's plans as they have evolved over the past several years. It is clear to me that the project now proposed meets the city's expectations, maintains the quality of life in surrounding neighborhoods, and fulfills the vision of the community hills- task force.

I encourage adoption of subject EIR, including all traffic mitigation therein. Thank you.

**Response J.1:** The comment correctly restates the conclusion of the SEIR that the proposed improvements at the Narvaez Avenue/Capitol Expressway and Curtner Avenue on-ramps to SR 87 are included in the CHSP Area Development Policy and will be constructed as part of the project. No further response is required.

**K. RESPONSES TO COMMENTS FROM SANTA CLARA COUNTY, ROADS AND AIRPORTS DEPARTMENT, DATED JULY 25, 2014**

**Comment K.1:** Thank you for the opportunity to comment on the Communications Hill 2 DSEIR. We appreciate the extension of time to submit comments through July 25, 2014. The County of Santa Clara Roads and Airports Department is submitting the following comments.

*Impact TRAN-3 and TRAN-5*

The DSEIR states that the project would have impacts that are significant and unavoidable under background plus project conditions for the intersections at Almaden Expressway/Foxworthy Avenue (Impact TRAN-3) and Snell Avenue/Capitol Expressway (Impact TRAN-5). The City has determined that the identified mitigation measures for Impact TRAN-3 and TRAN-5 are infeasible due to the extent of right-of-way acquisition that would be required. The City is proposing to implement the projects identified in the Communications Hill Specific Plan Area Development Policy (CHSPADP) in lieu of the mitigation measures. The County's comments regarding this strategy are as follows:

1. The mitigation measures identified for TRAN-3 and TRAN-5 are important for future operations of the expressways, particularly the addition of a third southbound left-turn lane at the Capitol/Snell intersection. Although these mitigation measures are not considered feasible as part of the Communications Hill 2 project, the County requests that the City pursue the necessary right-of-way through future development approvals as the opportunities arise.

**Response K.1:** The comment is correct that the City has determined that implementing physical mitigation at the Capitol Expressway/Snell Avenue intersection is not feasible. The City will evaluate the acquisition of right-of-way at this intersection as future development opportunities arise. This comment does not refer to environmental effects or the conclusions of the SEIR. Therefore, further response is not required.

**Comment K.2:**

2. The County supports the list of CHSPADP projects proposed, particularly CHSPADP Improvement 5: Improvement to the SR 87 On-Ramp/Narvaez Avenue Corridor, which will help relieve conditions on Capitol Expressway created by the extended queues at the freeway on-ramp.

**Response K.2:** Please refer to Response J.1. The comment is noted. No further response is required.

**Comment K.3:**

3. The County requests that the following project be added to the CHSPADP: Improve pedestrian and bicycle accommodations along Capitol Expressway between Narvaez and Monterey Road, including sidewalk gap closures. This project is consistent with the principles behind the Area Development Policy to improve multi-modal transportation opportunities along an impacted road.

**Response K.3:** The City is supportive of the County’s Expressway Plan 2040 and the inclusion of multimodal design standards to the County expressways. The ADP includes a fair share contribution from the project to the County, which can be used for the improvements described in the comment. As the comment does not refer to the conclusions of the SEIR, no further response is required.

**Comment K.4:**

4. The County requests that the following project be added to the CHSPADP: Provide a fiber optic connection from the Santa Clara County 9-1-1 Communications Center on top of Communications Hill to the county expressway fiber optic network on Capitol Expressway in order to enhance emergency operations. The attached fiber optics map indicates the path of the proposed connection. This fiber optic connection would allow 9-1-1 Communications to access the video cameras at expressway intersections when incidents occur in order to determine the appropriate equipment to send to the emergency and reduce their response time. This will reduce the impacts of collisions and other incidents on the operations of Almaden and Capitol Expressways.

**Response K.4:** The CHSPADP is intended to optimize access to existing transit opportunities and freeways in the project area, as described in Section 2.3 and Appendix C of the SEIR. While the proposed fiber optic connection would improve safety conditions on Capitol Expressway, it would not fall within the intended goals of the CHSPADP.

The City is supportive of the County’s Expressway Plan 2040 and the inclusion of multimodal design standards to the County expressways. For this reason, the ADP includes a fair share contribution to the County that can be used for transportation improvements prioritized by the County. The CHSPADP is not considered CEQA mitigation for the identified intersection impacts, thus impacts will remain significant and unavoidable. This comment does not refer to the environmental effects of the project or the conclusions of the SEIR. No further response is required.

**Comment K.5:** Intersection Operations Analysis (Vehicle Queue)

Section 4.2.2.5 recommends that left-turn lanes be extended at the intersections at Vistapark Drive/Capitol Expressway and Snell Avenue/Capitol Expressway to accommodate the projected queues under project conditions. It is unclear from the text whether the Communications Hills 2 Project will construct the extended left-turn lanes. The County requests that these improvements be provided, either as a mitigation project or through project conditions of approval.

**Response K.5:** The analysis of project intersection level of service was supplemented with an analysis of intersection operations for selected signalized intersections. CEQA intersection impacts are determined by the City based on level of service thresholds of significance; not vehicle queues at intersections. Therefore, this information is provided for informational purposes only.

The City is supportive of the County's Expressway Plan 2040 and the inclusion of multimodal design standards to the County expressways. For this reason, the ADP includes a fair share contribution to the County that can be used for transportation improvements prioritized by the County. As this comment does not refer to the conclusions of the SEIR, no further response is required.

## SECTION 4.0 REVISIONS TO THE TEXT OF THE DRAFT SEIR

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This section contains revisions to the text of the Draft SEIR for the Communications Hill 2 Project, dated June 2014. Revised or new language is underlined. All deletions are shown ~~with a line through the text~~.

Page xxi *Summary*; **REVISE** the left column of the table of impacts and mitigation measures as follows:

<p><b>Impact GEO-4:</b> The grading and backfilling of the mines could result in impacts associated with construction worker safety during remediation.</p>
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<p><b>(Significant Impact)</b> <b><u>(Less Than Significant Impact With Mitigation Incorporated)</u></b></p>
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Page xxiii *Summary*; **ADD** the following row to the table of impacts and mitigation measures:

<p><b>Impact AES-1:</b> While the proposed project would be designed consistent with the City's <u>design guidelines and applicable General Plan policies to reduce visual impacts, the development of the project would significantly change and degrade the existing visual character and quality of the site as compared to existing conditions. This same impact was identified previously in the certified Envision San José 2040 General Plan Final EIR (SCH#2009072096).</u></p>
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<p><u>No mitigation measures are proposed.</u></p>
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<p><b><u>(Significant and Unavoidable Impact)</u></b></p>
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Page 10 *Section 2.1 Introduction and Overview*; **ADD** the following text to the list of bullet points:

- General Plan Amendment
- Specific Plan Amendment
- RWQCB Cleanup and Abatement Order

Page 11 *Section 2.2.1 Residential Development*; **REVISE** paragraph 1 as follows:

The project proposes the development of up to 2,200 residential units consisting of townhouses/flats, detached alley houses, detached row houses, podium condominiums, and apartments in the Village Center. The overall density of the

residential development would be approximately 26.5 dwelling units per acre per block. An approximate breakdown of residential units to be developed is shown in Table 2.2-2 and on Figure 2.0-2. ~~It is assumed that at least 15 percent of the proposed housing would be affordable to households of low and moderate income, consistent with City policies and goals.~~

Page 14 *Figure 2.0-3 Conceptual Storm Drain Plan*; **REPLACE** figure with figure shown on the following page of this SEIR.

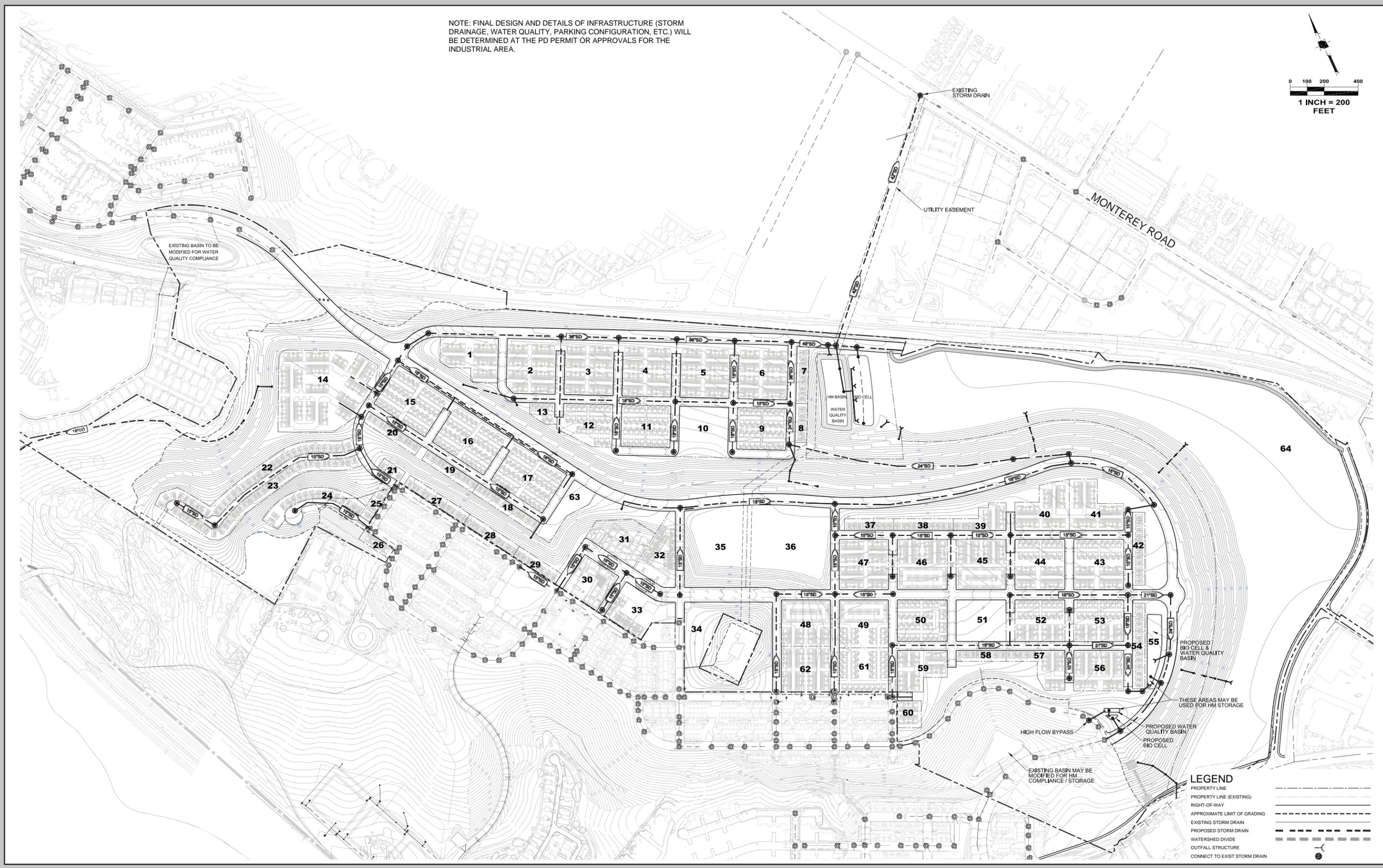
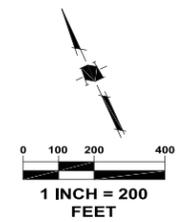
Page 33 *Section 2.7.2 Level of Environmental Review Provided by this SEIR*; **ADD** the following text to Table 2.6.1:

<b>Table 2.6-1: CEQA Responsible and Trustee Agencies</b>	
<b>AGENCY</b>	<b>ROLE(S)</b>
California Department of Fish and Wildlife	<ul style="list-style-type: none"> <li>• <u>Streambed Alteration Permit</u></li> </ul>
California Department of Conservation, Office of Mine Reclamation	<ul style="list-style-type: none"> <li>• <u>Final Closure of Reclaimed Areas, California Mine ID# 91-43-003</u></li> </ul>
California Department of Transportation (Caltrans)	<ul style="list-style-type: none"> <li>• Encroachment Permit for any work within the Caltrans right-of-way.</li> </ul>
U.S. Army Corps of Engineers	<ul style="list-style-type: none"> <li>• Permit for the filling of potential wetlands.</li> </ul>
Regional Water Quality Control Board	<ul style="list-style-type: none"> <li>• Section 401 Clean Water Act Certification for Corps Permit.</li> <li>• <u>Waste Discharge Requirements</u></li> </ul>
Valley Transportation Authority/Joint Powers Board	<ul style="list-style-type: none"> <li>• Transit system improvements, such as linkages to the existing Curtner LRT Station/Capitol Caltrain Station.</li> </ul>
United States Fish and Wildlife Service	<ul style="list-style-type: none"> <li>• Review biological analysis.</li> <li>• Issue FESA “Take” permits</li> </ul>
Santa Clara Valley Habitat Agency (in conjunction with the City of San Jose)	<ul style="list-style-type: none"> <li>• Oversight of compliance with Santa Clara Valley Habitat Conservation Plan</li> <li>• Issuance of take permits for covered species</li> </ul>
California Public Utilities Commission (CPUC)	<ul style="list-style-type: none"> <li>• <u>Relocation of electric utility lines</u></li> </ul>

Page 57 *Section 4.1.2.4 LAFCO/Annexations*; **REVISE** the last sentence of paragraph 1 as follows:

LAFCOs have approval authority for ~~any~~ most proposals by private property owners, public agencies, or special districts to change boundaries.

NOTE: FINAL DESIGN AND DETAILS OF INFRASTRUCTURE (STORM DRAINAGE, WATER QUALITY, PARKING CONFIGURATION, ETC.) WILL BE DETERMINED AT THE PD PERMIT OR APPROVALS FOR THE INDUSTRIAL AREA.



**LEGEND**

PROPERTY LINE	---
PROPERTY LINE (EXISTING)	---
RIGHT-OF-WAY	---
APPROXIMATE LIMIT OF GRADING	---
EXISTING STORM DRAIN	---
PROPOSED STORM DRAIN	---
WATERSHED DIVIDE	---
OUTFALL STRUCTURE	---
CONNECT TO EXIST STORM DRAIN	---

CONCEPTUAL STORM DRAIN PLAN

(REVISED) FIGURE 2.0-3

Page 57 *Section 4.1.2.4 LAFCO/Annexations*; **ADD** the following text to the numbered list:

7. LAFCO shall not review an annexation or reorganization proposal that includes an annexation to any city in Santa Clara County of unincorporated territory that is within the urban services area of the city if the annexation or reorganization proposal is initiated by resolution of the legislative body of the city.

Page 63 *Section 4.1.3.4 Consistency with Plans and Policies*; **REVISE** the last paragraph on the page as follows:

The CHSP included the construction of 4,700 residential units, of which, approximately 2,500 have been constructed. The project is the construction of the remaining approximately 2,200 residential units, commercial/retail/office, and Industrial Park uses, consistent with the CHSP. Future development of a school is also evaluated at a program-level in this SEIR. ~~All of this development~~ While the project generally is consistent with the land use designations shown on the Envision San José 2040 Land Use Transportation diagram (Figure 2.0-9); ~~however~~, some changes to the Land Use Transportation Diagram and the CHSP are proposed. These changes preserve the acreage for industrial uses and will not facilitate more units than were originally set forth in the CHSP in 1992.

Page 98 *Section 4.2.2.3 Existing Plus Project Conditions*; **REVISE** the second paragraph on the page as follows:

**Impact TRAN-1:** ~~The project would have a significant impact under~~ Under existing plus project conditions, the project would impact at the intersections of Almaden Expressway and Foxworthy Avenue, Communications Hill Boulevard and Curtner Avenue, and Snell Avenue and Capitol Expressway.  
**(Significant Impact)**

Page 108 *Section 4.2.2.7 Freeway On-Ramp Analysis*; **REVISE** paragraph 2 as follows:

To serve the projected vehicle queue length, an additional lane would need to be added to the SR 87 northbound on-ramp at Curtner Avenue for a total of two mixed-flow lanes and one HOV lane. This improvement is part of the CHSPADP as described in *Section 2.3*. The addition of a third lane to the on-ramp would provide an additional 700 feet of queue storage capacity from Curtner Avenue to the existing ramp meter location. Assuming as a worst case scenario that the projected queue length would remain as estimated with only two lanes on the on-ramp, the additional queue storage capacity required to serve the projected 61 vehicles being added to the queue by the project potentially could be provided along Curtner Avenue. By

widening the westbound direction on Curtner Avenue from two to three lanes from Communications Hill Boulevard to the SR 87 northbound ramps, additional queue storage capacity would be provided to serve the projected westbound queue length under project conditions. **(Less Than Significant Impact)**

Page 108 *Section 4.2.2.8 Transit, Pedestrian, and Bicycle Facilities*; **REVISE** the last paragraph on the page as follows:

The proposed project would result in an increase in demand for transit services. Existing pedestrian/bicycle links to existing bus and rail transit would require improvements to serve the future residents and workers on the project site. Implementation of the CHSPADP as previously summarized in *Section 2.3*, would enhance existing facilities as well as provide new non-motorized facilities that encourage the use of multi-modal travel options. Identified project impacts to the roadway system would be reduced because viable connections to surrounding pedestrian/bicycle and transit facilities would be provided, thus reducing automobile trips. Further, this project would include shuttle service or other transportation management measures to provide better access to nearby transit facilities. It would also provide for a balanced transportation system, consistent with the goals and policies of the General Plan. **(Less Than Significant Impact)**

Page 109 *Section 4.2.2.9 On-Site Traffic Operations*; **ADD** paragraph to end of section as follows:

The proposed project would not result in a substantial increase in hazards due to design features, changes in air traffic patterns, or inadequate emergency access.  
**(Less Than Significant Impact)**

Page 109 *Section 4.2.2.10 Parking*; **REVISE** paragraphs 1 and 2 as follows:

Based on City of San José parking code requirements, single-family residential development should provide two (2) covered parking spaces per unit. Multi-family residential development is required to provide parking based on number of bedrooms in each unit. Retail uses require one space per ~~400~~ 500 square feet of space. Industrial park uses require 1 spaces per 350 square feet of development.

The residential development would require approximately 4,138 spaces while the retail uses would require approximately ~~469~~ 135 spaces. As currently proposed, the project would provide approximately 4,307 spaces for the residential and 198 spaces for the retail development, respectively. In addition, approximately 1,400 on-street parking spaces would be available along new streets to be constructed as part of the project.

Page 110 *Section 4.2.2.11 Consistency with Plans and Policies; REVISE* paragraph 3 as follows:

**Consistency:** The traffic analysis completed for the project was prepared in accordance with the standards of the CMP. As discussed in *Section 4.2 Transportation*, the project would not result in significant level of service impacts at any CMP intersections under background plus project conditions, based on CMP level of service criteria. The project would have a significant impact on mixed-flow lanes on 10 directional freeway segments and two HOV lanes during at least one peak hour. Implementation of TDM measures for the industrial park uses would reduce impacts to freeways, but not to a less than significant level.

Page 110 *Section 4.2.2.11 Consistency with Plans and Policies; REVISE* paragraph 4 as follows:

### **Envision San José 2040 General Plan/CHSP**

As previously described, the CHSP was incorporated into the 2040 General Plan and the development of 2,200 residential units, up to 65,700 square feet of commercial/retail/office, and 1.44 million square feet of industrial park uses were included in the transportation demand forecasting model and CUBE analysis completed for the General Plan PEIR. Amendments to the General Plan/Specific Plan are proposed to: 1) better reflect current General Plan land use designations; 2) utilize other potential shuttle route options; 3) remove the roadway extension of Pullman Way from Communications Hill Boulevard to Hillcap Avenue; 4) allow for a limited number of garages to front on some streets; and 5) allow industrial park buildings to have heights up to four stories.

Page 114 *Section 4.2.5 Conclusion; REVISE* paragraph 1 as follows:

**Impact TRAN-1:** ~~The project would have a significant impact under~~ Under existing plus project conditions, ~~the project would impact at~~ the intersections of Almaden Expressway and Foxworthy Avenue, ~~Almaden Expressway and Blossom Hill Road,~~ Communications Hill Boulevard and Curtner Avenue, and Snell Avenue and Capitol Expressway, ~~Meridian Avenue and Hamilton Avenue, Capitol Expressway and Quimby Road, Capitol Expressway and Aborn Road, Capitol Expressway and Silver Creek Road, and Meridian Avenue and Hillsdale Avenue. (Significant Impact)~~

Page 124 *Section 4.3.3.2 City of San Jose Policies*; **ADD** the following text to the list of General Plan policies:

**Policy EC-1.9:** Require noise studies for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, implement mitigation so that recurring maximum instantaneous noise levels do not exceed 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms.

Page 132 *Section 4.3.2.2 Short-Term Noise Impacts*; **REVISE** paragraph 11 as follows:

### **Construction Vibration**

A review of the proposed construction equipment and the FTA vibration source levels indicates that at the proposed minimum distance between the construction equipment and the sensitive receptors of 60 feet, vibration levels would be less than the FTA construction vibration impact criteria of 0.20 in/sec PPV for building damage. It is not known if any pile driving would be required for construction of the Communications Hill Boulevard Bridge over the railroad tracks or for any off-site improvements. Implementation of the mitigation measures ~~described below for noise impacts~~ would further reduce these less than significant impacts to a less than significant level. **(Less Than Significant Impact)**

Page 159 *Section 4.4.5 Conclusion*; **REVISE** the last paragraph as follows:

As described above, the project would not result in other significant air quality impacts, such as ~~exposing sensitive receptors to substantial pollutant concentrations creating objectionable odors affecting a substantial number of people. The project would not result in significant cumulative impacts.~~ **(Less Than Significant Impact)**  
**(Less Than Significant Cumulative Impact)**

Page 173 *Section 4.6.2.1 Government Code §65962.5 (Cortese List)*; **REVISE** paragraph 1 as follows:

Section 65962.5 of the Government Code requires Cal EPA to develop and update (at least annually) a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by the State, local agencies, and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the DTSC, SWRCB, and the Department of Resources Recycling and Recovery (CalRecycle). The project site is not on the Cortese List.

Page 177 *Section 4.6.3.7 Quarry Reclamation Fill*; **REVISE** paragraph 1 as follows:

During the reclamation of the former Azevedo Quarry, Raisch Products Company placed generally two to three feet of imported soil to cap over exposed bedrock prior to hydroseeding. No documentation of the sources of the import soil is available and no testing for the presence of contamination appears to have been performed. Reclamation was to be accomplished by spreading serpentine-based topsoil over the quarried areas and subsequent seeding with “locally favorable” native grasses and forbs; however, the quantity of serpentine-based topsoil ultimately used is unknown. The use of the serpentine-based topsoil in the reclamation process would have ~~increases~~ increased the likelihood of NOA-containing soils being used to cap the bedrock.

Page 209 *Section 4.7.3.3 Impacts to Trees*; ADD the following sentence to paragraph 1 as follows:

Of the 52 trees on the site, 51 trees are considered native to the San José area, and 20 trees are considered ordinance size. It is anticipated that the project would remove all 52 existing trees from the site. The removal of native and ordinance size trees would be considered a significant impact. The project would not, however, impede the use of native wildlife nursery sites because no native wildlife nurseries are located on or adjacent to the site.

Page 239 *Section 4.9.3.2 Hydrology and Drainage Impacts*; **REVISE** paragraph 4 as follows:

Water samples collected from the quarry pond identified methyl mercury concentrations that exceed the RWQCB ESLs for surface water screening levels for estuary habitats. The construction of the proposed project would fill the existing quarry pond and prevent future production of methyl mercury which could be discharged to the groundwater or surface waters. The proposed project detention basins would not include a permanent pool which may create anerobic conditions. The detention basins would drain within 48 hours to meet HMP requirements. Therefore, the project would have a less than significant impact for a release or discharge of methyl mercury or other substances that could substantially degrade water quality. **(Less Than Significant Impact)**

Page 250 *Section 4.10.2.2 Water Service and Supply Impacts*; **REVISE** paragraph 1 as follows:

The CHSP is incorporated into the City’s General Plan. In accordance with SB 610, the City completed a water supply assessment (WSA) for a full build-out of the General Plan, which includes a full build-out of the CHSP. In this WSA, the City concluded that future water supplies are sufficient to meet the demand of the General Plan development. The WSA completed for the General Plan is incorporated by reference in this SEIR.

Page 278 *Section 4.14.1.1 Jobs/Housing Balance*; **REVISE** paragraph 2 as follows:

Important to the analysis of the jobs/housing balance is whether housing is affordable to local employees and whether employment opportunities match the skills and educational characteristics of the local labor force. When considering these factors, sizeable levels of in-commuting and out-commuting may occur, even if a jurisdiction has a statistical balance between jobs and housing. Improving the availability of housing that is suitable for those holding jobs in the community can allow employees to live in proximity to their place of work. ~~It is assumed that at least 15% of the project's proposed housing would be affordable to low- and moderate-income households, consistent with City policies and goals.~~

Page 279 *Section 4.14.2.1 City of San José Policies and Programs*; **REVISE** paragraph 1 as follows:

The City of San José has developed a wide range of programs designed to address state and regional housing goals, create housing opportunities for all income levels, provide assistance to homeless shelter service providers, and encourage the revitalization of neighborhoods and development of higher density housing near transit. In light of pending litigation, recent court cases, dissolution of redevelopment agencies, and reductions in federal funding, the City is developing implementation strategies to increase the availability of affordable housing in the City. Strategies may include development agreements, public benefit agreements, public-private partnerships, tax increment financing, assessment districts, and other planning and market-based tools. ~~However, as stated previously, it is assumed that at least 15% of the project's proposed housing would be affordable to low- and moderate-income households, consistent with City policies and goals.~~

Page 281 *Section 4.14.3.4 Consistency with Plans and Policies*, **REVISE** paragraph 2 as follows:

**Consistency:** The proposed amendments to the General Plan would not result in additional impacts when compared to construction of the proposed project, as the amount and intensity of the proposed development is consistent with the uses planned for the site in the General Plan. As described above, the project would not result in significant populations and housing impacts. ~~It is assumed that at least 15% of the residential units proposed would be affordable to households of low- and moderate-incomes, consistent with City policies and goals.~~ The proposed project is the construction of jobs and housing in an identified Growth Area of the City, consistent with General Plan goals and policies. For these reasons, the project is consistent with the 2040 Envision San José General Plan.

Page 303      *Section 4.17.3.2 Change in Visual Character*; **REVISE** paragraph 7 as follows:

In the 1992 Final EIR prepared for the CHSP, impacts to visual and aesthetic resources were identified as significant and unavoidable. These impacts were identified, in part, as the result of development of new residences and construction of a water tank that are currently in place as part of the Tuscany Hills development. Although the area surrounding and within the Specific Plan area is not a pristine area or part of an adjacent and connected mountain range, build-out of the proposed project would introduce additional development on grassy hillsides visible from valley floor areas. Development of this area would result in a significant impact to a scenic vista and scenic resources, from portions of the central, eastern and southern areas of San José.

Page 319      *Section 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS*, **REVISE** paragraph 3 as follows:

**Impact ~~VISA~~ES-1:** While the proposed project would be designed consistent with the City’s design guidelines and applicable General Plan policies to reduce visual impacts, the development of the project would significantly change and degrade the existing visual character and quality of the site as compared to existing conditions on-site. This same impact was identified previously in the certified 2011 Envision San José 2040 General Plan Final EIR (SCH#2009072096). **(Significant and Unavoidable Impact)**

Page 327      *Section 8.7 ENVIRONMENTALLY SUPERIOR ALTERNATIVE*, **REVISE** paragraph 11 as follows:

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project/No Development Alternative because all of the project’s significant environmental impacts would be avoided. However, Section 15126.6(e)(2) states that “if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” ~~All of the other analyzed alternatives~~ The Reduced Development Alternative would be environmentally superior to the proposed project, although ~~they~~ it may not be considered feasible by the applicant and City Council.

Appendix C Section VI. IMPLEMENTATION; **REVISE** the footnotes below Table 1 as follows:

<sup>1</sup>The actual number of units per phase are intended to be approximately 25% of the total number of units. Actual units within each phase will not vary greatly from what is identified above and will be determined during the PD Permit stage. Regardless of the number of units per stage, all improvements shall be implemented as part of the proposed project ~~in a timely manner as~~ PD Permits are acquired.

~~<sup>2</sup>As costs increase over time, an escalation factor will be applied.~~

<sup>2</sup> The outstanding balance of the unallocated funds is subject to a cost escalation to maintain the value of the project's contribution toward Policy improvements over time. Funds shall be considered allocated if either funds are obligated by contract or already expended. Annual cost escalation shall begin on January 1, 2020 and shall be applied to the unallocated balance on January 1 of each subsequent year based on the Engineering News Record (ENR) Construction Cost Index for San Francisco.

<sup>3</sup>Implementation of the ADP may be completed by more than one development or project applicant. PROJECT APPLICANTS shall be conditioned to contribute to or complete the identified ADP improvements or pay the identified fees (Phase IV).

<sup>4</sup>Project costs eligible for credit against the total project obligation include preliminary design and estimate preparation, agency permits, land acquisition, final design, construction costs, City engineering and inspection fees, construction staking, and construction management.

<sup>5</sup>Accounting of the CHSPADP improvements will start with an initial scoping cost estimate based on a preliminary design. Upon City acceptance of the preliminary design and estimate, final project design will be completed along with a final cost estimate. The final cost estimate shall be agreed upon by the developer and City and will be used as a basis of costs to satisfy the obligations of the required expenditure to confirm that the project cost falls within the remaining project allocation balance. In the event that actually project costs over-runs exceed 10% of the estimated cost, those costs that exceed 10% of the estimated cost will be credited against the total obligation. In the event that the 10% project cost over-run causes the total obligation for offsetting improvements to exceed the maximum obligation, that amount shall be credited through a reimbursement by the City.

Appendix F: Archaeological Evaluation, Section 9.0, page 36, **REVISE** as follows:

Manly, William Lewis

1894 Death Valley in '49: An Important Chapter of California Pioneer History [originally published as From Vermont to California, 1886]. ~~Kessinger Publishing, Whitefish.~~ The Pacific Tree and Vine Co., San José, California.

**SECTION 5.0 COPIES OF COMMENT LETTERS RECEIVED ON THE  
DRAFT EIR**

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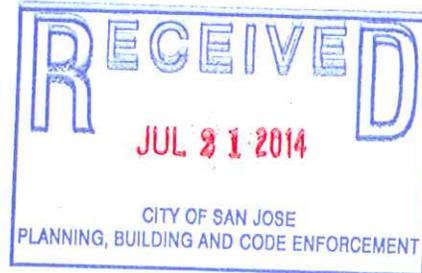
EDMUND G. BROWN JR.  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE of PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX  
DIRECTOR

July 18, 2014



John Davidson  
City of San Jose  
200 East Santa Clara Street, Tower 3  
San Jose, CA 95113-1905

Subject: Communications Hill 2 KB Home Residential/Village Center Commercial Project  
SCH#: 2001062119

Dear John Davidson:

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 17, 2014, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding 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. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

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 contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2001062119  
**Project Title** Communications Hill 2 KB Home Residential/Village Center Commercial Project  
**Lead Agency** San Jose, City of

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**Type** SIR Supplemental EIR  
**Description** Construction of approximately 2,200 residential units of varying density, up to 67,500 sf of commercial/retail uses, parks, open space, trails, streets, stormwater facilities, and other associated supporting infrastructure on an approximately 320 acre site. Development of up to 1.44 million sf of industrial park uses. Project requires General Plan Amendments, pre-zoning, annexation, and PD zonings to allow the proposed development on Communications Hill in Central San Jose.

---

**Lead Agency Contact**

**Name** John Davidson  
**Agency** City of San Jose  
**Phone** 408 535 7895 **Fax**  
**email**  
**Address** 200 East Santa Clara Street, Tower 3  
**City** San Jose **State** CA **Zip** 95113-1905

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**Project Location**

**County** Santa Clara  
**City** San Jose  
**Region**  
**Lat / Long** 37° 17' 9.16" N / 121° 51' 18.65" W  
**Cross Streets** Communications Hill Blvd and Casselino Drive, east of Altino Blvd  
**Parcel No.** 455-09-057, 455-28-017  
**Township** **Range** **Section** **Base**

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**Proximity to:**

**Highways** SR 87  
**Airports**  
**Railways** UPRR / Caltrain  
**Waterways** Guadalupe River and Canoas Creek  
**Schools** Rachel Carson ES  
**Land Use** Vacant / Santa Clara County A-1 and R1-8 / Communications Hill Specific Plan - Urban Residential / Commercial / Open Space

---

**Project Issues** Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Economics/Jobs; Fiscal Impacts; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Landuse; Cumulative Effects; Aesthetic/Visual; Agricultural Land; Forest Land/Fire Hazard; Flood Plain/Flooding; Growth Inducing

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**Reviewing Agencies** Resources Agency; Department of Conservation; Department of Fish and Wildlife, Region 3; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Office of Emergency Services, California; California Highway Patrol; Caltrans, District 4; Department of Housing and Community Development; Air Resources Board; Regional Water Quality Control Board, Region 2; Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission

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**Date Received** 06/03/2014 **Start of Review** 06/03/2014 **End of Review** 07/17/2014

**From:** [Davidson, John](#)  
**To:** [Boyd, Darryl](#); [Jodi Starbird](#)  
**Subject:** FW: Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project  
**Date:** Thursday, July 17, 2014 9:27:48 AM

---

Hi Jodi:

Here's the first comment letter received on the Communications Hill EIR. I'll bundle any other comments I get--thanks!

John D.  
408/535-7895

---

**From:** Kaahaaina, Jennifer <Jennifer.Kaahaaina@deh.sccgov.org>  
**Sent:** Wednesday, July 16, 2014 4:03 PM  
**To:** Davidson, John  
**Subject:** FW: Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project

Mr. Davidson,

We have reviewed the EIR and have the following comment:

It is advisable to carefully consider the proximity of a large propane storage and retail facility along the northeast corner of the proposed development. The facility is subject to the State's Hazardous Materials Business Plan (HMBP) Program, which is enforced by our office within the City of San Jose. According to the HMBP submitted via the California Environmental Reporting System (CERS), they store up to 51,000 gallons of propane in aboveground tanks as large as 30,000 gallons in capacity. We used the Environmental Protection Agency's RMP\*Comp to estimate off-site consequences in the event of a worst case release resulting in a vapor cloud explosion. The software estimates that a catastrophic failure and explosion involving the largest tank (30,000 gallons or 126,000 pounds) would result in damage to humans and property up to 0.4 miles away. The nearest residential property appears to be within the damage radius at approximately half that distance.

The information in CERS is available for review by emergency responders so that they may adequately prepare for and respond to emergencies involving these facilities. All but the chemical storage maps are available for review by the public, upon request.

Thank you,

Jennifer Kaahaaina  
Hazardous Materials Program Manager

Santa Clara County  
Department of Environmental Health

Hazardous Materials Compliance Division  
1555 Berger Drive, Suite 300  
San Jose, CA 95112  
(408) 918-4795 – Direct  
(408) 280-6479 – Fax  
[www.ehinfo.org/hazmat](http://www.ehinfo.org/hazmat)

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**From:** Yeung, Ivana  
**Sent:** Monday, June 16, 2014 2:14 PM  
**To:** DEH - CEQA; Wien, Martha  
**Cc:** Oda, Colleen  
**Subject:** RE: Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project

Hello DEH,

PLN did not have any comments previously for this project; please submit your response to John Davidson by July 18<sup>th</sup>.

Thank you,

**Ivana Yeung**  
408-573-2464

---

**From:** Yeung, Ivana  
**Sent:** Monday, June 16, 2014 1:44 PM  
**To:** DEH - CEQA; Wien, Martha; Oda, Colleen  
**Cc:** Cameron, Dawn  
**Subject:** FW: Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project

Hello DEH and PLN,

Please see below for the City of San Jose's Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project.

*Where:* The site is on Communications Hill from the junction of Communications Hill Blvd. and the CalTrain railway to the terminus of Communications Hill Blvd. and Casselino Drive.  
(Reference APN: 45509057)

**Deadline: 5:00 p.m. on July 18, 2014**

*Contact:* John Davidson in the Department of Planning, Building and Code Enforcement at (408) 535-7895, via e-mail: [John.Davidson@sanjoseca.gov](mailto:John.Davidson@sanjoseca.gov)

The Roads Department will most likely prepare a response for this project. At this time, please review the project as it pertains to your agency—if coordination is required, there will be a follow-up correspondence.

Sincerely,

**Ivana Yeung**

Transportation Planner

Planning, Land Development & Survey Unit  
County of Santa Clara Roads & Airports Department  
101 Skyport Drive, San Jose, CA 95110  
[ivana.yeung@rda.sccgov.org](mailto:ivana.yeung@rda.sccgov.org)  
P: 408-573-2464

---

**From:** Davidson, John [<mailto:John.Davidson@sanjoseca.gov>]

**Sent:** Monday, June 16, 2014 12:36 PM

**To:** Davidson, John

**Cc:** [dnoel1234@aol.com](mailto:dnoel1234@aol.com); Cameron, Dawn; [dp1216@sbcglobal.net](mailto:dp1216@sbcglobal.net); [simonv@cupertino.org](mailto:simonv@cupertino.org);  
[roy.molseed@vta.org](mailto:roy.molseed@vta.org); [esjay7@yahoo.com](mailto:esjay7@yahoo.com); [seanpal@jps.net](mailto:seanpal@jps.net); [meredithhaase@gmail.com](mailto:meredithhaase@gmail.com)

**Subject:** Notice of Availability of an Environmental Impact Report for the Communications Hill 2 Project

## **NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) AND PUBLIC COMMENT PERIOD**

Draft Environmental Impact Report (EIR) for **the Communications Hill 2 Project**, for a Planned Development Zoning from A(PD), A, R1-8(County), & A1(County) to A(PD) for a proposed development of the approximately 320 acre site located at Communications Hill consisting of up to 2,200 residential units, including single family detached and attached residential, multi-family residential; up to 70,000 square feet of retail / commercial space, up to 1.44 million square feet of industrial park uses, parks, trails, and a school site. The project also includes related General Plan Amendments; rezoning and annexation of unincorporated lands within the project site; and the formation of an Area Development Policy for the Communications Hill Specific Plan Area. The site is on Communications Hill from the junction of Communications Hill Blvd. and the CalTrain railway to the terminus of Communications Hill Blvd. and Casselino Drive.

**File No.:** PDC13-009. Council District: 7.

The proposed project will have potentially significant environmental effects with regard to Transportation, Air Quality, and cumulative effects to Population and Housing, namely the City's jobs/housing imbalance. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present at the project location. The project location is not contained in the Cortese List of toxic sites.

The Draft EIR and documents referenced in the Draft EIR are available for review online at the

City of San José's website: <http://www.sanjoseca.gov/index.aspx?nid=2434> and are also available at the following locations:

Department of Planning,  
Building,  
and Code Enforcement  
200 East Santa Clara Street,,  
3<sup>rd</sup> Floor  
San José, CA 95113  
(408) 535-3555

Pearl Avenue Branch Library  
4270 Pearl Ave.  
San José, CA 95136

Dr. Martin Luther King Jr. Main  
Library  
150 E. San Fernando St.  
San José, CA 95112  
(408) 277-4822

The public review period for this Draft EIR runs through **July 18, 2014**. Written comments must be received at the Planning Department by **5:00 p.m.** on July 18, 2014, in order to be addressed as part of the formal EIR review process. Comments and questions should be referred to John Davidson in the Department of Planning, Building and Code Enforcement at (408) 535-7895, via e-mail: [John.Davidson@sanjoseca.gov](mailto:John.Davidson@sanjoseca.gov), or by regular mail at the mailing address listed above. Please reference the above file number in your written comment letter.

Following the close of the public review period, the Director of Planning, Building, and Code Enforcement will prepare a Final Environmental Impact Report that will include responses to comments received during the review period. Ten days prior to the public hearing on the EIR, the City's responses to comments received during the public review period will be available for review and will be mailed to those who have commented in writing on the EIR during the public review period.

A public hearing before the Planning Commission to consider certification of the Final EIR is tentatively scheduled for **September 10, 2014**, at 6:30 p.m. in the City Council Chambers at San José City Hall, 200 East Santa Clara Street, San José, CA 95113-1905.

Harry Freitas, Director  
Planning, Building and Code Enforcement

Post Office Box 13105  
Coyote, CA 95013

July 17, 2014

John Davidson, Senior Planner  
City of San Jose  
Department of Planning, Building  
and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113-1905

Re: Communications Hill 2 Project  
Draft SEIR June 2014

Dear John Davidson:

The following are my comments, referenced to specific sections of the Draft SEIR.

1) 2.2.1 Residential Development

"It is assumed that at least 15 percent of the proposed housing would be affordable to households of low- and moderate-income, consistent with City policies and goals."

Comment: Residential development within the CHSP area has been exempted from participation with the City's BMR programs "without a sunset". The extraordinary infrastructure cost of development cited by the City Council as a reason for exemption, remains as relevant today.

(City Council, January 12, 2010, Agenda Item 4.2)

2) 2.2.6 Existing Mercury Mine/Former Quarry

"Reclamation efforts were undertaken in 1995 under an approved Reclamation Plan to restore vegetation to the quarried areas. Although these efforts ceased in 2009 due to a lack of funding, most of the former quarry area has been revegetated, with the exception of areas occupied by existing recycling operations."

Comment: The County and State have certified that the majority of the former quarry site, with the exception of three minor areas, has been reclaimed in accordance with the approved reclamation plan.

According to OMR staff's recommendation, when the rough grading has been accomplished as planned by KB Home, OMR can certify final reclamation and closure for the remainder of the site.

(CA Department of Conservation, Office of Mine Reclamation, May 6, 2014)

3) 4.2.2.10 Parking

"Retail use require one space per 400 square feet of space... the retail uses would require approximately 169 spaces."

Comment: The parking ratio approved for the CHSP, is one parking space per 500 square feet of building area for retail uses. Upon full build-out of the Village Center, a total of 135 parking spaces would be required. (A Specific Plan For Communications Hill, page 65, adopted by the City Council on April 7, 1992)

4) 4.2.2.11 Consistency with Plans and Policies  
Envision San Jose 2040 / CHSP

"...65,700 square feet of commercial/retail/office..."

Comment: The area planned for commercial/ retail/ office uses, is "up to 67,500 square feet". (Draft SEIR, June 2014, 2.1 Introduction and Overview, page 8)

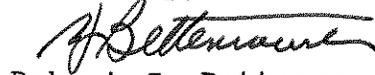
5) 4.6.3.7 Quarry reclamation Fill

"Reclamation was accomplished by spreading serpentine-based topsoil over the quarried areas..."

Comment: The Year One monitoring report evaluating reclamation implementation observed "The topsoil used for the Azevedo Quarry reclamation comes from a wide variety of soils, many of which appear to be non-serpentine." Continued utilization of non-serpentine-based soils was subsequently approved by the County. (H.T. Harvey & Associates, February 29, 1996, page 9; Azevedo Quarry, March 27 and July 17, 1996; County of Santa Clara, July 31, 1996)

Thank you for this opportunity to comment.

Sincerely,



Robert J. Bettencourt

encl.

cc: Darryl Boyd

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

---

- 4.1 **Report of the Community & Economic Development Committee – December 14, 2009**  
Council Member Pyle, Chair  
Accepted.

- 4.2 **Inclusionary Housing Ordinance.**

**Recommendation:** Approve an ordinance amending Title 5 of the San José Municipal Code to add a new Chapter 5.08 adopting a Citywide Inclusionary Housing Program.  
CEQA: Exempt. (Housing)

(Deferred from 11/17/09 – Item 4.2 and 12/1/09 – Item 4.2)

**Ordinance No. 28689 passed for publication, as amended, to include:**

- (1) **Changes to the Staff recommendations read into the record by the City Attorney regarding Sections 5.08.520.B.2.a.(2) - In-Lieu Fees and 5.08.560 - HUD Restricted Units;**
- (2) **Modifications proposed by Council Member Pyle in her memorandum dated January 11, 2010, and by Joan Gallo in her letter dated January 6, 2010 regarding the Communications Hill Planning Area Exemption (Section 5.08.320.G).**

**Staff was directed to analyze other specific plans and return to Council.**

**Noes:** Constant, Oliverio.

**Disqualified:** Nguyen. [*Note: Due to a potential conflict of interest, Council Member Nguyen was disqualified, and did therefore abstain from participating in the discussion of the Communications Hill Planning Area Exemption (Sections 5.08.320.F and G portion of the draft ordinance).*]

- 4.3 **Sign Ordinance Update.**

**Recommendation:** Accept the report and direct staff to prepare an ordinance to revise Title 23 of the San José Municipal Code (the Sign Ordinance) consistent with the proposed draft signage strategy and conduct additional related community outreach.

CEQA: Not a Project. (Planning, Building and Code Enforcement)

(Deferred from 11/17/09 – Item 4.8 and 12/1/09 – Item 4.3)

**Heard last in the afternoon.**

**Due to time constraints, Council provided direction on 2 out of 8 policy questions, as outlined in the supplemental memorandum, as follows:**

- (1) **Billboards on Private Property – (a) Council approved Option 1: Maintain the cap (ban) on the number of billboards in the City. (b) Staff was directed to explore opportunities to “cap and trade” (move existing billboards in residential areas to commercial areas), and further, to encourage property owners to upgrade billboards.**
- (2) **Freeway Signs – (a) Council approved Option 1: Allow freeway signs for shopping centers 25+ acres in size; (b) Council approved Option 2: Allow freeway signs for smaller shopping centers (15+ acres) Noes: Chirco. (c) Staff requested to explore and report back on alternatives for allowing signs higher than 60 feet.**

Continued to 02/02/10.



# CITY COUNCIL AGENDA

**JANUARY 12, 2010**

## SYNOPSIS

PETE CONSTANT  
ASH KALRA  
SAM LICCARDO  
KANSEN CHU  
NORA CAMPOS

DISTRICT 1  
DISTRICT 2  
DISTRICT 3  
DISTRICT 4  
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO  
MADISON P. NGUYEN  
ROSE HERRERA  
JUDY CHIRCO, VICE MAYOR  
NANCY PYLE

DISTRICT 6  
DISTRICT 7  
DISTRICT 8  
DISTRICT 9  
DISTRICT 10



# Memorandum

TO: HONORABLE MAYOR AND  
CITY COUNCIL

FROM: COUNCILMEMBER  
NANCY PYLE

SUBJECT: ADOPTION OF A  
CITYWIDE  
INCLUSIONARY HOUSING  
ORDINANCE

DATE: January 11, 2010

APPROVED: *Nancy Pyle*

DATE: 1/11/10

## RECOMMENDATION

Support the request from representatives of Communication Hill to remove the proposed change in the Inclusionary Ordinance Subsection 5.08.320 G, Item 5

"As of the Operative Date, there has been no construction of residential units in one or more remaining phases of the Residential Development within the Specific Plan area, and within forty (40) months of the Operative Date the Developer has obtained City approval of at least one building permit in any such remaining construction phase."

## BACKGROUND

The City of San Jose has been working with affordable housing advocates, developers and community members for more than a year to create a citywide Inclusionary Housing ordinance. Housing staff has done exemplary work to make sure that all interests were kept well informed.

The Communication Hill Specific Plan was approved in 1992. Specific Plans take years to implement and both property owners and developers need to know that the regulations and ordinances in place at the time of approval will not dramatically change.

There have been unforeseen and major changes regarding development and finances for both businesses and the city. The property owners of Communication Hill are currently without a developer and have been notified that given the financial state of the city, there will not be any public funds to help pay for the infrastructure costs anticipated to total more than \$300 million. Exempting Communication Hill from the proposed Inclusionary Ordinance without a sunset will simply ensure that the development plans in place during the approval of the Specific Plan will remain consistent.

THE LETITIA BUILDING  
70 S. FIRST STREET  
SAN JOSE CA 95113-2406

MAILING ADDRESS  
P O BOX 1469  
SAN JOSE CA 95109-1469



**HOPKINS & CARLEY**  
A LAW CORPORATION

TELEPHONE:  
408.286.9800

FACSIMILE:  
408.998.4790

hopkinscarley.com

January 6, 2010

JOAN R. GALLO  
Of Counsel  
jgallo@hopkinscarley.com  
408-286-9800  
Fax 408-938-6227

**Agenda 1/12/10**  
**Item: 4.2**

Mayor and City Councilmembers  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

**Re: *Inclusionary Zoning/ Communications Hill***

Dear Honorable Mayor Reed and Councilmembers:

I represent MTA Properties, the majority property owner of Communications Hill. As explained below, we are asking you to modify the exemption for the Specific Plan as shown in §5.08.320 of the draft ordinance.

The build-out of the Communications Hill Specific Plan will result in more than 2,500 new housing units essential to enable the City to meet its housing goals. SummerHill Homes withdrew its interest in the Communications Hill project due, in large part, to the exorbitant infrastructure costs required to complete the project, and in light of the current economic conditions affecting the housing development industry.

**A. Requested Modifications**

For the reasons outlined below, the draft ordinance Exemption §5.08.320 G is intended to exempt Communications Hill from the inclusionary requirements. However, in order to be effective, some changes to the language in the draft ordinance are necessary. Attached is the draft Exemption with our requested modifications in red lined format.

1. First of all, unlike the Staff report which recommended the exemption apply if the "Specific Plan was originally adopted no later than 1992," the language in the draft ordinance §5.08.320 G (2) reads: "A Specific Plan was adopted by the City for the Planned Community prior to 1992." Since the Communications Hill Specific Plan was adopted April 7, 1992, it would not qualify for the exemption. This section should be amended to read "prior to 1993."

2. Secondly, consistent with the Staff report language, subsection (4) of the draft ordinance should be clarified, as shown below, to ensure that one or more phases of the Residential Development and the required infrastructure improvements related to each of those phases **has previously been completed.**

3. Thirdly, we request **elimination in its entirety of subsection (5)** which appears in both the Staff report and draft ordinance that reads: "*within forty (40) months of the Operative Date the Developer has obtained City approval of at least one building permit in any such remaining construction phase,*" since there is no certainty that a qualified developer can be found, financing secured, the remaining phases of the Specific Plan entitled, and the construction of the needed infrastructure completed to enable a building permit to be pulled within that time frame. No Developer will make the extraordinary investment in the infrastructure necessary before a building permit can be issued without certainty that the development can occur without the additional cost of the inclusionary housing.

#### **B. Extraordinary Infrastructure Cost**

At the time the Specific Plan was adopted by City Council on April 7, 1992, it identified major backbone infrastructure with estimated construction costs of \$114 million. A combination of public and private financing was envisioned. Since a mechanism for public financing has never been implemented, all costs have been absorbed by private financing.

The start of the development of the Specific Plan has already been accomplished with the Dairy Hill and Tuscany projects. There have been 2,417 units approved to date, with the majority constructed. The infrastructure cost to date has been \$126 million. The infrastructure cost for the remainder of the Specific Plan is anticipated to be more than \$120 million in Specific Plan backbone infrastructure and at least \$70 million dollars for in-tract infrastructure. Thus, the additional infrastructure cost to build the current project will be approximately \$200 million. The total infrastructure cost to achieve the housing envisioned by the Specific Plan will be well over \$300 million. Add to that City fees, school impact fees and parkland fees. The project cannot support any additional exactions.

#### **C. Complexity**

A project of this size is fundamentally more complex than a traditional 750 or 1,000 unit project. The remaining development has many challenges and will likely involve multiple developers. The potential of an affordable housing requirement will render the property valuation virtually worthless and completion of the Communications Hill Specific Plan will cease for the foreseeable future. If the Specific Plan is not developed,

San Jose City Council  
January 6, 2010  
Page 3

not only will the City lose the needed housing but the school, park, and retail center will not be built and the expectations of the existing residents of Dairy Hill, Tuscany, Lancaster Gate, and Helzer Court, will not be realized.

#### CONCLUSION

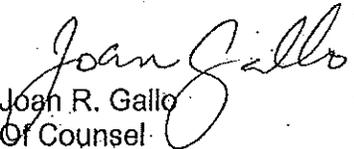
Relatively dense development of the Hill is essential for the City to meet its housing goals. There will be well over a million dollars just in the planning and environmental review for this project. This is coupled with the more than \$200 million dollar additional investment in infrastructure. Unanticipated delays are inevitable in a project of this size and complexity. In order for any developer to be willing to expend the several hundred million dollars required for the infrastructure for this project, there needs to be some level of certainty. There can be no certainty if there is a requirement that a building permit be secured within a set period of time.

Therefore, we ask that the Council make the changes to the proposed Exemption 5.08.320G as shown in the attachment to this letter.

Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation

  
Joan R. Gallo  
Of Counsel

JRG/bm

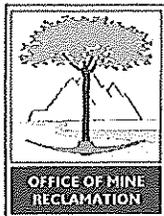
Enclosure

cc: Rob Bettencourt  
Rick Doyle  
Laurel Prevetti  
Leslye Krutko

Proposed Changes  
Exemption 5.08.320 G

G. Residential Development in a Planned Community, as specified in the San José 2020 General Plan, and:

1. The Residential Development is not in the Redevelopment Project Area;
2. A Specific Plan was adopted by the City for the Planned Community prior to 1992 1993;
3. The Specific Plan and/or a Planning Permit specifies that the Residential Development will occur in phases and authorizes the phased construction of new on-site and off-site infrastructure;
4. One or more phases of the Residential Development, and the required infrastructure improvements related to each of those phases, ~~is~~ **has been** completed in conformance with the Specific Plan and Planning Permits prior to the Operative Date; and
5. ~~As of the Operative Date, there has been no construction of residential units in one or more remaining phases of the Residential Development within the Specific Plan area, and within forty (40) months of the Operative Date the Developer has obtained City approval of at least one building permit in any such remaining construction phase."~~



## DEPARTMENT OF CONSERVATION OFFICE OF MINE RECLAMATION

801 K STREET • MS 09-06 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 323-9198 • FAX 916 / 445-6066 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

May 6, 2014

VIA EMAIL: [Marina.Rush@PLN.SCCGOV.ORG](mailto:Marina.Rush@PLN.SCCGOV.ORG)  
ORIGINAL SENT BY MAIL

Ms. Marina Rush  
Santa Clara County Department of Planning and Development  
70 W. Hedding Street  
San Jose, CA 95110-1705

Dear Ms. Rush:

AZEVEDO QUARRY  
PARTIAL CLOSURE OF RECLAIMED AREAS  
CALIFORNIA MINE ID # 91-43-0003

The Department of Conservation (Department) has received documents submitted pursuant to California Code of Regulations (CCR), Title 14, Section 3805.5(a), indicating that certain portions of the Azevedo Quarry have been reclaimed. The intent of the reclamation plan as amended and approved in 2008 was "to create and maintain stable site conditions until development plans go forward as set forth in the *Communication Hill Specific Plan, adopted by the City of San Jose adopted April 7, 1992*". Santa Clara County (County), as SMARA lead agency, has determined that the majority of the site, with the exception of specific areas discussed below, has been reclaimed in accordance with the approved reclamation plan to open space and industrial end uses, readily adaptable to future urban development.

Staff of the Department of Conservation's Office of Mine Reclamation (OMR) conducted an inspection on April 3, 2014 accompanied by representatives from the County. OMR has completed its review in accordance with CCR 3805.5(b) and concurs that revegetation performance standards have been achieved for the open space portion of the site. The other segment of the site has an industrial end use with a separately permitted recycle facility that is to remain until its permit expires.

The only outstanding reclamation liabilities are related to areas of concern that have been noted in previous inspection reports: (1) the over-steepened slopes at the southeastern entrance to the site, (2) the two over-steepened rocky knolls supporting utility poles, and (3) the embankment above the northern sedimentation pond. The enclosed map depicts these features with buffers around them to allow for grading or

Ms. Marina Rush  
May 6, 2014  
Page 2

buttressing, should it become necessary. Reclamation of these areas is not complete. However, reclamation can be certified complete for the remainder of the site.

The mine was abandoned by the operator, Raisch Products, and the County seized the financial assurance mechanism in 2012. The remaining financial assurance should be maintained in order to complete reclamation of the areas noted in the event that the development plans for Communication Hill do not proceed as anticipated.

The reclamation plan was amended in 2008 to incorporate the anticipated end uses of open space, industrial use, and ultimately, residential development. The proposed residential development project involves annexation of the property by the City of San Jose and environmental review under the California Environmental Quality Act (CEQA) later this year. Once approved, the project involves substantial import fill grading which would result in burying and/or modifying the slopes of the entire property in preparation for development by KB Homes. If and when the rough grading has been accomplished as planned, OMR can certify final reclamation and closure for the remainder of the site and any remaining financial assurance can be released pursuant to CCR 3805.5(d).

If you have any questions on these comments or require any assistance with other mine reclamation issues, please contact me at (916) 324-0716.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Ferrero', with a long horizontal flourish extending to the right.

Tom Ferrero, PG, CEG  
Manager, Compliance Unit

Imagery: NAIP 2012



**Mine Boundaries**  
Azevedo Quarry - Mine ID 91-43-0003  
Santa Clara County

- Existing Permit Area
- Un-Reclaimed Feature
- Buffer Around Un-Reclaimed Feature

The street-oriented retail blocks will accommodate up to 50,000 square feet of retail shops, commercial space, restaurants and possibly a daycare facility. The Plan establishes its location so that the retail and commercial uses will not compete with the surrounding strip shopping centers and mini-malls. The success of the *village center* depend upon tenant selection, leasing policy and management. Examples of successful shopping streets similar in character and intent to the *village center* of Communications Hill are the centers of Mill Valley, Saratoga and Corte Madera. Orinda Theater Square and Miami Lakes Main Street are also good examples of urban places for shopping.

The *village center* is within walking distance of most housing and deliberately not located on Vistapark Drive. The location and links to transit suggest that the parking ratio for the *village center* be somewhat less than that required for completely auto-oriented retail facilities. Some parking should be conveniently located along its street frontage and some within the block.

## DESIGN STANDARDS

### Appropriate Uses

There are three categories of appropriate tenants. Examples of each include: 1) regular convenience shopping and services for local residents, such as a small grocery/deli, cleaners, video outlet, beauty shop, ATM machine or branch bank and postal/business services; 2) food and drink including a neighborhood-serving cafe/dessert spot/bar and up to two region-serving restaurants; 3) specialty convenience stores, such as a flower shop, card/office supply store, gift shop, and bookstore. Small professional offices are also appropriate, particularly service-oriented uses such as travel or insurance agents. Housing (with no minimum density requirement) is also permitted within the village blocks, above the ground floor level and provided that the parking requirement can be satisfied.

### Building Height & Massing

Buildings must be at least 15 feet high. Building height is limited to two stories of housing or offices over the ground floor of retail or offices. Buildings should have well defined, articulated massing with frequent recessed entrances, storefronts and display windows. Floor to ceiling glass is not appropriate for retail frontage.

### Parking Ratio

Retail and office uses must provide one parking space per 500 square feet of building area. Residential uses must provide the standard Communications Hill parking ratio current at the time of development; alternate use parking may be considered.

### Parking Accessibility & Orientation

On-street parking must be conveniently located along retail street frontage. Surface parking lots behind buildings within the mid-block must be partially concealed or screened from view. Mid-block passages every 150 feet which provide direct access to stores from these lots should be provided through passageways. Bike storage areas should be provided adjacent to parking.

### Setback Zone

Except for those listed below, building projections are not permitted to encroach into the setback. This makes for wider sidewalks and the possibility for small outdoor dining areas.

### Building Projections

Projections from buildings which are applied such as cornices, awning, canopies, and signage are permitted to encroach into the setback up to 3 feet. Their placement should be over entrances and display windows and not dominate street frontage. Where housing or offices occur above retail, projections above the ground floor are limited to those outlined for the setback zone on page 60.

### Paving

Special paving is encouraged in recessed entries, crosswalks, and areas between street trees in the planting strip of the public right-of-way. The normal wear and tear of daily use requires that the base of buildings and paved areas use quality materials which are durable and require little care.

**A SPECIFIC PLAN FOR COMMUNICATIONS HILL**  
Prepared for the City Of San Jose

Prepared By  
**SOLOMON, INC.**

Adopted by City Council  
April 7, 1992

## DISCUSSION

### Reclamation Plan Intent and Performance Criterion

According to the site's reclamation plan, the general intent of the reclamation is to create and maintain stable conditions until the site is developed. The goal of the reclamation is to restore the quarry to the general vegetative condition occurring prior to the commencement of quarrying. In addition, the reclamation plan calls for the spreading of serpentine-based topsoil over the quarried areas and seeding with "locally favorable" native grasses and forbs. The performance criteria is the establishment of 80% coverage by locally native grasses and forbs using an unquarried portion of the site as a reference area.

Overall, the general intent of creating stable site conditions and restoring the quarry to its general vegetative condition prior to grading were achieved. However, serpentine-based topsoil was not spread over all areas of the site nor was the site seeded with "locally favorable" grasses and forbs. Very little of the site met the performance criterion of 80% coverage by locally native grasses and forbs.

The reclamation plan is inconsistent in its specific performance standard of 80% cover by "locally native" grasses and forbs. Since the reference site is dominated by exotic grasses and forbs, 80% cover by "locally native species" would result in a species composition that is dissimilar to the reference site. Attainment of 80% cover by locally native species is not considered practical or possible for this site. Even the highest quality serpentine grasslands in Santa Clara County have less than 80 % cover by native species (Boursier pers. com.). Even if the reclamation topsoil were sterilized and the site seeded with locally native species, exotic vegetation from the surrounding non-native grassland would invade the site and quickly dominate the vegetation. Since 80% cover by locally native grasses and forbs is not considered realistically attainable, the performance standard used to evaluate the success of the reclamation site should be modified to 80 % cover by locally occurring grasses and forbs. The majority of the areas evaluated in this report would have met this modified performance criterion.

### Vegetation

Only minimal portions of the reclamation areas met the performance criteria of 80% cover by locally native species. However, most areas did have total vegetative cover (both native and non-native species) of 80 % or greater. The areas with less than 80% total vegetative cover appeared to be a result of inadequate topsoil. To achieve 80 % cover in these locations additional topsoil should be added.

Little if any of the reclaimed areas of the site appear to have been seeded with native grasses and forbs as called for in the reclamation plan. Future reclamation work should include seeding with native species to achieve a greater component of native species.

### Topsoil

The topsoil used for the Azevedo Quarry reclamation comes from a wide variety of soils, many of which appear to be non-serpentine. The Quarry's use of non-serpentine topsoil is inconsistent with the reclamation plan. The reclamation plan's rationale for using local serpentine-based soils is that non-serpentine soils would contain seeds of exotic species which would compromise the "locally native grassland". Since the grassland which occurs throughout Communications Hill is composed primarily of exotic species, use of local serpentine-based soils would only provide a marginal benefit in establishing native species on site. However, the unique chemical properties of serpentine-based soils do provide a competitive advantage to native species which have adapted to the harsh growing conditions of serpentine soils. Thus, the quarry should ensure that a substantial portion of the topsoil used for reclamation is serpentine-based.



**H.T. HARVEY & ASSOCIATES**  
**ECOLOGICAL CONSULTANTS**

**AZEVEDO QUARRY  
YEAR ONE  
RECLAMATION MONITORING  
SANTA CLARA COUNTY USE PERMIT  
FILE NO. 4728-43-60-91P-91A**

Prepared by:

**H. T. HARVEY & ASSOCIATES**  
Ronald R. Duke, M.A. - Principal  
Daniel D. Stephens, B.S., Revegetation Division Head  
Rick Hopkins, Ph.D., Project Manager  
Patrick H. Reynolds, M.S., Revegetation Specialist

Prepared for:

Rick Navarro  
**RAISCH COMPANY**  
99 Pullman Way  
San Jose, CA 9511

**RECEIVED**  
**MAR - 6 1996**  
**RAISCH CO.**

February 29, 1996

Project Number 709-06

**Alviso Office**  
906 Elizabeth Street • P.O. Box 1180  
Alviso, CA 95002 • 408-263-1814 • Fax: 408-263-3823

**Fresno Office**  
423 West Fallbrook, Suite 207  
Fresno, CA 93711 • 209-449-1423 • Fax: 209-449-8248



P.O. BOX 7092 ■ SAN JOSE, CALIFORNIA 95150  
PHONE: (408) 225-9227

March 27, 1996

*Rec'd  
03-28-96*

Mr. Ransom Bratton, Secretary  
Architectural and Site Approval  
70 West Hedding Street  
San Jose, CA 95110

**Subject: Revegetation, CTS and Burrowing Owl Report. H. T. Harvey & Associates  
Report Dated February 29, 1996.**

**Reference: Azevedo Quarry. Ca Mine ID No.: 91-43-0003. Use Permit  
County File No.: 4728-43-60-91P-91A, Parts A5.**

Dear Mr. Bratton:

Enclosed please find the subject Annual Report for the Azevedo Quarry, prepared by our consultant, H. T. Harvey & Associates, in accordance with Part A3, B29, B30, D6, and D7, of the referenced Use Permit.

Based on this report and its Management Recommendations (page 10), the following comments are offered.

#### COMMENTS

##### MANAGEMENT RECOMMENDATION #1

**Revise the reclamation plan performance criterion to specify 80% cover by locally native occurring grasses and forbs.**

- We are requesting, that the reclamation plan performance criterion be revised to reflect this recommendation. (Please refer to Harvey & Associates report, page 9, "DISCUSSION".)

##### MANAGEMENT RECOMMENDATION #2

**Spread primarily serpentine-based top soil in all future reclamation areas.**

- Because there is not enough serpentine-based soil available, we are also requesting a revision to allow us to continue utilizing non-serpentine-based soil. We intend to make every possible effort to use serpentine-based soil whenever possible. (Please refer to Harvey & Associates report, page 9, "DISCUSSION".)

**MANAGEMENT RECOMMENDATION #3**

Seed with native grasses and forbs in all future reclamation efforts.

- We will comply with this recommendation as stated. If request for revision in item #1 is granted, we will proceed to seed with locally occurring grasses and forbs.

**MANAGEMENT RECOMMENDATION #4**

Take measures to stop the gullies that have formed in the year 1-2 Reclamation Areas.

- These areas will be repaired with top soil and reseeded this summer.

**MANAGEMENT RECOMMENDATION #5**

Add top soil and native seed to areas shown on Figure 2 that have less than total 80% cover. It is recognized that it may not be feasible to add top soil in some locations due to lack of access.

- We will comply with this recommendation as stated. If our request for revision in item #1 is granted, we will proceed to seed with locally occurring grasses and forbs.

**MANAGEMENT RECOMMENDATION #6**

Reclaim all roads within the Year 1-3 Reclamation which are not actively used.

- Once all other items have been resolved, we intend to make this item our last reclamation activity for each and every Year reclamation area.

**MANAGEMENT RECOMMENDATION #7**

Identify ponds in which California tiger Salamanders have bred in 1996, and place fencing to discourage the dispersal of juveniles in the active quarry.

- The identification phase has been accomplished by Caltrans and copy of that report will be forwarded to us after March 23, 1996. Based on this information, Harvey & Associates will proceed with fence location recommendations in the Spring, 1996. (Please refer to Harvey & Associates report, page 8, "TIGER SALAMANDERS").

Thank you for your anticipated attention to this letter and our requests. Please advise us of your intent at your earliest time possible.

If you have any questions, please call us.

Sincerely,

**AZEVEDO QUARRY**



E. A. "Rick" Navarro, C.E., R.E.A.  
Manager of Engineering & Environmental

cc: MTA Properties.

C. Berry. Azevedo.

Harvey & Assoc.

Encl.:



P.O. BOX 7092 • SAN JOSE, CALIFORNIA 95150  
PHONE: (408) 225-9227

July 17, 1996

Mr. Ransom Bratton, Secretary  
Architectural and Site Approval  
70 West Hedding Street  
San Jose, CA 95110

Subject: Revegetation, CTS and Burrowing Owl Report. H. T. Harvey & Associates  
Report Dated February 29, 1996.

Reference: Azevedo Quarry. Ca Mine ID No.: 91-43-0003. Use Permit  
County File No.: 4728-43-60-91P-91A, Parts A5.

Dear Mr. Bratton:

In our letter of March 27, 1996, we requested from your office the following revisions in our reclamation plan:

#### MANAGEMENT RECOMMENDATION #1

Revise the reclamation plan performance criterion to specify 80% cover by locally native occurring grasses and forbs.

- We are requesting, that the reclamation plan performance criterion be revised to reflect this recommendation. (Please refer to Harvey & Associates report, page 9, "DISCUSSION".)

#### MANAGEMENT RECOMMENDATION #2

Spread primarily serpentine-based top soil in all future reclamation areas.

- Because there is not enough **serpentine-based** soil available, we are also requesting a revision to allow us to continue utilizing non-serpentine-based soil. We intend to make every possible effort to use serpentine-based soil whenever possible. (Please refer to Harvey & Associates report, page 9, "DISCUSSION".)

#### MANAGEMENT RECOMMENDATION #3

Seed with native grasses and forbs in all future reclamation efforts.

- We will comply with this recommendation as stated. If request for revision in item #1 is granted, we will proceed to seed with locally occurring grasses and forbs.

---

"AN EQUAL OPPORTUNITY EMPLOYER"

H. T. HARVEY & ASSOCIATES

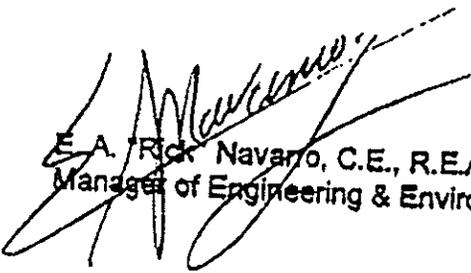
JULY 17, 1996

As we approach the time to make preparations for the revegetation activities of the upcoming winter, we will assume that our request has been approved unless we are advised differently, by July 31, 1996.

Thank you for your anticipated attention to this letter and our requests. If you have any questions, please call us.

Sincerely,

AZEVEDO QUARRY



E. A. "Rick" Navaro, C.E., R.E.A.  
Manager of Engineering & Environmental

cc: C. Berry. Azevedo.

**County of Santa Clara**Environmental Resources Agency  
Planning OfficeCounty Government Center, East Wing, 7th Floor  
70 West Hedding Street  
San Jose, California 95110-1705  
(408) 299-2434 FAX 279-8537

July 31, 1996

Mr. E. A. "Rick" Navarro  
Raisch Company  
P.O. Box 643  
San Jose CA  
95016RE: ANNUAL INSPECTION FOR COMPLIANCE WITH THE QUARRY RECLAMATION  
PLAN

On July 31, 1996, I conducted the annual inspection of the Azevedo Quarry for compliance with the quarry's reclamation plan. Enclosed is a copy of the County Master Application Form. Once I have received this completed form and a check in the amount of \$320.00 to cover the costs of the inspection copies of the report of inspection will be mailed to you.

In response to your letter of July 17, 1996, the minor revisions to your recommendation plan is approved as submitted.

Sincerely,

Ransom Bratton  
Associate Plannercc: Doug M.  
ChuckBoard of Supervisors: Michael M. Honda, Blanca Alvarado, Ron Gonzales, James T. Beall Jr., Dianne McKenna  
County Executive: Richard Wittenberg

H. T. HARVEY &amp; ASSOCIATES

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4  
P.O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 286-6053  
FAX (510) 286-5559  
TTY 711  
www.dot.ca.gov



*Serious Drought.  
Help save water!*

July 17, 2014

Mr. John Davidson  
Planning Division  
City of San Jose  
200 E. Santa Clara Street, T-3  
San Jose, CA 95110



SCL087105  
SCL/87/PM 2.83  
SCH# 2001062119

Dear Mr. Davidson:

**Communications Hill 2 Project – Draft Subsequent Environmental Impact Report (DSEIR)**

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. Please also refer to Caltrans' comments regarding the Proposed Transportation Impact Analysis (TIA) Workslope in our letter dated July 5, 2007. We have reviewed the DSEIR and have the following comments to offer.

***Traffic Impacts (Operations)***

One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance potential adverse impacts by local development on State highways. Regarding Appendix B Traffic Impact Analysis, the TIA should:

1. State who will be financially responsible for the mitigation of the following intersections: (1) Intersection #3 Monterey Road/Curtner Avenue; (2) Intersection #22 Communications Hill Boulevard/Curtner Avenue; (3) Intersection #13 Alameda Expressway/Foxworthy Avenue; (4) Intersection #32 Vistapark Drive/Capitol Expressway; and (5) Intersection #33 Snell Avenue/Capitol Expressway.
2. Address if there will be a separate project report for the proposed improvement projects on the northbound (NB) State Route (SR) 87/Curtner Avenue and NB SR 87/Narvaez Avenue.
3. Include conclusive statements whether the project has significant impacts or not on SR 82, SR 85, Interstate (I-) 280, I-680, and U.S. Highway (U.S.) 101.
4. State if there will be a Traffic Demand Management (TDM) program such as a shuttle bus for the residents and future industrial employees to go to nearby train stations, malls, schools, and other industrial development facilities in order to mitigate project trips generated by this

project.

5. In addition to the NB SR 87/Narvaez Avenue diagonal on-ramp and the NB SR 87/Curtner Avenue diagonal on-ramp, the proposed project is likely to have impacts on the operations of the SB SR 87/Curtner Avenue diagonal on-ramp and the SB SR 87/Capitol Expressway diagonal on-ramp. During the ramp metering hours, the existing on-ramp queues will likely be lengthened with the additional traffic demand by this project, and they may impede onto the local streets affecting their operations. Caltrans recommends storage on the on-ramps/local streets for the freeway on-ramp traffic to avoid such impacts.
6. Caltrans recommends removing or modifying the last part of the first paragraph on page 58 of the TIA because the statements are incorrect, "*The ramp operations and delays are dictated by the ramp meter service rate. In order to reduce delay time at the ramp, the meter would have to be adjusted to provide a higher service rate and traffic flow onto the freeway....*" High on-ramp traffic demand, on-ramp geometry and capacity, and the freeway capacity contribute to freeway on-ramp operations. When the freeway segment is operating at capacity or in queue as indicated by the LOS F in Table 4 (p. 23), increasing ramp metering rate would not improve the reduce wait time at the on-ramp.
7. The queuing analysis and impact assessment for the NB SR 87/Curtner Avenue diagonal on-ramp should be based on existing metering rates. Existing metering rates will not be increased to accommodate additional traffic demand from new development and any proposed metering rate adjustment will require analyses for their effects on the entire freeway corridor. Therefore, Table 14 and the second paragraph on page 58 of the TIA should be modified to reflect the existing metering rates.

#### **Traffic Impacts (Forecasting)**

1. Table 9 *Trip Generation Estimates Based on Standard City of San Jose Trip Rates* (p. 36): of the TIA shows double counts on internalization reduction for retail-residential land use as 90 percent and 15 percent. The TIA assumes the retail would primarily serve the existing and proposed residential units. However, Caltrans considers the 90 percent internalization reduction over estimated and should be a lower percentage, unless the retail proves to be constrained only to existing and proposed residential units.
2. Please clarify what type of retail business is identified as being 64,800 square feet. If this retail is not a regional mall, then Caltrans recommends that the 90 percent internalization reduction be eliminated altogether for a conservative analysis. Instead, Caltrans recommends the TIA apply single retail-residential internalization reduction within a reasonable range. An average of 33 percent is used for most Bay Area projects for AM (PM) peak hour generated traffic trips.
3. Table 9 shows AM (PM) peak hour generated trip rates of 0.15 (0.13) for industrial. However, the ITE Trip Generation 9<sup>th</sup> edition shows AM (PM) peak hour trip rates of 0.82 (0.85) for industrial park and AM (PM) peak hour trip rates of 0.92 (0.97) for light industrial, indicated the AM (PM) peak hour trip rates given in Table 9 are under estimated. Therefore,

Caltrans recommends the TIA clarify whether the industrial in Table 9 is industrial park or industrial light and adopt the appropriate ITE Trip Generation 8<sup>th</sup> edition AM (PM) peak hour trip rates of 0.82 (0.85) for industrial park or AM (PM) peak hour trip rates of 0.92 (0.97) for light industrial.

***Traffic Impacts (Safety)***

All curb ramps and pedestrian facilities located within the limits of this project must be brought up to current Americans with Disabilities Act (ADA) standards. Pedestrian access through the construction zone of this project must be in accordance with ADA guidelines.

***Lead Agency***

As the lead agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the City work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see the end of this letter for more information regarding encroachment permits.

***Transportation Management Plan (TMP)***

If it is determined that traffic restrictions and detours are needed on or affecting State highways, a TMP or construction TIS may be required of the developer for approval by Caltrans prior to construction. Traffic Management Plans must be prepared in accordance with Caltrans' *Manual on Uniform Traffic Control Devices*. Further information is available for download at the following web address:  
<http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/pdf/camutcd2012/Part6.pdf>.

Please ensure that such plans are also prepared in accordance with the transportation management plan requirements of the corresponding jurisdictions. For further TMP assistance, please contact the Office of Traffic Management Plans at (510) 286-4647.

***Cultural Resources***

Caltrans requires that a project's environmental document include documentation of a current archaeological record search from the Northwest Information Center of the California Historical Resources Information System if construction activities are proposed within State ROW. Current record searches must be no more than five years old. Caltrans requires the records search, and if warranted, a cultural resource study by a qualified, professional archaeologist, and evidence of Native American consultation to ensure compliance with California Environmental Quality Act

(CEQA), Section 5024.5 and 5097 of the California Public Resources Code, and Volume 2 of Caltrans' Standard Environmental Reference (<http://www.dot.ca.gov/ser/vol2/vol2.htm>).

These requirements, including applicable mitigation, must be fulfilled before an encroachment permit can be issued for project-related work in State ROW; these requirements also apply to National Environmental Policy Act (NEPA) documents when there is a federal action on a project. Work subject to these requirements includes, but is not limited to: lane widening, channelization, auxiliary lanes, and/or modification of existing features such as slopes, drainage features, curbs, sidewalks and driveways within or adjacent to State ROW.

#### ***Freeway Monument Signage***

Sign plans for any proposed freeway monument signage should be provided to Caltrans for review and, depending on proposed sign location, approval. The plans should depict the layout, roadway setback, orientation, glare intensity, and sign size. Caltrans is required by law to enforce the Outdoor Advertising Act and Regulations regarding the placement of advertising along the highways. That document is available on the internet at:  
[http://www.dot.ca.gov/hq/oda/download/ODA\\_Act\\_&\\_Regulations.pdf](http://www.dot.ca.gov/hq/oda/download/ODA_Act_&_Regulations.pdf).

#### ***New Connection to Local Street***

Any new connection of local streets or roads to an existing State freeway will require a revision to the existing freeway agreement.

#### ***Traffic Impact Fees***

Please identify traffic impact fees to be used for project mitigation. Development plans should require traffic impact fees based on projected traffic and/or based on associated cost estimates for public transportation facilities necessitated by development. Scheduling and costs associated with planned improvements on State ROW should be listed, in addition to identifying viable funding sources correlated to the pace of improvements for roadway improvements, if any.

#### ***Voluntary Contribution Program***

State Route 87 and other State facilities near the site are critical to regional and interregional traffic in the San Francisco Bay region. They are vital to commuting, freight, and recreational traffic and are among the most congested regional facilities. Given the scale and location of the proposed project and the traffic generated, along with other projects in the vicinity, this project will have a cumulative significant regional impact to the already congested State Highway System.

Caltrans encourages the City to participate in Santa Clara Valley Transportation Authority's (VTA) voluntary contribution program and plan for the impact of future growth on the regional transportation system. Contributions would be used to help fund regional transportation programs that improve the transportation system to lessen future traffic congestion, improve mobility by reducing time delays, and maintain reliability on major roadways throughout the San Francisco Bay Area. Reducing delays on State facilities will not only benefit the region, but also reduce any queuing on local roadways caused by highway congestion.

Mr. John Davidson/City of San Jose

July 17, 2014

Page 5

***Transportation Permit***

Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, a completed transportation permit application with the determined specific route(s) for the shipper to follow from origin to destination must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. See the following website for more information: <http://www.dot.ca.gov/hq/traffops/permits>.

***Encroachment Permit***

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See this website for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits>.

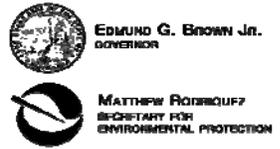
Should you have any questions regarding this letter, please contact Brian Brandert of my staff at (510) 286-5505 or [brian.brandert@dot.ca.gov](mailto:brian.brandert@dot.ca.gov).

Sincerely,



ERIK ALM, AICP  
District Branch Chief  
Local Development - Intergovernmental Review

- c: Scott Morgan, State Clearinghouse  
Robert Swierk, Santa Clara Valley Transportation Authority (VTA) – electronic copy  
Robert Cunningham, Santa Clara Valley Transportation Authority (VTA) – electronic copy



---

## San Francisco Bay Regional Water Quality Control Board

July 17, 2014  
CIWQS Place ID No. 807728

Sent via electronic mail: No hardcopy to follow

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

Attn: John Davidson, Senior Planner ([John.Davidson@sanjoseca.gov](mailto:John.Davidson@sanjoseca.gov))

Subject: Communications Hill 2 Project, Draft Subsequent Environmental Impact Report  
SCH No. 2001062119

Dear Mr. Davidson:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the *Communications Hill 2 Project, Draft Subsequent Environmental Impact Report (SEIR)*. The SEIR assesses potential impacts associated with implementing the Communications Hill 2 Project (Project). The Communications Hill Specific Plan Area comprises roughly 900 acres of hilly land located approximately four miles south of downtown San José. The Plan Area is bounded by Curtner Avenue to the north, Monterey Road to the east, Capitol Expressway, Snell Avenue, and Hillside Avenue to the south, and Guadalupe Freeway (SR 87) to the west. The proposed project site is within the Specific Plan Area near the top of the hill adjacent to the existing Tuscany Hills development. The approximately 331.6-acre site is generally bounded by the Caltrain/Union Pacific railroad tracks on the north, Old Hillside Avenue to the east, the Tuscany Hills development to the south, and the Millpond and Dairy Hill residential neighborhoods to the west.

The Communications Hill 2 Project proposes the development of the remaining 2,200 residential units in the Communications Hill Specific Plan (CHSP), along with 67,500 square feet of retail uses and 1.44 million square feet of industrial uses. The project includes rezoning and annexation of unincorporated lands within the project site, rezoning, minor amendments to the Envision 2040 General Plan, and formation of an Area Development Policy for the CHSP area.

The EIR for the Communications Hill 2 Project is a Subsequent EIR (SEIR) to the previously certified *Communications Hill Specific Plan (CHSP) Environmental Impact Report* (City of San José, 1992). The CHSP serves as the action guide for development activities in the Plan Area, including the project site. The proposed project is within the boundaries of the approved Communications Hill Specific Plan Area (Plan Area) and would result in the construction of the remaining residential units included in the Specific Plan. Other land uses proposed, consistent with the Specific Plan, are commercial/retail, industrial park, a future school, parks, trails, open space, and stormwater filtration/detention facilities. Therefore, the Communications Hill 2 Project EIR tiers off the *Communications Hill Specific Plan EIR* to the extent possible. Water Board staff have the following comments on the SEIR.

**Comment 1. Section 4.6 Hazards and Hazardous Materials**

Based on review of the Draft SEIR, as well as Phase I and Phase II reports for the Project site, Water Board staff in the Groundwater Protection and Waste Containment Division believe that remediation of the mine may be necessary prior to development of the Project site. Initial investigations of the Project site indicate that mercury and other metals are present in soils at elevated concentrations. Some detected levels of mercury and other metals are above standards for the protection of human health due to direct exposure and some detected concentrations are above hazardous waste thresholds. Elevated concentrations of metals have also been detected in water discharging from mine adits at the Project site (Note: The SEIR refers to the adits as “springs”).

It is unclear how the plans to develop the property will “safely eliminate much of the mine” as is asserted in section 4.8 of the SEIR. In the absence of a thorough site investigation, excavation and grading activities on the Project site may expose additional sources of mercury and result in the dispersal of mining wastes. These mining wastes may include calcines, which contain a relatively labile and, therefore, mobile form of mercury (in comparison to cinnabar ore). The unintentional dispersal of calcines may increase impacts associated with mercury-contaminated waste materials, rather than reducing those impacts.

A more thorough investigation of the mine area, and any other area containing elevated metals concentrations, is necessary to evaluate the potential impact of Project activities on water quality. In particular, Water Board staff is concerned about any potential increases in the loading of mercury to the Guadalupe River, which drains a large portion of the site, because the Guadalupe River is listed as impaired due to mercury on the Clean Water Act 303(d) list of impaired water bodies.

Prior to development of the Project site, the property owners are required to contact Water Board staff (Lindsay Whalin, [lindsay.whalin@waterboards.ca.gov](mailto:lindsay.whalin@waterboards.ca.gov)) to discuss initiating a site investigation under the oversight of the Water Board. Investigation (and potentially remedial activities) at the Project site may be conducted under a Water Board order (Site Cleanup Requirements, also known as a Cleanup and Abatement Order). This type of Order should be added to the list of permits required for the Project.

**Comment 2. Section 4.7 Biological Resources, 4.7.1.2 Existing Conditions On-Site, Regulated Habitats.**

This section of the SEIR contains the following text:

A formal wetland delineation and waters of the U.S. analysis was completed for the site in 2013. Potentially jurisdictional waters are presumed to be present on the site in the form of four seeps, an intermittent drainage channel, manmade drainage ditches, a quarry pond, and two detention basins. Because the seeps, intermittent drainage channel, manmade drainage ditches, and quarry pond are hydrologically isolated from known waters of the U.S. and lack a significant chemical, physical, or biological nexus to such waters, they do not fall under the USACE’s jurisdiction. The two detention basins are manmade impoundments constructed as part of the neighboring Tuscany Hills development and connect into the public stormwater system. These features do not impound waters otherwise defined as waters of the U.S. and, therefore, should also be disclaimed from the USACE’s jurisdiction.

In 2000, a 1.42-acre wetland was mapped in a swale along Hillsdale Avenue and verified by the USACE (File No. 24975S). This jurisdictional determination expired on March 1, 2005. In

2007, 2009, and 2012, *Live Oak Associates* surveyed this area and did not find positive indicators of wetlands. Therefore, it is believed that this area no longer meets the technical criteria for wetlands and should be disclaimed from the USACE's jurisdiction. Despite this preliminary analysis of the extent of agency jurisdiction, it is important to note that the agencies are the final arbiters and could claim jurisdiction over some or all of these features. Should the USACE disclaim jurisdiction over all of the features on the site, the RWQCB will likely exert jurisdiction over the natural aquatic features, and the CDFW will likely exert jurisdiction over the natural aquatic features supporting a defined bed and bank. All three agencies would likely disclaim jurisdiction over the manmade drainage ditches and two detention basins.

This section of the DEIR lacks a discussion of the Water Board's authority under the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). The DEIR notes that impacts to wetlands and other waters are subject to the jurisdiction of the Army Corps of Engineers (ACOE) and the California Department of Fish and Wildlife (CDFW). However, the discussion of Water Board jurisdiction is limited to the certifications of ACOE permits that are issued by the Water Board pursuant to Section 401 of the Clean Water Act. The DEIR should be revised to include the Water Board's independent jurisdiction over wetlands and other waters, including wetland and waters that may not be subject to ACOE jurisdiction, under the State of California's Porter-Cologne Water Quality Control Act.

The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act. Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in conjunction with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, seasonal streams, intermittent streams, channels that lack a nexus to navigable waters, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs).

The regulatory status of the "manmade drainage ditches" cannot be assessed on the basis of the information presented in the SEIR. If these channels have a supporting watershed, it is possible that they may be considered jurisdictional by the Water Board, as well as the CDFW. If the State agencies determine that these channels are jurisdictional, then mitigation will be required for any unavoidable impacts to these channels.

The regulatory status of the detention basins will be a function of the extent to which they have been constructed and maintained in compliance with the NPDES permit for municipal separate storm sewer systems (MS4s). Post-construction stormwater treatment basins that are designed, constructed, and maintained in conformance with the Municipal Regional Permit (MRP) for MS4s, or one of the prior permits regulating MS4s, are not subject to regulation as waters of the State.

**Comment 3. Section 4.7 Biological Resources, 4.7.3.2 Impacts to Sensitive Habitats, Aquatic Habitat/ Wetlands**

This section of the SEIR contains the following text:

Sensitive habitat present on the site is limited to aquatic features, including four seeps, an intermittent drainage channel, and a quarry pond. Three of the four seeps and a reach of the channel also meet the USACE's criteria for wetlands. While the quarry pond supports a breeding population of CTS, it is a manmade feature that was constructed adjacent to the railroad tracks in association with historic quarrying operations on the site. The seeps and intermittent drainage channel all developed in reclaimed parts of the site that had previously been mined. All of the aquatic features on the site are isolated from known waters of the U.S. The project would result in permanent fill of these features, including all four seeps (approximately 0.87 acres), the quarry pond (approximately 1.53 acres), and the intermittent drainage channel (approximately 0.04 acres and 612 linear feet). In total, approximately 2.4 acres of aquatic habitat, including wetlands, would be permanently impacted.

In accordance with the HCP, the project proponent shall implement avoidance, minimization, and/or compensation measures to reduce impacts to aquatic habitats, including wetlands, to a less than significant level. These measures are described below.

Due to constraints posed by the site's topography and by vehicular connection requirements between the lower and upper parts of the site, the project cannot be achieved without extensive grading (i.e., cut and fill) over the entire site, including all of the aquatic habitats described above. Therefore, both avoidance and minimization of impacts to these features likely is not feasible. In lieu of implementing avoidance and minimization, the project may instead implement the measures below.

And:

In addition to compliance with the HCP, the project will be required to comply with all state and federal regulations related to disturbance to jurisdictional waters that are not covered by the HCP. Therefore, the applicant may be required to obtain a CWA Section 401 water quality certification from the RWQCB for impacts to waters of the State (totaling approximately 2.4 acres) and a Section 1602 streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank (i.e., the intermittent drainage channel, which totals approximately 0.04 acres and 612 linear feet).

As described previously, all of the aquatic features on the site are believed to be isolated and, therefore, not requiring a Clean Water Act section 404 permit from the USACE. However, should the USACE take jurisdiction over these features, a CWA Section 404 individual permit would be necessary. As such, mitigation to satisfy the USACE would fall outside the purview of the HCP (i.e., wetland mitigation through the payment of wetland fees or in-lieu mitigation could not be completed via the HCP to satisfy any mitigation requirements by the USACE).

At the time this SEIR was prepared, the CDFW and RWQCB also do not have a mechanism to permit projects impacting jurisdictional waters in conjunction with the HCP. If they are deemed necessary, these permits must be obtained prior to initiating any ground disturbance within jurisdictional waters. Typical mitigation measures required by these agencies are provided below; however, additional or slightly different measures may be required by the agencies during the permit process to be completed at some point in the future. Implementation of all measures required by the agencies during the permit process would reduce impacts to a less than significant level.

Based on the information provided in the SEIR, it is likely that the Project will be required to obtain CWA Section 401 Certification and/or Waste Discharge Requirements (WDRs) for the fill of most, if not all, aquatic features present at the Project site.

When the Water Boards receives an application for certification and/or WDRs, staff reviews the project to verify that the project proponent has taken all feasible measures to avoid impacts to waters of the State (these impacts usually consist of the placement of fill in waters of the State). Where impacts to waters of the State cannot be avoided, projects are required to minimize impacts to waters of the State to the maximum extent practicable (i.e., the footprint of the project in waters of the state is reduced as much as possible). Compensatory mitigation is then required for those impacts to waters of the state that cannot be avoided or minimized. Avoidance and minimization of impacts is prerequisite to developing an acceptable project and identifying appropriate compensatory mitigation for an approved project's impacts. Avoidance and minimization cannot be used as compensatory mitigation. After avoidance and minimization of direct impacts to waters of the State have been maximized for the proposed project, the necessary type and quantity of compensatory mitigation for the remaining impacts to waters of the State are assessed on a case-by-case basis.

Under both the Clean Water Act and the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), projects are required to avoid impacts to waters of the U.S. and waters of the State, in conformance with U.S. Environmental Protection Agency's CWA 404(b)(1) Guidelines (Guidelines). The Guidelines provide guidance in evaluating the circumstances under which wetlands filling may be permitted. Projects must first exhaust all opportunities, to the maximum extent practicable, to avoid, and then to minimize impacts to jurisdictional waters. Only after all options for avoidance and minimization of impacts have been exhausted, is it appropriate to develop mitigation for adverse impacts to waters of the U.S. and waters of the State.

The Water Boards only allow compensatory mitigation to be implemented for those impacts to waters of the State that cannot be avoided and/or minimized; "avoidance and minimization" in the context of reviewing applications for Clean Water Act (CWA) Section 401 certification and/or Waste Discharge Requirements (WDRs) refers to minimizing the proposed project's footprint in waters of the State. The current Project proposes to fill all waters of the State that are present at the Project. It is unusual for the Water Board to issue permits for projects that include no avoidance or minimization of impacts to waters of the State.

The SEIR refers to the Santa Clara County Habitat Conservation Plan's (HCP's) "standardized avoidance and minimization measures". The use of the term "avoidance and minimization" in the HCP is not consistent with the way the term "avoidance and minimization" is used in the Water Board's permitting process. The HCP has several lists and tables of "avoidance and minimization measures." Most of these measures are best management practices (BMPs) implemented during the construction process, rather than actual avoidance and minimization measures. In fact, the HCP contains very little mention of the actual avoidance and minimization measures as these terms are used by the Water Boards; measures which reduce a project's footprint within waters of the State.

**Comment 4. Section 4.7 Biological Resources, 4.7.3.2 Impacts to Sensitive Habitats, Aquatic Habitat/ Wetlands, Mitigation**

This section of the SEIR acknowledges that the HCP does not currently provide mitigation that meets the regulatory requirements of the Water Board or the ACOE, and proposes Mitigation Measure Bio-2.1:

**MM BIO-2.1: Regulatory Agency Mitigation.** If required by the pertinent regulatory agencies, the applicant shall satisfy agency mitigation requirements by compensating for aquatic impacts at a 1:1 replacement-to-loss ratio either onsite or offsite, in addition to payment of wetland fees via the HCP.

Should the applicant choose to complete its own mitigation on-site, several areas within designated open space on the site may have the potential to accommodate such mitigation. Potential opportunities for wetland/aquatic creation or restoration include, but are not limited to, an aquatic/wetland feature along the proposed water quality and detention basins, and creation of one or more aquatic/wetland features in the eastern part of the site designated as open space. These areas could offset some of the required wetland fee and/or may also satisfy a portion of the anticipated mitigation requirements by the CDFW and RWQCB.

An on-site mitigation and monitoring plan (MMP) would need to be developed to mitigate for impacts to these features. At a minimum, the MMP shall:

- Define the location of all restoration/creation activities;
- Provide evidence of a suitable water budget to support any created aquatic and riparian habitats;
- Identify the species, amount, and location of plants to be installed in the aquatic and riparian habitats;
- Identify the time of year for planting and method for supplemental watering during the establishment period;
- Identify the monitoring period. This should be not less than 5 years for aquatic restoration.
- Define success criteria that will be required for restoration efforts to be deemed a success;
- Identify adaptive management procedures that accommodate the uncertainty that comes with restoration projects. These include, but are not limited to, measures to address colonization by invasive species, unexpected lack of water, and excessive foraging of installed plants by native wildlife;
- Define management and maintenance activities (weeding of invasive plants, providing for supplemental water, repair of water delivery systems, etc.); and
- Provide for surety in funding the monitoring and ensuring that the created aquatic and riparian habitats fall within lands to be preserved and managed into perpetuity.

Any remaining mitigation required by these two agencies to satisfy the additional 1:1 replacement-to-loss ratio would need to be obtained offsite (e.g., via the purchase of credits from an approved mitigation bank).

Since the SEIR acknowledges that the payment of HCP fees will not meet the permitting requirements of the ACOE and Water Board, more detail should be provided to demonstrate that adequate mitigation for the Project's impacts can be provided at the Project site.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires

that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The SEIR lacks concrete proposals for the mitigation of impacts to waters of the State that will be required in a Certification and/or WDRs for the Project.

The SEIR also states that:

If on-site mitigation is not feasible or cannot adequately compensate for all of the impacts, the applicant may also choose to purchase appropriate mitigation credits from a mitigation bank in the permit area that has been approved by the USFWS and CDFW and pre-approved to service the Habitat Plan.

At this time, Water Board staff is not aware of a mitigation bank with wetland credits that includes the Project location in its service area. When project impacts occur within the San Francisco Bay Regional Water Quality Control Board's jurisdictional boundaries, mitigation for those impacts must also be within the San Francisco Bay Regional Water Quality Control Board's jurisdictional boundaries. In other words, a mitigation bank that is located within the jurisdictional boundaries of the Central Coast Regional Water Quality Control Board cannot be used to provide mitigation for this Project's impacts to waters of the State.

**Comment 5. Section 4.9 Hydrology and Water Quality, 4.9.3.2 Hydrology and Drainage Impacts, Drainage Patterns**

This section of the SEIR includes the following text:

Currently, 11.6 acres of the Tuscany Hills development drains to the Mill Pond and Canoas Garden drainage system, which discharges to the Guadalupe River. This is achieved through a lifting station and force main. The proposed project would remove the lifting station and force main, and this area would now drain to the Hillsdale Avenue drainage system, restoring the natural drainage pattern of the area. As a result, the project would increase by 11.6 acres the drainage area which drains to the Hillsdale Avenue drainage system. This system discharges to Canoas Creek, a tributary of the Guadalupe River. The diversion of the drainage area to Canoas Creek may increase the potential erosion in the unlined stream channel. However, the overall drainage to the Guadalupe River watershed would remain unchanged.

The SEIR should include measures for preventing additional erosion of the unlined stream channel, since the additional erosion may have a negative impact on water quality in the Guadalupe River watershed.

This section of the SEIR also includes the text:

The portion of the project site on the north side of Communications Hill is located within the Coyote Creek watershed. The project would not divert additional drainage area from the Guadalupe River watershed. However, the operation of the quarry on the project site has modified the historic drainage conditions for the area. Prior to construction of the UPRR and the quarry, runoff from the north side of the hill drained overland toward Coyote Creek to the north. The railroad originally included cross culverts to allow drainage under the railroad. During the quarry operation period, drainage from the quarry area was retained on-site, and the

cross culverts were abandoned or blocked. Therefore, the historic flow pattern with drainage to Coyote Creek was interrupted. The project would restore the drainage discharge from the site and therefore would increase the runoff to Coyote Creek which may slightly increase erosion or siltation in the Creek, but not at significant levels.

The SEIR should have provided more support for the assertion that Project impacts to Coyote Creek would not be significant.

**Comment 6. Section 4.9 Hydrology and Water Quality, 4.9.3.2 Hydrology and Drainage Impacts, Stormwater Drainage Capacity**

This section of the SEIR includes the following text:

As described above, the project would modify the existing Tuscany Hill detention basin to detain runoff from the larger drainage area to control the peak flow from the project site to be less than the undeveloped runoff condition for the 10-year and 100-year design storms for both the Tuscany Hills development and the project development.

Please note that the hydromodification control requirements of the MRP require that flow duration controls be designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations from 10 percent of the pre-project 2-year peak flow up to the pre-project 10-year peak flow. Controls that address only the 10-year and 100-year design storms are not sufficient.

Please contact me at (510) 622-5680 or [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov) if you have any questions. All future correspondence regarding this Project should reference the CIWQS Place ID Number indicated at the top of this letter.

Sincerely,

Brian Wines  
Water Resources Control Engineer  
Watershed Division

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))

July 18, 2014

John Davidson  
Planning Building and Code Enforcement  
City of San Jose

RE: Communication Hill 2 EIR  
PDC 13-009  
Archeology report

Dear John:

Thank-you for the opportunity to review this environmental document. I especially appreciate that staff posts the supplemental reports as I am very interested in their contents. Regularly, I review the historic reports to learn content that I do not know or is difficult to obtain.

This historic report is not up to the high standards that the City of San Jose expects of its contributing consultants. This entire report should be reviewed by another consulting historian with special emphasis on the native period since the potential for loss of historic information is so great. I reviewed the Historic Period and found many deficits. I can't review the archeological data since the database is kept restricted. However, the deficits in the historic period report are so great that it casts doubt on the quality of the rest of the report

Several factors raised my concern immediately, among them:

1) The bibliography cites Wikipedia as a source for Lewis Manly. Citing Wikipedia is sufficient cause for high schools, colleges and universities, and all professional historic journals to reject a paper—unless the research paper is an analysis of the inaccuracies in Wikipedia or sociological behavior of crowd-sourced Wikipedia. Wikipedia has no place in a professional paper. The city should reject any comment in this report derived from Wikipedia. The city should remove from the accepted consultant list anyone who uses Wikipedia as a source.

2) The bibliography contains no reference to the most important printed Santa Clara document of the 1880s---Horace S. Foote's *Pen Pictures from the Garden of the World-Santa Clara County*, containing 672 pages of history and biographies of the eminent persons of Santa Clara County. This book is widely available throughout the county and more importantly, it is fully searchable online in Google Books. The comments within the narrative of the report made clear the author didn't search this book as many details that the consultant dismisses or claims are "not available" can be found in this book!

3) The 1886-7 Brainard Maps apparently were not consulted.

4) The paucity of newspaper references. The San Jose Mercury archives from the 1880s to 1922 are fully searchable in a *free* online database. Fully searchable online articles from San Francisco newspapers and other communities around California covering from the 1850s to 1922 are available for *free* through the UC Riverside Digital Collections. Further, additional newspapers are available at charge. Importantly, the people and situations the consultant dismisses as unknown are found in these newspapers. One of them was a state legislator!

5) The number of suppositions contained within the report---“probably” this or that without any apparent effort to check the supposition using the free databases and online resources, not to mention hard copy materials in local archives.

6) The apparent non-use of the extensive holdings of History San Jose, the County Archives (operated by but separate from the County Recorder), the California Room, the Sourasseau Society, and San Jose State’s Special Collections, specifically on mining. Nor does it appear that the University of Santa Clara’s holdings on the Spanish and Mexican periods were consulted as evidenced by claims such that the San Juan Bautista Hills were not used for running cattle.

#### Some Environmental Concerns:

1) The report contains relative lack of detail about the Mines, other than they were low volume. Not all the names of the mine were mentioned for the mine as recorded in Mining literature. There was a furnace on site and at least 4 entry tunnels scattered over the hillside from roughly opposite Estahan Court’s terminus to Pullman Way. Considering all the planned grading, I hope the geological report goes into further detail about the stability of those tunnels, as well as other tunnels with locations that would be more clear if searches were made under all of the names. Wouldn’t the geotechnical consultants depend on the historic consultants to find all the names of the mining firms on this hill? Also, I hope the geotechnical report integrates the Water Resource Board comments about the site and the tailings that were not visible on the surface according to the water board. Perhaps, the tailings were used to fill the mines and shouldn’t someone check that—I hope that is in the geotechnical report. The maps in the history report indicate possible quarries but not the mine entries.

2) Schuetzen Park operated from 1903 to at least World War I as a picnic grounds and competitive shooting range. It is mentioned as a well-known location until at least the 1930s, so it may have been operational at that time. The users fired into the hillside and onto the hill that is about to be developed. There may be live unexploded ammunition in the hillside. Although historian Clyde Arbuckle referred to a “Farewell Club” party in 1912, it was not the closing of the park to shooting. Likely, World War I brought about the need to call the park something other than a German word. In addition, when the park changed hands in 1903, a plan was made to build a scenic cable train to the hilltop of the proposed development. The

California Room database shows there is additional information on the operating of the park and the possible train.

Some details and corrections that should have been in the report

In this section, I highlight a few things the consultant couldn't find or mis-stated that I discovered in the past 3 days using free online primary sources and secondary sources from the time period, eg *Pen Pictures from the Garden of the World*. This is not meant to be comprehensive but suggestive of the inadequacy of the consultant's report. I did not search everything because I started this project too late and there is a July 18 deadline. I'm confident more could be found on items the consultant says "there is no data." Who knows what would be discovered with more comprehensive analysis.

**Clemente Colombet. (See page 12 of report)**

The consultant wrote that the properties were owned by Charles T. Colombet. However, the two subject properties were owned by Pioneer Clemente Colombet in 1876. After his death, in 1885, his lands were dispersed among his children. One parcel on the Northwest next to MD Kell became Clem Colombet's property. The western property transferred Charles Thomas Colombet. The Brainard Atlas of 1886 makes clear how the properties were dispersed.

Note that the consultant's comments don't make sense. He wrote that Charles Thomas Colombet was a prominent stock dealer according to Sawyer 1922, but in the next sentence he wrote that Charles Thomas Clemente is not included in local histories or biographical sketches and includes Sawyer 1922 as an example of a place where there is no reference to him. It can't be both.

Pioneer Clemente Colombet's biography is in *Pen Pictures of the Garden of the World*. The Thompson and West map of 1876 refers to pioneer Clemente Colombet (1817-1885) who owned the subject land and lived on it until his paralytic stroke of 1878. Shortly thereafter and before 1880, he moved into town, with his second son Thomas C. Colombet living on the property and farming.

Pioneer Clemente Colombet operated a San Jose store and then married Ann Kell in 1851. Ann Kell was grand-daughter to Martin Murphy Senior. Colombet built the brick block on the west side of Market Street and called it the San Jose Hotel which was renamed the Cosmopolitan by 1888. His wife's kin, Martin Murphy built the brick buildings across the street. In the late 1850s, the Colombet family moved to Mission San Jose where he had an award winning winery and a store. After living in the Mission San Jose and Warm Springs area, he returned to San Jose in 1869, having at some point purchased the subject land from his in-laws Thomas and Margaret *Murphy* Kell. Margaret *Murphy* Kell was a member of the large and famous Martin Murphy Senior family, making Mrs. Ann *Kell* Colombet the grand-daughter of Martin Murphy Senior. A map of Colombet's and Kell's property is also available on

the 1886 Brainard map of Almaden Road.—available online in Digital Online Archives of California. (A map of the Catholic Cemetery donated by the Kells is available from the Archdiocese. This cemetery was relocated for the freeway. ) Eldest son Joseph Clemente was the City Treasurer and executor of his father's estate. Colombet's estate was valued at \$112K. At the time of Pioneer Clemente Colombet's death in 1885, there were 7 living adult children and a widow; the estate did not settle for many years.

The Thompson and West 1876 map shows the property "Kelty & Ryan." According to *Pen Pictures*, Michael Ryan was Colombet's tenant farmer for the 110 acres next to the Kell's from 1877 but Ryan also raised grain on his own acreage on Foxworthy Avenue—across the Guadalupe River from J.W. Pearl's property. Mr. Thomas Kelty's biography is featured in *Pen Pictures*. He partnered with Michael Ryan for the property adjacent to the Colombet's.

### **Milus Gay (See page 13 of the report)**

Milus Gay (1811-1878)

Milus H. Gay (1842-1894)

Henry Milus Gay MD (1873-1939)

Contrary to the consultant's claim that little is known of Milus Gay—quite a bit is known about him, his son, and his grandson.

Note: some documents have these men listed as Milius Gay, some list Milus Gay, some list Miles Gay.

First, Milus Gay senior's papers about his gold rush experiences are advertised as collectibles and are quoted in a various gold rush histories and books. I don't know where they are archived nor how extensive a collection he left behind.

Mr. Milus Gay (1811-1878) and his son Milus H. Gay (1841-1894) were featured prominently in the book *Pen Pictures from the Garden of the World*. They came across the plains in the early 1850s, buying the first part of the subject ranch in 1853—eventually expanding to 500 acres. A chain of title is available at History San Jose from 1850 for the first 24.35 acres. Forty acres was withheld from the 500 acre piece to become Oak Hill cemetery. The elder Milus Gay died in 1878; his wife in 1874. Their son Milus graduated from University of Pacific in 1865, taught in Los Gatos, became the chair of the languages department at UOP, read law, became a deputy clerk, then founded a bank in Ventura County, serving as manager and cashier. When his dad died, he came home and took over the ranch. In 1880 Milus H. Gay was nominated then elected to the California State Assembly. Also, he served on the Franklin School Board from 1878. In 1882, the City bought the cemetery lands from Milus H. Gay and in 1883, Miles H. Gay became the Superintendent (Sextant) of Oak Hill Cemetery. In 1884, Milus H. Gay served as the secretary of the Republican convention, too.

By 1886, about 175 acres of the Milus Gay holdings were sold to Tyler Beach and his “Beach Hill Farm.”

When Milus H Gay’s estate was settled in 1895, he had the quarry and 500 shares of the cemetery. While he had a lot of land in Santa Clara and Santa Cruz counties, his estate owed a large sum of money, too. His son, Henry M. Gay purchased the “Quarey Plant” in 1895 from his father’s estate. According to newspaper reports from 14 May 1901, HM Gay et al sold 71.176 acres part of the 500 acre lot 3 S for \$2750 to Charles Doerr et al who immediately sold it to San Jose Schuetzen Park. “Charles Doerr et al” referred to members of the Turn Verein, German benevolent association. Charles Doerr was a baker who rose to prominence in his benevolent association, downtown investments, civic affairs and sat on the city council.

### **William H Hall - page 13**

The name “William Hall” is a very common name and the consultant seems to be creating one person from citations that are “William Hall”, “WH Hall”. They may not be the same person.

By way of explanation, there was a William H. Hall who was a partner with Warren Hall of the stagecoach company in 1854. Arbuckle wrote this was William Henry Hall. Warren Hall left the area when they closed the local company and reconfigured soon thereafter. By 1860, Warren is in San Diego County.

In 1870 Census there were three adults: William G, William H, and William S. William H Hall was 47 and a county supervisor living in Ward 2 of the City of San Jose. William S. Hall was in Redwood Township and could have been the William Hall of the Cupertino area vineyard contracts mentioned by the consultant’s report. Sawyer [page 141] referenced William Hall only. The southern part of present-day Cupertino is in Redwood Township.

In the 1880 Census, there were four adult Halls, William in Alviso, William in Ward 1 and living as a boarder (probably in a hotel), William S. in Redwood Township and William Henry Hall—but recorded under his nickname “Bud”. Bud’s biography is featured in the 1922 Sawyer history book—page 1286. Soon after he married in 1873 he acquired property 4 miles south of San Jose. Notably, “Bud” Hall [William Henry Hall] was reared by his extended Cottle kin after his father died. And there are large Cottle holdings just south of the WH Hall property in the 1876 Thompson and West property. Since Bud’s biography in Sawyer explains that he sold the land about 4 years later, a quick search of County Recorder records could resolve the issue.

The consultant claimed the wealthy Mr. Hall owned 4000 acres with citations from Arbuckle page 96 and Sawyer page 163, I can’t find evidence of this 4000 acres on

those pages. His self-reported worth in the Census is too small for an owner of that much land.

There's no doubt that there was a wealthy William H. Hall but was he the owner of the subject property? Or was the younger William Henry Hall the owner of the property in the 1870s?

### **M. D. Kell page 14**

The consultant wrote that M.D. Kell may have been related to Thomas Kell. Had the consultant used *Pen Pictures* .. and freely available online census records the relationships would have been clear.

M. D. Kell is Martin D. Kell the son of Thomas Kell. Martin Kell's biography appears in *Pen Picture from the Garden of the World*. Martin's mother was a Margaret Murphy, and his grand-father was Martin Murphy Senior, the famous patriarch of California's famous Murphy family.

Thomas Kell, Martin's father, died in 1878 after a long period of invalidism. His mother Margaret *Murphy* Kell died in 1881. Martin's younger brother Thomas B. became owner of the old homestead and the property is clearly labeled "T.B Kell" in the Brainard Atlas of 1886.

Martin D. Kell was prominent of civic affairs, serving from 1875 to 1878 as Deputy Roadmaster. He served as a county supervisor starting in 1878 and was undersheriff for 4 years. He owned 88 acres as of 1888 mostly general farm, but 5 acres was orchard.

### **William Lewis Manly page 14**

Contrary to the consultant's claim, WL Manly is in local history books. He is featured in Foote's 1888 *Pen Pictures from the Garden of the World*, but more is available from local searchable free online historic newspapers. Certainly, there is no need to depend on the crowd-sourced Wikipedia that can be changed on a whim by anyone.

Although there are variations of the spelling of his name in sources such as Wikipedia—he signed his name as "Manly" in the photo in *Pen Pictures* and both his tombstone and his wife's tombstone in Woodbridge California used "Manly."

Manly purchased his property in 1849 and kept ownership until the time of his death in 1903. The 1880 Census still has him at the old homestead. At some point after 1880, he retired from active farming and moved to the College Park neighborhood---Stockton Avenue near Elm.

Manly served as a director for the Union Flour Mill which was established in 1887. From at least 1891 to 1900, he was a director of the Farmer's Union, a major political force in San Jose. His wife's passion was the floral fair.

When Manly died in 1903 , his executor AC Manly sold his properties : 205.6 acres went to Glenn Lumbard (Glenn Lombard) and 44 acres to Elizabeth [Elisabette] Kohrs.

### **Tyler Beach page 15**

Tyler Beach's biography is also given in *Pen Pictures... The Brainard Atlas* of 1886 shows that he called the subject property "Beach Hill Farm," having acquired the land from Milus Gay. As the consultant mentioned, Beach was the owner of the St James Hotel. By the mid-1880s, it was the pre-eminent facility, having been expanded twice. His advertising explained that guests received fresh milk and meat from his property south of town—Beach Hill Farm. At his stock fair, he kept 50 varieties of poultry and 20 milch cows.

In 1887, his biography appeared in the Pacific Rural press. It included a reference to a quicksilver mine on his property that he was not working due to low prices of Quicksilver. This refers to the property on Communication Hill.

Beach also is featured in Oscar Tully Shuck's 1875 book *Sketches of leading and representative men of San Francisco*. At that time, Mr. Beach also operated a large paint manufacturing company, California Chemical Paint Company.

Beach retired from St. James Hotel in 1899, but his manager died shortly thereafter. Beach died in 1904.

### **Oscar Promis and G. Promis page 15**

The consultant did not know the relationship between Oscar and G. Promis. Oscar Promis was born in 1854 in San Francisco to Geraud Promis, a French immigrant. The family moved to Victoria British Columbia in 1858 where Geraud became a grocery retailer. The family lived there until 1873 acquiring downtown Victoria property. Oscar moved to San Jose when he was 18 and eventually became a real estate developer making many trips to Victoria in his lifetime. His name appears on many hotel guest lists published in old newspapers.

One of Oscar's developments, the "Promise Block" in Victoria is on the Canadian National Historic Register. It is a downtown retail block.

Oscar Promis and his father operated a crockery and glassware shop in downtown San Jose. Geraud Promis died in November 1896.

In 1911 Oscar Promis was the president of the United States Laundry. By 1922, he was part of the ownership team for San Jose Foundry.

A mining bulletin, Volume 22 referred to Oscar's mine as the "Chapman Mine."

### **Scheutzen Park**

Scheutzen Park was a recreation facility and shooting ranged acquired by the Turn Verein, a German social and political group. Their first mention of their park that I

found is July 1896. They acquired 71.75 acres from H.M. Gay in 1901 according to newspaper reports. More likely, this is when they recorded the deed, since HM Gay bought the property from his dad's estate in 1895.

Although Arbuckle claims the park ran until 1912, this is an error. A newspaper article refers to the "Farewell Club" as the last picnic of the year. Yet, subsequent newspaper articles show that the park operated thereafter, including January 1913 for a shooting contest. The park had pavilions and shooting ranges. Many shooting contests were held at the park.

In 1903, ownership/operation of the park was transferred to Jungblat and Doll (Boll?). They had plans to build a tram to the top of the hill suggesting that they had cooperative agreements with the hillside property owner, eg the mine owner.

With the advent of World War I, other San Jose German companies changed their names to be less German. Perhaps, the park also did making it hard to track its operation in free online databases that only cover up through 1922 due to copyright restrictions. It is not known when it ceased operations. However, a published court case from 1932 includes Schuetzen Park as a geographic location of an auto accident.

### **Hillsdale Quicksilver Mines**

There's no doubt that this is a small mine. This mine was operated under many many different names and details about its shafts, adits, and furnances are buried in many different reports under those different names.

Some of the names I have discovered:

Shaboya, Chaboya, Hillsdale, San Juan Mine, San Juan Bautista Mine, Bell Mine, Harper Mine, Beach Mine, Chapman, New Discovery Quicksilver Company.

A state mining bulletin indicates that it has more than 4000 ft of underground works. The reduction plant had two 12 pipe retorts.

From the same report, it was worked to 1874 and idle from 1874 to 1892 when R. H. Harper took it over until 1907. It was taken over in 1915 and a little bit of production. By 1922, newspaper articles showed it was arrears for unpaid taxes.

R.H. Harper is really Captain Robert Bailey Harper. Sawyer has a biography of Captain Robert B. Harper who worked in the mining industry, including the Almaden Quicksilver mines. Sawyer reports that he purchased the "old Chapman mine" and operated it for three years. Harper's biography as a mining specialist is very extensive in the Sawyer book.

So somehow, RB Harper became RH Harper in a mining bulletin obscuring its history.

The report does not mention the analysis of the California State Resource Board although it does mention other mining reports.

### **Elizabeth Kohrs**

Elizabeth Kohrs is mentioned in different spots of the report and mentioned as an unknown. She is the wife of Frederick Kohrs. She is also known as Elisabethette and her husband was Frederick Kohrs. She died in 1921 and he died in 1922. Some newspaper articles indicate property sales in and around her. A mining book has her as the owner of the mine in 1921.

Other than that, I didn't find anything of significance for the family.

### **Joseph Barba**

The consultant wrote that nothing was known about Joseph Barbo. Perhaps, a search for "Joseph Barba" would have been more productive. He was a well-known rancher with property on Stone Avenue. In 1919, his daughter was the accused murderer of a man who gave her unwanted sexual entreaties. Barba is shown on a county map dated Dec 1, 1914 with Joseph Barba, Eliz Kohrs, and Warren Cottle.

### **John Quincy Pearl**

John Quincy Pearl was an early pioneer. Pearl arrived in the valley in 1852 buying 500 acres. He traveled via the Isthmus. He was part of the Young Men's Social Club organized in 1858. He was a member of one of the city's first volunteer fire fighting companies and he was a found of the Pioneer Irrigation Ditch Company and active in the Santa Clara County Agricultural Society.

At first, he raised cattle, then moved into dairying, by the 1890s it was mostly fruit and grain. At some point, he moved to town with a home on 256 North 4<sup>th</sup> Street.

Pearl died there in 1913 after a six month lingering illness. His obit referred to him as a respected pioneer. The California pioneers took charge of his funeral and he is buried at Oak Hill.

He was married to Sophie Hanks and had 5 children. Pearl Avenue is named for him.

Information about his farming operations can be found in both the Thompson and West Atlas and the Brainard Atlas.

### **Summary**

The historic section of the report is inadequate and used flawed sources (OMG! Wikipedia!!). The consultants didn't use important sources nor did they use *free* high quality online databases. It is not possible to evaluate the pre-history portion

of the report due to the secure databases. A separate consultant should evaluate this report for the Native American data.

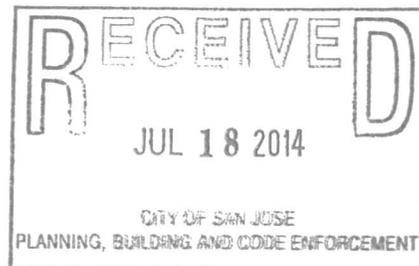
The mining history and the Scheutzen park history suggest possible concerns to the property.

I'd be pleased to share with the consulting company the sources of the *free* online high quality resources that they could use for this and future reports.

Sincerely,

Jean Dresden  
1276 Blewett Avenue  
San Jose, CA 95125

Communications Hill Task Force  
Millpond Mobile Home Community  
368 Millpond Drive  
San Jose, CA 95125



July 18, 2014

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

Attn: Darrell Boyd

Attached is our response to the Subsequent Environmental Impact Report #2001062119.

We appreciate the opportunity to work with the Planning Dept., City staff and KB Homes. We hope that we can continue to arrive at mutually beneficial solutions while this project is under construction.

Regards,

Communications Hill Task Force  
Millpond Mobile Home Community

Joe Melino      Ken Nelson      Wayne Pearson      Judy Reuther

Bob Schuman      Judi Souza      Dave Vogelhuber      Karen Vogelhuber

Communications Hill  
Task Force Meeting, July 13, 2014

San Jose City Planning Dept.

In the bidding process on this Project, KB Homes has the absolute responsibility of awarding bids to Sub-contractors that will follow the regulations set forth by the City, State and Federal governments regarding grading, dust, asbestos, mercury findings and blasting if required. By KB Homes following these regulations it will protect the residents of Millpond Mobile Home Community (for those 55 and older)

The following issues are of very great concern to the residents of Millpond Mobile Home Community. We request that your attention be directed to the following items:

#### #1 FENCING

The fencing is necessary to provide security and privacy to the residents of Millpond Mobile Home Community. Minimum of eight feet, solid, interlocking, no maintenance material similar to the fencing along the railroad tracks to the east of Millpond. Landscaping and Evergreens similar to the east of Millpond should also be used. The fence would ensure the security of the residents as well as provide a sound barrier during construction and after. We would request this fence be installed prior to KB Homes breaking ground on Communications Hill.

#### #2 TRAILS

The proposed trails should be 30 – 40 feet away from the perimeter fence. Landscaping installed between the fence and trail. Surface should not create dust when used. Trail should be limited to pedestrians and bicycles. Trails posted, stating no motor bikes, scooters or horses allowed. Closed at sunset.

#### #3 TRAFFIC

You are well aware of the current traffic congestion in the Curtner Avenue Canoas Garden area between Old Almaden and Monterey Road. With the vehicle and

foot traffic on Friday evenings from the Mobile Gourmet Dining Trucks at the VTA parking lot and the Cathedral of Faith traffic Friday and Sunday, traffic from the apartments, the residents of Millpond Community have to plan 30 minutes to 1 hour ahead to be able to get to their destinations on time during these times. We virtually feel trapped in the Millpond Pit! Hillside to the South, Curtner Avenue to the North, Railroad and Hwy. 87 to the East and the VTA tracks to the West. Each of these items create even more congestion and more dust, thus more poor air quality.

As we mentioned at the meeting with KB Homes, Curtner between Old Almaden and Monterey Road needs to be studied very carefully. There are too many traffic lights, too many freeway exits dumping onto Curtner and too many on-ramps for HWY. 87 to absorb in such a short distance. Increasing on-ramp lanes to get onto Hwy. 87 while removing maybe 30 cars off Curtner is not nearly enough, since KB Homes are planning on building over 2,000 residences.

#### #4 RIDGELINE VIEW

We have requested and would like to see renderings of the ridgeline above the Millpond Community hillside homes. We are told that the homes were anywhere from 20 to 30 feet above the ridgeline, but KB Homes is rethinking that. We would like to see the view of the completed Phase IV, and how much of the homes will be visible. At this juncture KB does not have an answer for us. Because it impacts the privacy of all the residents of Millpond Mobile Home Community, we are requesting the Phase IV be pushed back so that only the rooflines will be visible.

#### #5 GRADING

We wish to know how much grading is anticipated on the ridgeline above Millpond Mobile Home Community. We are told the project will take 10 to 15 years to complete. We need to know if all the grading will be done at one time, or will we be exposed to the construction dust and asbestos dust for the next 10

to 15 years. Given the state of some of our resident's health, this is a serious concern to us

KB could not answer that for us at this time, but we feel it should be answered before the project is allowed to move forward. We are aware the residents living up there have signed waivers, however, none of the residents of the Millpond Mobile Home Community have signed any waivers and the quality of our life in the final years is paramount to us.

#### #6 CITY PROPERTY AT THE ENTRANCE OF MILLPOND

After much discussion, we feel this should be left as open space. A garden, park or dog walking area would only become an attractive nuisance. We, the residents of Millpond Mobile Home Community would be responsible for the clean-up. As it is now, we pick up a lot of trash every couple of weeks. With the Jack-in-the-Box in close proximity and the Mobile Gourmet Dining Trucks every Friday night, we would be picking up wrappers and food containers as well as dog feces constantly.

As residents we have also noted the presence of police and arrests being made every Friday night, and we fear the violence will find its way to our residents and make it unsafe for them to take their dogs out to walk in the evenings.

The Communications Hill development that is completed has the very bad reputation of attracting outside visitors that are destructive, noisy and abusive to the residents. We fear that the trails will attract the same individuals to the Millpond side of the hill. We need assurances that you are finding a solution to this problem immediately.

#### Millpond Communications Hill Task Force

Joe Melino	Ken Nelson	Wayne Pearson	Judy Reuther
408-813-6496	408-298-8743	408-298-6428	408-298-4411

Bob Schuman	Judi Souza	Dave Vogelhuber	Karen Vogelhuber
408-278-1955	408-282-8910	408-294-8883	408-294-8883



July 18, 2014

*via email*

John Davidson, Senior Planner  
Department of Planning, Building and Code Enforcement  
City of San Jose

Re: Communications Hill 2 Project, Draft Subsequent Environmental Impact Report (DSEIR)

Dear Mr. Davidson,

The Santa Clara Valley Audubon Society (SCVAS) has reviewed the Draft Subsequent Environmental Impact Report (DSEIR) for the Communications Hill 2 Project (Project). The proposed project site is currently an island of open space that provides habitat to common and rare plants, birds and wildlife. It is adjacent to designated and occupied burrowing owl habitat on Dairy Hill.

SCVAS' mission is to preserve, to enjoy, to restore and to foster public awareness of native birds and their ecosystems, mainly in Santa Clara County. As stewards for avian species and their environmental resources, we are always concerned with any development that may consume wildlife habitat and/or access to surface water. We are also concerned with the diminishing opportunities for city dwellers to access nature near their homes. We see the Communications Hill 2 Project as one that sprawls into remnant habitat, and should result in a great loss to wildlife and to San Jose residents.

Please accept the following comments:

Water Supply Assessment Pursuant to Section 10912 of the California Water Code, a Water Supply Assessment (WSA) is required for this Project. CEQA Guidelines also require that a Water Supply Assessment be conducted for projects of this scale, and that projects that do not have adequate water supply not be approved. No Water Supply Assessment has been conducted for this project. Instead, the project appears to be deferring to the City-wide Water Supply Master. This deferral is impermissible and leaves the EIR without an adequate water supply analysis. It also results in a project that apparently has an inadequate water supply and, therefore, cannot be approved without conflicting with state law. These decisions require an EIR to evaluate potential sources of new water if supplies are found to be inadequate. This EIR fails to do so. A WSA must be prepared for the project and evaluated in the EIR. If supplies are found to be inadequate, then the EIR must discuss "possible replacement sources or alternatives and the environmental consequences of those contingencies." (*Vineyard*, p. 432). *Vineyard* (p.

*p. 1 of 4*

431) goes on to say, “An EIR may not ignore or assume a solution to the problem of supplying water to a proposed project.”

### Sections 1.2-1.3 and section 2 - Project Location and Project Description

Please include the Dairy Hill Open Space and Dairy Hill Burrowing Owl Habitat mitigation areas in Project description and project maps. Please refer to the November 14, 2013 Memo by San Jose City Attorney Richard Doyle to the City of San Jose Rules and Open Government Committee regarding “City Property Adjacent to Oak Hill Cemetery and Summerhill Residential Development” (pages 4-7 in <http://www.sanjoseca.gov/DocumentCenter/View/23974>).

### Section 2.2.4. Parks Trails Open Space and Landscaping

The SEIR proposes “*The precise location, size, and shape of parks and trail alignments are subject to modification and variation during the development review process.*” – Since the location, size, and shape of parks and trail alignments can have significant impacts on Biological Resources, the SEIR should disclose precise information for public review.

### Section 2.5 – General Plan Amendment

Please provide the exact acreages for each landuse in the Envision 2040 General Plan and in the proposed Project amendment land use designations. Please provide visual depictions of deviations of the proposed development from the existing General Plan.

Looking at the maps provided in section 2.5 – it seems that the Project would have a larger footprint of development than what is allowed by the existing General Plan, and that open space will diminish. We are opposed to this change, as we consider natural open space in central San Jose to be vital to migrating birds, wildlife, and residents of the city. The City should require the development to remain within the existing general Plan designation boundaries as illustrated in the Environ 2040 General Plan landuse designation maps.

The General Plan Amendment requested by the Project increases sprawl into the undeveloped open space lungs of the City of San Jose, and stands against policies that focus residential growth along transportation corridors. It goes against a stated objective of the project, “*Integrate existing land uses with new land uses, ensuring the viability and compatibility of both*”.

Increasing the development footprint while decreasing the footprint of existing land use (natural open space which supports native plants and wildlife) eliminates the possibility of accomplishing this objective.

### Section 2.7 – Lead and responsible agencies

#### Table 2.6-1 CEQA Responsible and Trustee Agencies

- Under the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2774 (c), local lead agencies are required to submit reclamation plans and plan amendments to the Director of the Department of Conservation (i.e., OMR) for review prior to approving such documents.

Please include the Department of Conservation in the list of Responsible agencies, and provide a Reclamation Plan for public review.

*p. 2 of 4*

- The project proposes to fill a stream and requires a Section 1602 streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank (i.e., the intermittent drainage channel, which totals approximately 0.04 acres and 612 linear feet). Thus, the California Department of Fish and Wildlife should be recognized as a responsible agency

#### Section 4.7.1.2 - Habitat Types / Aquatic and loss of aquatic habitat

The SEIR describes: *“Aquatic habitats were identified within the site in the form of a manmade quarry pond, four freshwater seeps, a defined natural drainage channel between one of the seeps and the quarry pond, seasonal manmade drainage ditches, and two detention basins constructed as part of the Tuscan Hills development.”*

“Freshwater seeps” should be recognized as springs, and a “natural drainage channel” should be defined as a creek and indeed host riparian vegetation and wetland species. As stated in the SEIR, *“Aquatic sources on the site provide drinking water for resident and migratory wildlife through most or all of the year and often support invertebrate populations upon which wildlife may forage. They provide breeding habitat for the Pacific treefrog and western toad, which were observed in these areas.”* We believe that these freshwater features are critical to the survival of native plant and animal species onsite and of migratory birds, especially in drought years.

Indeed, Impact BIO-2: The project would result in the loss of 2.4 acres of aquatic habitat, including wetlands” is considered a Significant Impact.

The SEIR recognizes that “intermittent stream channel on the site may be considered a “Category 2” stream under Condition 11 of the Habitat Plan”. Furthermore, it recognizes that a streambed alteration agreement from the CDFW for impacts to natural watercourses supporting a defined bed and bank will be required. Obviously, this is a creek (and it has a developed riparian vegetation).

General Plan Policy ER-2.2 states, “Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.”

Elimination of springs (seeps), wetland and the stream / creek (“natural drainage channel between one of the seeps and the quarry pond”) would impose a significant impact to local and migratory wildlife. Please avoid filling these natural water features. Furthermore, please implement the 100-ft setback from the spring and the creek as indicated in the General Plan Policy ER-2.2.

Please consider that compliance with the Habitat Conservation Plan (HCP) cannot fully mitigate for loss of wetlands and surface freshwater features, which are regulated under the Porter-Cologne Water Quality Control Act administered by the Regional Water Quality Control Board.

*p. 3 of 4*

A Clean Water Act section 404 permit is required. Thus, Compliance with HCP provisions would NOT reduce impacts to wetlands to a less than significant level.

We maintain that if “*both avoidance and minimization of impacts to these features likely is not feasible*” hold true, then the project must change to allow protection of freshwater features on the project site by avoiding the fill of these features, and by implementing setbacks to any development.

#### Burrowing Owls (CA Species of Special Concern)

The SEIR states, “*Historic sightings of overwintering burrowing owls or their evidence (i.e., white wash and pellets) have been observed a total of four times on or immediately adjacent to the site since 1992. All four sightings were of breeding owls utilizing the site as overwintering habitat or as a stopover for transient individuals on their way to another location. While the site has never been utilized for breeding in the past, suitable foraging habitat is present for owls moving through the area.*”

Burrowing owl activity in the vicinity of the project site at Dairy Hill (at the terminus of Communication Hill Blvd.) was identified in late spring of 2012 and reported by SCVAS to the Habitat Agency. We consider the presence of owls during the nesting season to be nesting activity. Part of Dairy Hill is also designated Burrowing Owl Mitigation land. In winter, spring and summer 2014 SCVAS conducted and found one solitary owl in January, and additional signs of burrowing owls in spring and summer (owl pellets, whitewash, and warning calls).

The Burrowing Owl Conservation Strategy of the Habitat Conservation Plan is the best available science for the biology of the burrowing owls in our region and it offers the only meaningful mitigation measures. It identifies all lands within 0.5 miles of a nesting site as essential foraging habitat. Since Dairy Hill is a functioning and occupied burrowing owl habitat, project lands within 0.5 miles from this designated habitat must pay all burrowing owl impact fees.

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Thank you for the opportunity to comment on the proposed project. Please keep SCVAS on the notification list for the proposed project site and any updates or public meetings related to this project.

Sincerely,



Shani Kleinhaus, PhD.  
Environmental Advocate  
[shani@scvas.org](mailto:shani@scvas.org)

p. 4 of 4



July 18, 2014

City of San Jose  
Department of Planning and Building  
200 East Santa Clara Street  
San Jose, CA 95113

Attention: John Davidson

Subject: City File No. PDC13-009 / Communications Hill 2 Project

Dear Mr. Davidson:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR (DEIR) for 2,200 residential units, 70,000 square feet of commercial development, and 1.4 million square feet of industrial development for a site bounded by Curtner Avenue, Monterey Road, Capitol Expressway, Snell Avenue, Hillsdale Avenue, and SR 87. We have the following comments.

#### Land Use

VTA supports the proposed land use intensification on this site, strategically located on the regional transportation network and served by the VTA Curtner Light Rail station, Capitol Caltrain station, and VTA bus service along Monterey Road. These locations are identified in VTA's Community Design & Transportation (CDT) Program Cores, Corridors and Station Areas framework, which shows VTA and local jurisdiction priorities for supporting concentrated development in the County. The CDT Program was developed through an extensive community outreach strategy in partnership with VTA Member Agencies, and was endorsed by all 15 Santa Clara County cities and the county.

#### Transportation Demand Management – Transit Incentives

VTA encourages the City to work with the applicant to explore Transportation Demand Management (TDM) measures that would reduce the number of single-occupant vehicle trips generated by the project and increase transit ridership. VTA encourages the City to require the project applicant to provide transit fare incentives to residents of the development, such as free or discounted transit passes on a continuing basis, as a Condition of Approval of the project.

#### Freeway Analysis and Mitigation Measures

The TIA and DIER note that the project will have a significant impact on eight directional freeway segments of SR 87 and one directional segment each on I-280 and I-680 (TIA pgs. 50-51, DEIR pg. 115). The TIA notes that, "The Valley Transportation Authority *VTP 2035* identifies improvements to regional facilities, including freeways, for which a regional funding plan could be used to fund... The project along with other projects within Santa Clara County

could contribute towards the funding of the improvements.” However, the TIA and DEIR do not propose any mitigation measures for the impacts, and find them “significant and unavoidable.”

VTA agrees with the statement that the project could contribute funding to regional improvements as a way to mitigate or offset these significant impacts. VTA notes that certain cities in Santa Clara County have identified contributions to regional improvements as mitigation measures for significant freeway impacts. One improvement included in *VTP 2040* that was not mentioned in the TIA and DEIR is the Guadalupe Express Light Rail Improvement Project, which will relieve congestion on SR 87. VTA recommends that the City include voluntary contributions to this project and/or operating funds for light rail service as a mitigation measure for these significant impacts. Please see the March 6, 2014 Report to the VTA Board of Directors (Agenda Item 6.18) for further information about Voluntary Contributions to Transportation Improvements.

#### Freeway Segment Analysis

VTA recommends including the freeway segments on SR 87 north of Julian Street to determine if project trips exceed one percent of the freeway capacity in the AM and PM peak periods for both the northbound and southbound directions. In addition, TIA must include analysis of other freeway segments to determine whether they meet the one percent threshold. This recommendation is based on *Section 2.2.2 Freeway Segments* of the VTA TIA guidelines.

#### Freeway Ramp Operations Summary

Table 14 of the TIA report shows reduction in wait time at SR 87 NB on-ramps with increased volume. VTA concurs with Caltrans comments on basing the queuing analysis and impact assessment on existing metering rates.

#### Capitol Expressway/Narvaez Avenue/SR 87 On/Off Ramps Improvement – Impact to VTA Property

The DEIR and TIA describe a proposed improvement to the SR 87 ramps at Capitol Expressway and Narvaez Avenue (DEIR pg. 23, TIA pg. ix). VTA recommends coordinating the addition of lanes to the on-ramp with VTA and Caltrans.

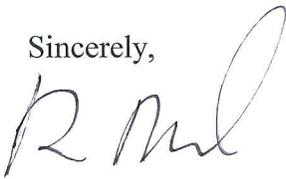
VTA notes that there is a discrepancy in the descriptions of this improvement between the TIA and DEIR. The TIA notes that “These improvements may require additional right-of-way between the SR 87 ramps and Capitol Expressway at the VTA parking lot (approximately ½ acre),” but the DEIR does not include this comment. The description of the project in the DEIR should be revised to clarify whether VTA property would be required for the project.

City of San Jose  
July 18, 2014  
Page 3

In addition, VTA notes that any proposal to use VTA's property for this improvement would only proceed at the discretion of VTA, and would be evaluated for consistency with VTA's development plans for this location.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Molseed', written in a cursive style.

Roy Molseed  
Senior Environmental Planner

cc: Michael Liw, San Jose Development Services  
Erik Alm, Caltrans  
Brian Brandert, Caltrans

**From:** [Davidson, John](#)  
**To:** [Jodi Starbird](#)  
**Cc:** [Michael Lisenbee](#)  
**Subject:** FW: Communications Hill EIR  
**Date:** Monday, July 21, 2014 2:50:48 PM

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Hi Josi:

Here's the comment letter from Dave Fadness-thanks!

John Davidson  
408-535-7895

---

**From:** Boyd, Darryl  
**Sent:** Monday, July 21, 2014 12:59 PM  
**To:** Davidson, John  
**Cc:** Mack, Karen  
**Subject:** FW: Communications Hill EIR

fyi

**Darryl Boyd**, Contract Planner, City of San Jose  
*Mon/Wed/Thurs.* VM: Planning, B & CE, **(408) 535-7843**  
*Tues.* VM: Parks, Recreation & Neighborhood Services, **(408) 793-5577**

---

**From:** drfadness7@gmail.com <drfadness7@gmail.com> on behalf of Dave Fadness  
<drfadness@sbcglobal.net>  
**Sent:** Friday, July 18, 2014 12:02 AM  
**To:** Boyd, Darryl  
**Subject:** Communications Hill EIR

Mr. Boyd and Planning Staff:

As a member of the original Communications Hill Task Force and long time advocate for transportation improvements in surrounding communities, I offer the following remarks on subject EIR.

In recent months, I have met several times with CSJ's, Public Works, DOT, KBHOME, and the landowner. These meetings focused on proposed transportation mitigations at Highway 87/Curtner and Highway 87/Capitol.

Peak traffic conditions at northbound Highway 87 and Capitol/Narvaez have been LOS F and worse since the 80s. Although large scale development has occurred nearby, no mitigation has been required for this northbound approach. Concerned residents of VEP and other

community associations south of Capitol Expressway were able to add this northbound freeway approach to VTA's project list; however, no funding has been identified into the foreseeable future.

An enormous relief to me is that KBHOME and the property owner have included mitigation for that notorious freeway approach in their Comm Hill buildout proposal. They are doing so despite any demonstrated need for mitigation owing to their project. Moreover, they have advocated and I now understand that the city agrees that this mitigation should occur as a priority in their project improvement schedule.

I applaud their recognition and generous willingness to solve a long standing community need.

Success in completing buildout of the proposed Comm Hill plan is, I believe assured by the thoughtful features and amenities on site as well as the developer team's transportation improvements overall. I have followed the developer's plans as they have evolved over the past several years. It is clear to me that the project now proposed meets the city's expectations, maintains the quality of life in surrounding neighborhoods, and fulfills the vision of the community hills- task force.

I encourage adoption of subject EIR, including all traffic mitigation therein.

Thank you,

David R Fadness  
445 Stratford Park Court  
San Jose, CA 95136  
408) 578-6428

--

Dave Fadness  
(408) 578-6428

# County of Santa Clara

Roads and Airports Department

101 Skyport Drive  
San Jose, California 95110-1302  
1-408-573-2400



July 25, 2014

John Davidson  
Senior Planner  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

**SUBJECT: Communications Hill 2 Project – Draft Subsequent Environmental Impact Report (DSEIR)**

Dear Mr. Davidson:

Thank you for the opportunity to comment on the Communications Hill 2 DSEIR. We appreciate the extension of time to submit comments through July 25, 2014. The County of Santa Clara Roads and Airports Department is submitting the following comments.

*Impact TRAN-3 and TRAN-5*

The DSEIR states that the project would have impacts that are significant and unavoidable under background plus project conditions for the intersections at Almaden Expressway/Foxworthy Avenue (Impact TRAN-3) and Snell Avenue/Capitol Expressway (Impact TRAN-5). The City has determined that the identified mitigation measures for Impact TRAN-3 and TRAN-5 are infeasible due to the extent of right-of-way acquisition that would be required. The City is proposing to implement the projects identified in the Communications Hill Specific Plan Area Development Policy (CHSPADP) in lieu of the mitigation measures. The County's comments regarding this strategy are as follows:

1. The mitigation measures identified for TRAN-3 and TRAN-5 are important for future operations of the expressways, particularly the addition of a third southbound left-turn lane at the Capitol/Snell intersection. Although these mitigation measures are not considered feasible as part of the Communications Hill 2 project, the County requests that the City pursue the necessary right-of-way through future development approvals as the opportunities arise.
2. The County supports the list of CHSPADP list of projects proposed, particularly CHSPADP Improvement 5: Improvement to the SR 87 On-Ramp/Narvaez Avenue Corridor, which will help relieve conditions on Capitol Expressway created by the extended queues at the freeway on-ramp.

3. The County requests that the following project be added to the CHSPADP: Improve pedestrian and bicycle accommodations along Capitol Expressway between Narvaez and Monterey Road, including sidewalk gap closures. This project is consistent with the principles behind the Area Development Policy to improve multi-modal transportation opportunities along an impacted road.
4. The County requests that the following project be added to the CHSPADP: Provide a fiber optic connection from the Santa Clara County 9-1-1 Communications Center on top of Communications Hill to the county expressway fiber optic network on Capitol Expressway in order to enhance emergency operations. The attached fiber optics map indicates the path of the proposed connection. This fiber optic connection would allow 9-1-1 Communications to access the video cameras at expressway intersections when incidents occur in order to determine the appropriate equipment to send to the emergency and reduce their response time. This will reduce the impacts of collisions and other incidents on the operations of Almaden and Capitol Expressways.

*Intersection Operations Analysis (Vehicle Queue)*

Section 4.2.2.5 recommends that left-turn lanes be extended at the intersections at Vistapark Drive/Capitol Expressway and Snell Avenue/Capitol Expressway to accommodate the projected queues under project conditions. It is unclear from the text whether the Communication Hills 2 Project will construct the extended left-turn lanes. The County requests that these improvements be provided, either as a mitigation project or through project conditions of approval.

If you have any questions or concerns about these comments, please contact me at (408) 573-2465 or [dawn.cameron@rda.sccgov.org](mailto:dawn.cameron@rda.sccgov.org).

Sincerely,

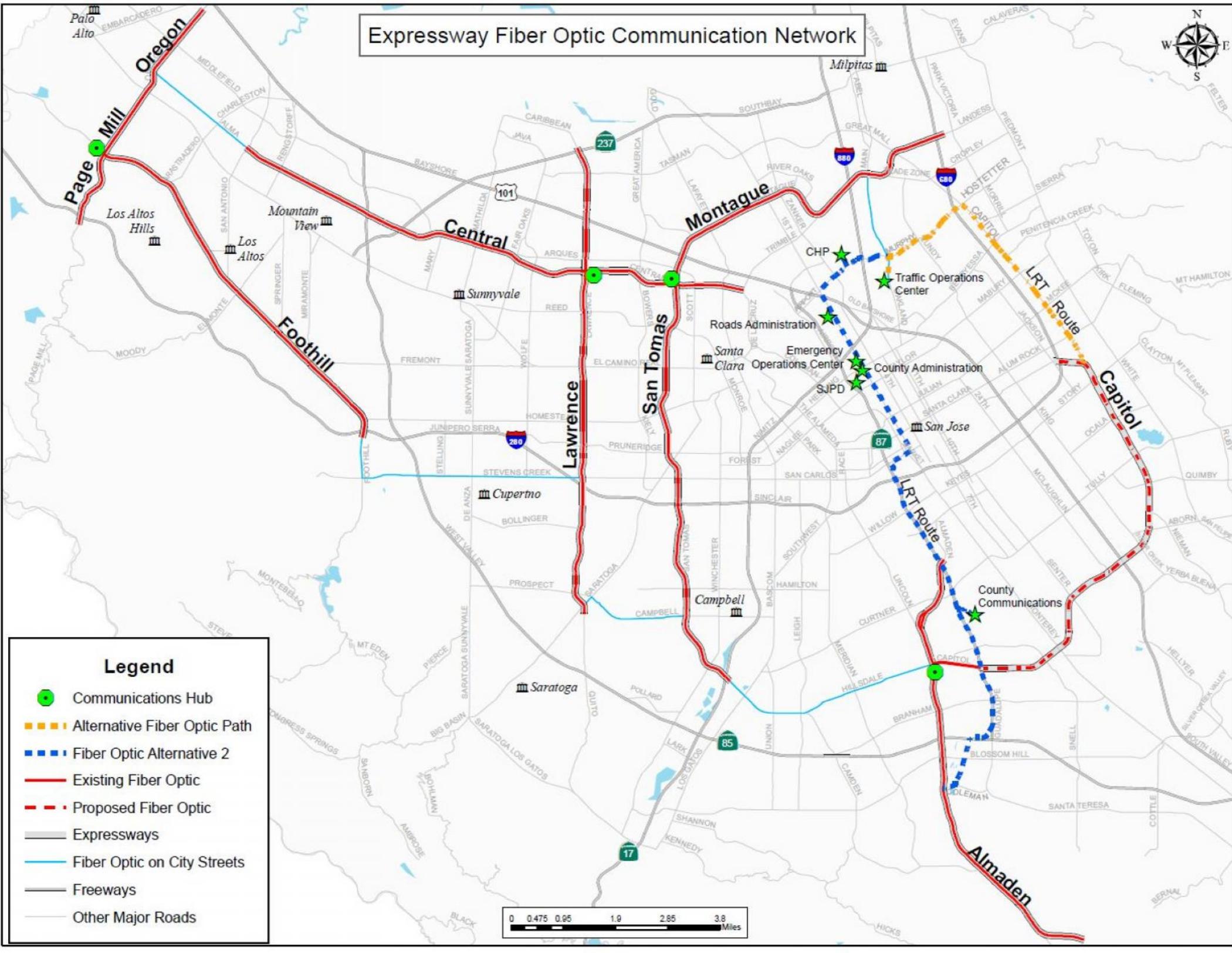


Dawn S. Cameron  
County Transportation Planner

cc: Masoud Akbarzadeh, *County Traffic Engineer*  
Ananth Prasad, *Senior Traffic Engineer*

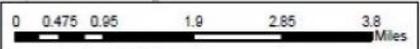
Enclosure: Expressway Fiber Optic Communication Network

# Expressway Fiber Optic Communication Network



## Legend

- Communications Hub
- Alternative Fiber Optic Path
- Fiber Optic Alternative 2
- Existing Fiber Optic
- Proposed Fiber Optic
- Expressways
- Fiber Optic on City Streets
- Freeways
- Other Major Roads



# **APPENDIX A**

## **Supplemental Documentation**



April 15, 2008

Ms. Carrie Austin

**San Francisco Bay Regional Water Quality Control Board**

1515 Clay Street, Suite 1400

Oakland, CA 94612

RE: Response to Proposed Guadalupe River Watershed Mercury TMDLs Basin Plan Amendment

Dear Ms. Austin:

On behalf of MTA Hillsdale, LP, the property owner of the former Hillsdale Mine site, this letter provides comments to the Guadalupe River Watershed Mercury Total Maximum Daily Load (TMDL) proposed San Francisco Bay Basin Plan amendment. The former Hillsdale Mine has been included in the proposed Basin Plan amendment as a potential source of mercury sediment that could impact water quality in the Guadalupe River which flows to the San Francisco Bay. We are presenting information in this letter that shows that the former Hillsdale Mine is not in the Guadalupe River watershed and has not historically nor does it currently drain to the Guadalupe River, and therefore should not be included in this Basin Plan amendment.

### **Introduction**

The former Hillsdale Mine is located on the northeastern flank of Communication Hill which is a prominent bedrock ridge located in the south-central portion of the Santa Clara Valley (Figure 1). This mine has not been active for many decades and the area has been used extensively as a rock quarry for several decades. The cinnabar ore was removed by tunneling and some of the subsurface workings remain. The portals were generally sealed many years ago, but some have recently been uncovered for evaluation purposes. The quarry operations generally did not disturb the mine and ore deposit, but extensive grading was performed at the former smelters and lower areas of the site. No smelters or waste rock remain present though their former location is generally known from review of historic aerial photographs.

### **Mine History**

According to Bradley (1918) the first mining activities at the Hillsdale Mine reportedly date back to 1847 just after the land was granted to a Pedro Chaboya. From 1847 to 1861 the mines were worked by these early Californios, and in 1861 the mines were sold to a Mr. Chapman who worked the mines until 1874. Peak production for the Hillsdale Mines was reportedly reached in 1871 with a production of 30 to 40 flasks per month (Bradley, 1918). This is a very small number when compared to the nearby New Almaden Mines which reached a peak production close to 4,000 flasks per month in 1865 (Layton and Bulmore, 1967). Clearly the Hillsdale Mines were marginal in



production likely reflecting the small amount of mercury ore available and/or the poor grade of the ore.

SES has reviewed historical air photos and has confirmed that no active mining appeared to be present in the earliest aerial photos we reviewed from 1939 to the present. Grading related to the Raisch Quarry operations has intermittently disturbed areas near the mine openings and lower flat-lying areas below the former mine in the 1971 through at least 1996. This grading removed both retorts that were previously present in the mining area.

### **Mine Operations**

From exploration work performed recently by SES, the mining was conducted by near-horizontal tunneling into the hillside at two levels, and opening up subsurface caverns using pillar and beam-type methods. Several steep air shafts appear to have been excavated as well. There is evidence that small, narrow-track ore carts were used to bring the ore out of the lowest levels of the mine and out to a retort located near the daylight of the main portal. From the SES review of historic aerial photos, it is not clear where the processed wastes were placed. It is possible that the wastes were placed in a low-lying area below the main mine workings, or used to improve the access roads to the mines. In either case, these areas are not located within the Guadalupe Watershed, as described below.

### **Surface Water Flow**

Communication Hill is a bedrock ridge that rises several hundred feet above the Santa Clara Valley. The ridge is elongated trending northwest-southeast, as shown on Figures 2 and 4. The former Hillsdale Mine is located entirely on the northeast-facing slope of Communication Hill following an elongated lens of silica-carbonate altered rock. Mass grading in the last several years for the residential development on the southwest-facing flank has confirmed that there was no mining on that portion. Surface water drainage follows topography and flow is to the northeast as shown on Figure 2. This direction is away from the Guadalupe River Watershed including the closest surface water which is Canoas Creek. The bedrock topography, however, prevents surface water flow in this direction as can be seen in Figure 2 where bedrock highs intersect and do not allow surface water flow from the mine area to the northwest. The earliest available USGS topographic map from 1899 is included as Figure 4. This map illustrates that the Communication Hill topography at that time was similar to what it is today and prevented surface water drainage to the west and northwest towards the Guadalupe River Watershed.

In support of our observations about surface water flow, we have identified a watershed map produced by the Santa Clara Valley Water District (1996) which is reproduced as Figure 3. This map clearly shows that the site and vicinity is part of the Coyote Creek



Sub watershed and not the Guadalupe River Sub watershed. Given the bedrock topography in the area that control surface water drainage, these sub watershed boundaries in the site area would have been no different when the majority of the mining activity occurred in the 1800's.

The railroad tracks below the former mine area are elevated and artificially interfere with surface water flow. Most surface water drainage is captured by a man-made pond that is present at the base of the hill and situated against the railroad tracks. During particularly wet years there are pipes beneath the railroad that allow excess surface water flows to the east. The railroad tracks were installed in 1935. During the mining activities in the 1800's presumably surface water flow and sediment transport was uninterrupted by the railroad and flow occurred to the northeast following topography. Flow in this direction would take all surface water to the Coyote Creek located about 1/2 miles to the northeast. Given the nearly flat topography, small drainage area, and relatively long distance, we believe it is very unlikely that any sediment from the mine area would have been able to reach the Coyote Creek now or in the past.

### **Conclusions**

In this response, we believe we have presented compelling evidence that the former Hillsdale Mine is not within the Guadalupe River Watershed, has not historically contributed sediment to the Guadalupe River Watershed, and therefore should not be included in the San Francisco Bay Basin Plan Amendment for the mercury TMDL implementation plan and controls for the Guadalupe River Watershed.

We hope you concur with our conclusions on this matter and the opportunity to comment on the proposed amendment. If you have any questions or concerns regarding this request, please contact me at (510) 451-2917 ext. 202, or (925) 786-7701 (cellular).

Sincerely,

Thomas F. McCloskey, P.G., C.E.G., C.HG.  
Principal Geologist

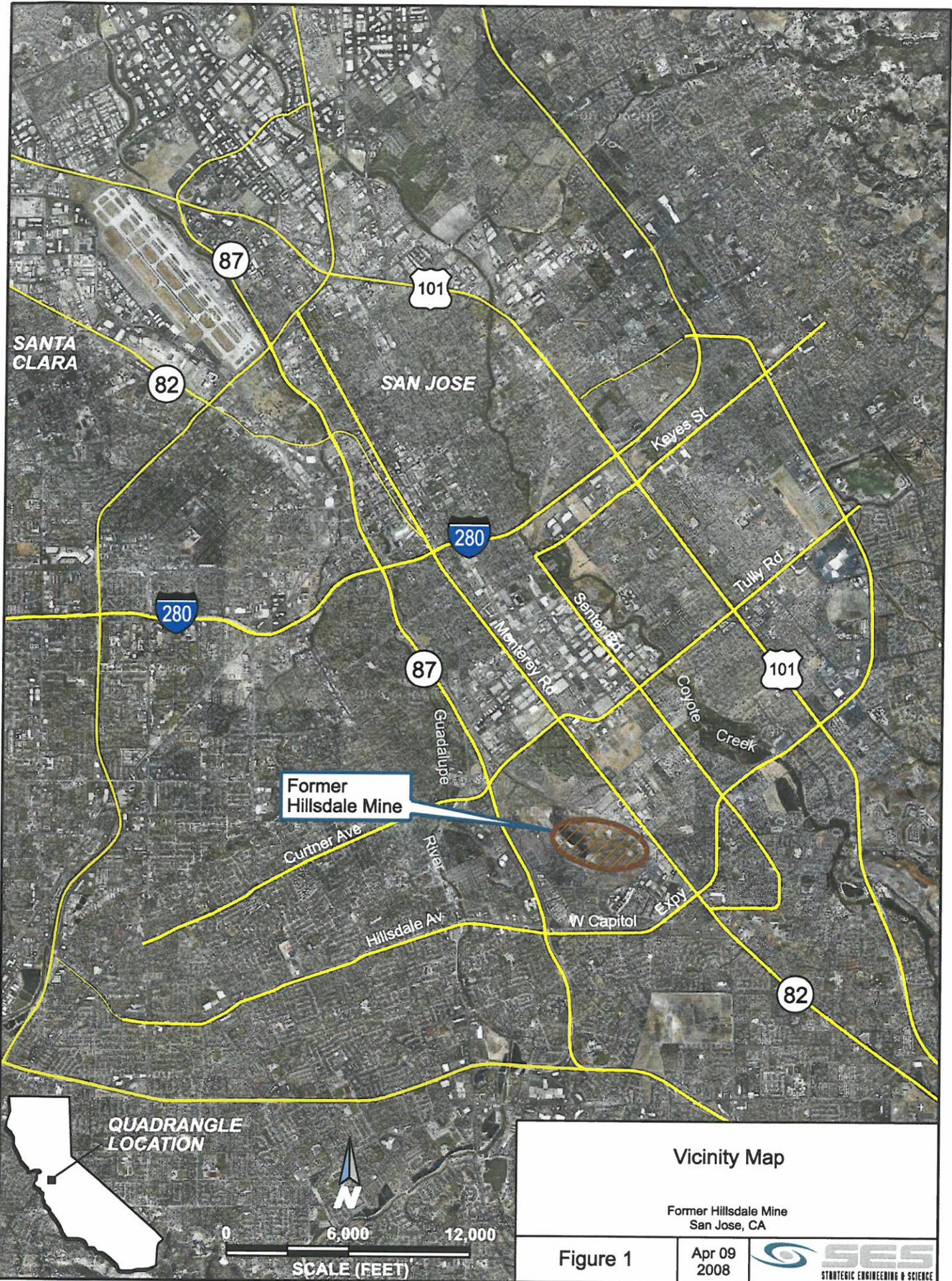
Copies: Addressee (2)  
MTA Hillsdale, LP (1)  
Attn: Mr. Robert Bettencourt  
SummerHill Homes (3)  
Attn: Mr. Bob Hencken



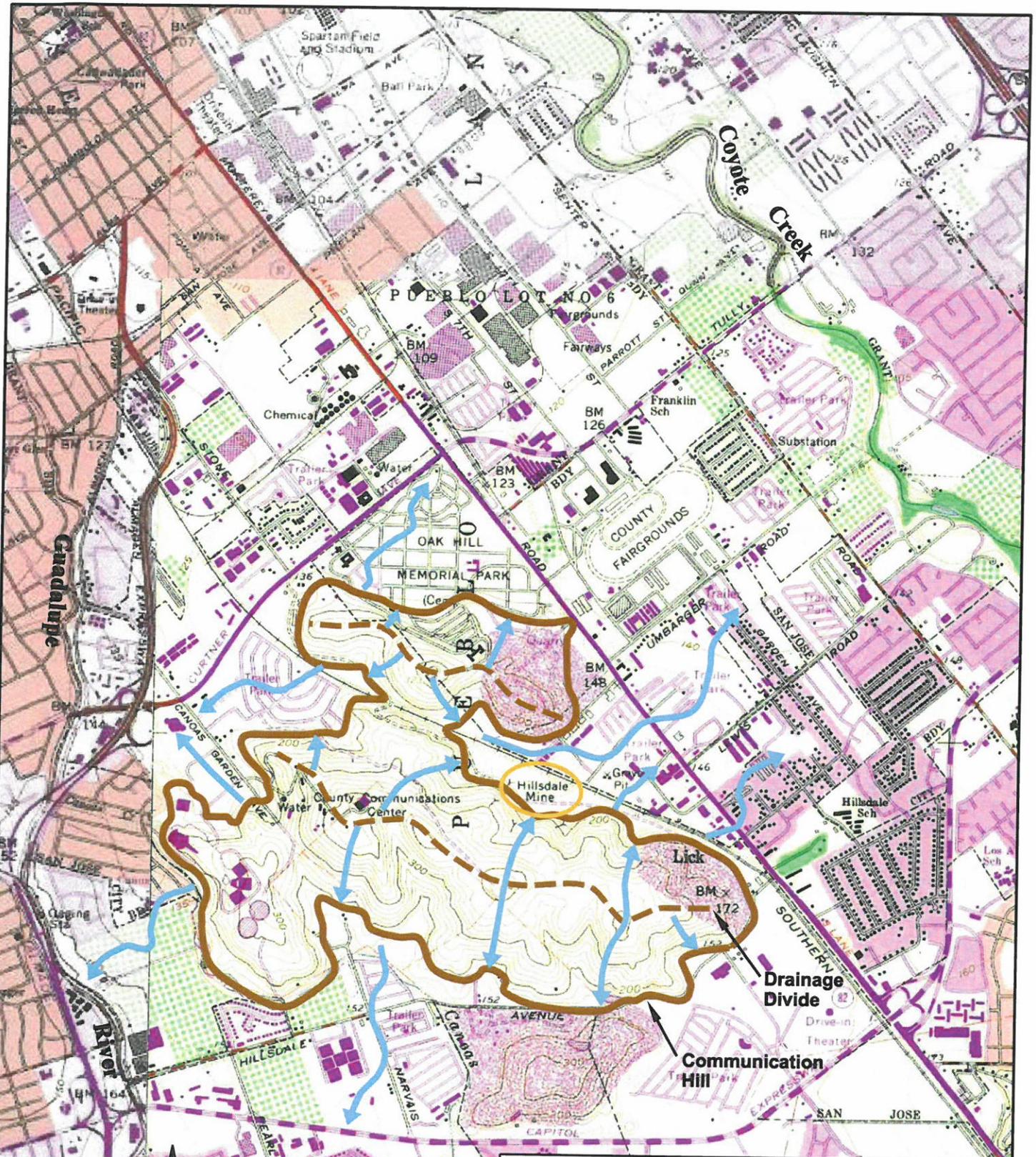
### **References**

Bradley, W.W., 1918, *Quicksilver Resources of California*, California State Mining Bureau, Bulletin no. 78.

Layton, Milton, and Bulmore, Laurence, 1967, *Cinnabar Hills: The Quicksilver Days of New Almaden*.



<b>Vicinity Map</b>		
Former Hillsdale Mine San Jose, CA		
<b>Figure 1</b>	Apr 09 2008	 <b>SES</b> STRATEGIC ENGINEERING & SCIENCE



## Topographic Map with Surface Water Flow

Communication Hill  
San Jose, CA

Figure 2

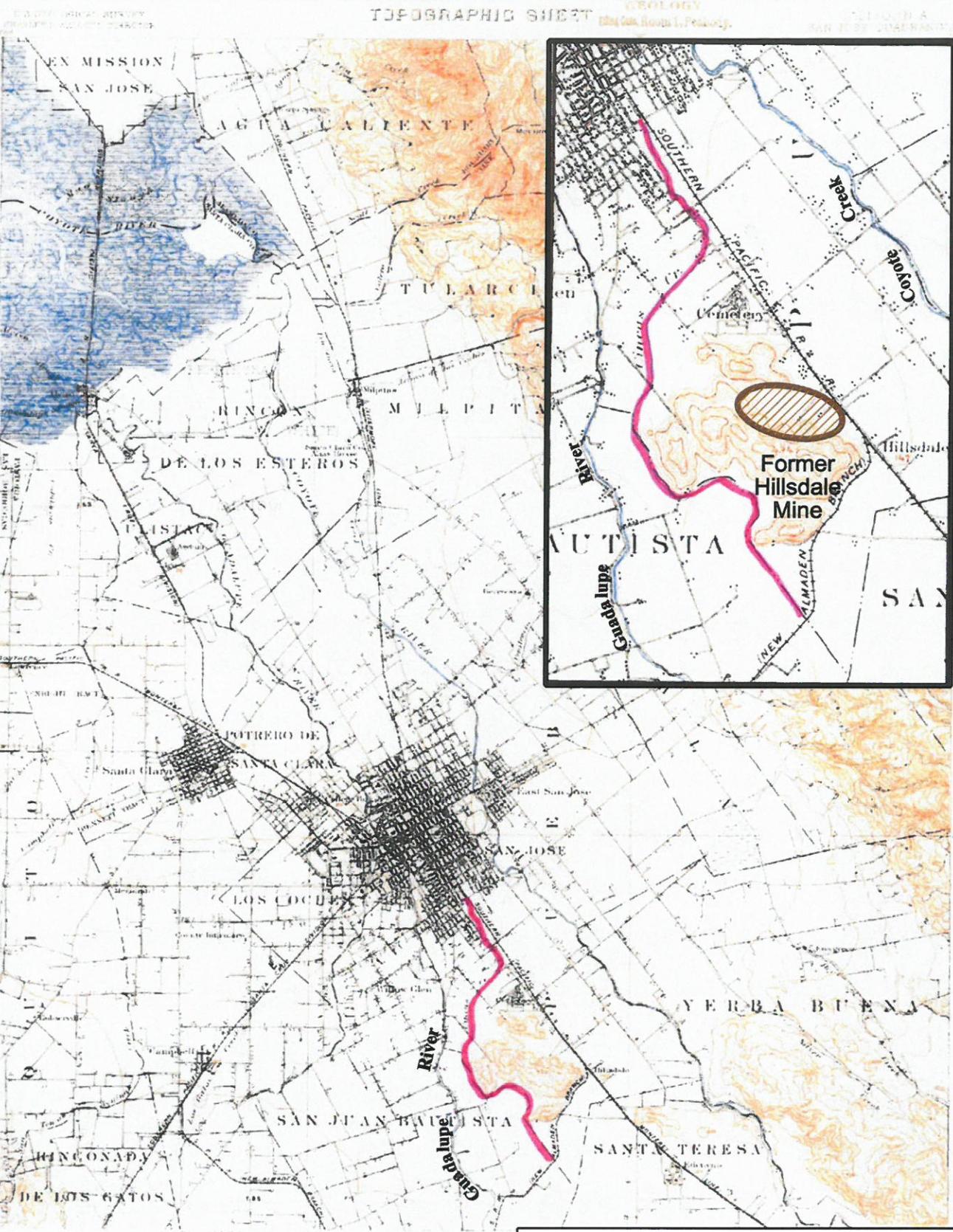
Mar 26  
2008



**LEGEND:**

→ Surface Water Flow Line





TOPOGRAPHIC SHEET

P:\CAD\0064 KB Homes - Communication HillTask 01\Fig\0064\_01 Fig 4 040808.dwg 8.5x11



**1899 USGS Topographic Map**

San Jose, CA

Figure 4

Apr 08  
2008





# DEPARTMENT OF CONSERVATION

## OFFICE OF MINE RECLAMATION

801 K STREET • MS 09-06 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 323-9198 • FAX 916 / 445-6066 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

May 6, 2014

VIA EMAIL: [Marina.Rush@PLN.SCCGOV.ORG](mailto:Marina.Rush@PLN.SCCGOV.ORG)  
ORIGINAL SENT BY MAIL

Ms. Marina Rush  
Santa Clara County Department of Planning and Development  
70 W. Hedding Street  
San Jose, CA 95110-1705

Dear Ms. Rush:

AZEVEDO QUARRY  
PARTIAL CLOSURE OF RECLAIMED AREAS  
CALIFORNIA MINE ID # 91-43-0003

The Department of Conservation (Department) has received documents submitted pursuant to California Code of Regulations (CCR), Title 14, Section 3805.5(a), indicating that certain portions of the Azevedo Quarry have been reclaimed. The intent of the reclamation plan as amended and approved in 2008 was *"to create and maintain stable site conditions until development plans go forward as set forth in the Communication Hill Specific Plan, adopted by the City of San Jose adopted April 7, 1992"*. Santa Clara County (County), as SMARA lead agency, has determined that the majority of the site, with the exception of specific areas discussed below, has been reclaimed in accordance with the approved reclamation plan to open space and industrial end uses, readily adaptable to future urban development.

Staff of the Department of Conservation's Office of Mine Reclamation (OMR) conducted an inspection on April 3, 2014 accompanied by representatives from the County. OMR has completed its review in accordance with CCR 3805.5(b) and concurs that revegetation performance standards have been achieved for the open space portion of the site. The other segment of the site has an industrial end use with a separately permitted recycle facility that is to remain until its permit expires.

The only outstanding reclamation liabilities are related to areas of concern that have been noted in previous inspection reports: (1) the over-steepened slopes at the southeastern entrance to the site, (2) the two over-steepened rocky knolls supporting utility poles, and (3) the embankment above the northern sedimentation pond. The enclosed map depicts these features with buffers around them to allow for grading or

Ms. Marina Rush  
May 6, 2014  
Page 2

buttressing, should it become necessary. Reclamation of these areas is not complete. However, reclamation can be certified complete for the remainder of the site.

The mine was abandoned by the operator, Raisch Products, and the County seized the financial assurance mechanism in 2012. The remaining financial assurance should be maintained in order to complete reclamation of the areas noted in the event that the development plans for Communication Hill do not proceed as anticipated.

The reclamation plan was amended in 2008 to incorporate the anticipated end uses of open space, industrial use, and ultimately, residential development. The proposed residential development project involves annexation of the property by the City of San Jose and environmental review under the California Environmental Quality Act (CEQA) later this year. Once approved, the project involves substantial import fill grading which would result in burying and/or modifying the slopes of the entire property in preparation for development by KB Homes. If and when the rough grading has been accomplished as planned, OMR can certify final reclamation and closure for the remainder of the site and any remaining financial assurance can be released pursuant to CCR 3805.5(d).

If you have any questions on these comments or require any assistance with other mine reclamation issues, please contact me at (916) 324-0716.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Ferrero', with a long horizontal flourish extending to the right.

Tom Ferrero, PG, CEG  
Manager, Compliance Unit



 **Mine Boundaries**  
Azevedo Quarry - Mine ID 91-43-0003  
Santa Clara County

-  Existing Permit Area
-  Un-Reclaimed Feature
-  Buffer Around Un-Reclaimed Feature

# **SAN JOSE WATER COMPANY CITY OF SAN JOSE 2040 GENERAL PLAN WATER SUPPLY ASSESSMENT**

June 2010



**Prepared by:  
Jacob Walsh, P.E.**

**With Assistance From:  
Bill Tuttle, P.E.  
Nicole Dunbar, P.E.**

**Under Direction of:  
Craig Giordano, P.E.**



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**Appendix**

- A SJWC and SCVWD 3-Year Treated Water Purchase Contract**
- B SJWC’s Water Shortage Contingency Plan (January 1992)**

**S**an Jose Water Company (SJWC) is one of the largest privately owned water systems in the United States, providing high-quality water and exceptional customer service to residents of Santa Clara County (currently about one million) in Northern California since established in 1866.



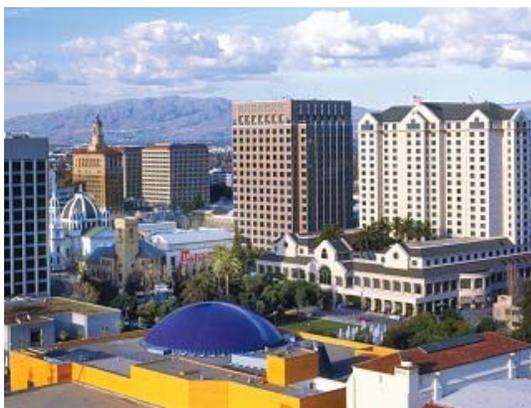
**Purpose**

This Water Supply Assessment (WSA) will describe the relationship between existing and future water supplies in SJWC’s service area, and presents SJWC’s ability to provide a diverse water supply to match planned water demands under both normal and dry years. This document is designed to promote collaborative planning between SJWC, Santa Clara Valley Water District (SCVWD), and the City of San Jose Task Force (Task Force), and in turn, assist the San Jose City Council in making decisions related to their Envision 2040 General Plan Update.

A General Plan outlines proposed growth and development throughout a city. The existing City of San Jose General Plan was adopted in 1994 and guides daily decision-making for land use and City services. Although the current Plan provides a framework for development, after fifteen years of residential and business growth, the City is reevaluating their General Plan.

This WSA is written in response to California Senate Bill 610; legislation which requires water retailers to demonstrate whether their water supplies are sufficient for certain proposed subdivisions and large development projects subject to the California Environmental Quality Act.

**Background**



San Jose is located at the southern end of the San Francisco Bay Area. Once a small farming city, San Jose has grown to become the tenth largest city in the country. The region is commonly referred to as Silicon Valley.

On June 16, 2009 the San Jose City Council accepted four land use scenarios presented by the Task Force. These scenarios, labeled 1-C, 2-E, 3-K, and 4-J represent varying residential and business growth projections. Each scenario anticipates a different amount of growth over the next 25 years in San Jose; with the majority of projected residential and business growth located along existing and proposed rail corridors. More recently, land-use scenarios 5-H and 6 were presented to the City Council by the Task Force. Scenario SJ 2020 refers to projected

population and business growth in San Jose based on the existing General Plan. This scenario should be viewed as a baseline for growth, since the General Plan was adopted in 1994. The following table is a summary of Task Force scenarios.

**Table 1: Projected Growth per Scenario by 2035**

<b>Scenario</b>	<b>Projected Growth by Type (In San Jose)</b>
Scenario 1-C	- 262,500 Population Added; 346,550 New Jobs
Scenario 2-E	- 402,000 Population Added; 360,550 New Jobs
Scenario 3-K	- 471,100 Population Added; 339,530 New Jobs
Scenario 4-J	- 262,700 Population Added; 526,050 New Jobs
Scenario 5-H	- 402,000 Population Added; 431,550 New Jobs
Scenario 6	- 355,630 Population Added; 470,000 New Jobs
SJ 2020	- 243,320 Population Added; 255,550 New Jobs

In April, 2010 the San Jose City Council accepted the Task Force and City staff’s recommendation to study land-use scenario 6 in their Environmental Impact Report (EIR), thus making scenario 6 the “preferred” scenario. All other scenarios will be presented in the city EIR as alternatives to the preferred recommendation. This WSA will address all Task Force proposed growth scenarios. Depending upon which scenario is ultimately adopted, the City anticipates between 262,500 and 471,100 more people in San Jose over the next 25 years. In terms of job growth, the City anticipates a minimum of approximately 340,000 new jobs and a maximum of over 526,000 new jobs.

**Service Area & Climate**

SJWC’s service area spans 139 square miles, including most of the City of San Jose and Cupertino, the entire cities of Campbell, Monte Sereno, Saratoga, the Town of Los Gatos, and parts of unincorporated Santa Clara County.

The San Jose area experiences a low-humidity climate with an average of 15 inches of rain annually. Daily average temperatures range between the high 60’s to mid 80’s (°F) in spring, summer, and fall, and between the high 50’s to low 60’s (°F) in the winter. Most of the precipitation in San Jose occurs between November and March with January and February typically being the wettest months. Further climate data is listed in the following table.

**Table 2: Climate Data**

	Jan	Feb	Mar	Apr	May	Jun
Average High Temperature (°F)	59	63	67	72	77	82
Average Low Temperature (°F)	42	45	46	48	52	55
Average Precipitation (in)	3.03	2.84	2.69	1.02	0.44	0.10
Evapotranspiration (in)	1.35	1.87	3.45	5.03	5.93	6.71

	Jul	Aug	Sept	Oct	Nov	Dec	Annual
Average High Temperature (°F)	84	84	82	76	65	59	72.5
Average Low Temperature (°F)	58	58	57	52	46	41	50.0
Average Precipitation (in)	0.06	0.07	0.23	0.87	1.73	2.00	15.08
Evapotranspiration (in)	7.11	6.29	4.84	3.61	1.80	1.36	49.35

**Population Projections**

Past and projected populations within SJWC’s service area are shown in the following table. Population projections for areas outside of San Jose are based on SJWC’s 2005 Urban Water Management Plan (UWMP), which used growth rates identified by the Association of Bay Area Governments (ABAG) in their 2005 population forecast. For purposes of this report, Scenarios 1-C, 2-E, 3-K, 4-J, 5-H, 6 and SJ 2020 are assumed to follow a constant annual population growth rate between 2005 and 2035.

**Table 3: Past and Projected SJWC Service Area Population**

	2005	2010	2015	2020	2025	2030	2035 <sup>(2)</sup>
Population Projection (excluding San Jose) <sup>(1)</sup>	153,510	161,185	171,974	183,924	196,753	208,265	220,878
2005 Population of San Jose (within SJWC Service Area)	781,790	-	-	-	-	-	-
San Jose – Scenario 1-C Population Projection (SJWC Service Area)	-	815,657	850,990	887,854	926,315	966,443	1,008,307
San Jose – Scenario 2-E Population Projection (SJWC Service Area)	-	831,159	883,645	939,445	998,770	1,061,840	1,128,894
San Jose – Scenario 3-K Population Projection (SJWC Service Area)	-	837,913	898,064	962,534	1,031,631	1,105,689	1,185,063
San Jose – Scenario 4-J Population Projection (SJWC Service Area)	-	815,638	850,951	887,794	926,231	966,332	1,008,171
San Jose – Scenario 5-H Population Projection (SJWC Service Area)	-	831,159	883,645	939,445	998,770	1,061,840	1,128,894
San Jose – Scenario 6 Population Projection (SJWC Service Area)	-	821,118	862,425	905,809	951,376	999,235	1,049,502
San Jose – SJ 2020 Population Projection (SJWC Service Area)	-	809,015	837,187	866,341	896,510	927,730	960,036
SJWC’s 2005 UWMP Population Projection	935,300	995,900	1,062,500	1,137,600	1,202,100	1,273,200	-

(1) ABAG’s 2005 Projections do not assign population growth rates beyond 2030

(2) Estimated for 2035

(3) The total projected SJWC service area population is the sum of the Scenario increase plus the “excluding San Jose” amount in the first row

Scenarios 1-C, 2-E, 4-J, 5-H and 6 will result in fewer people within SJWC’s service area than estimated in SJWC’s 2005 UWMP, whereas Scenario 3-K anticipates growth which exceeds previous population estimates. By 2030, Scenario 3-K anticipates approximately 40,750 more people than the projected population in SJWC’s 2005 UWMP.

**Job Growth Projections**

In 2005, per SJWC’s UWMP, there were approximately 52,530 acre-feet of non-residential demand. More than 75 percent of all SJWC service connections are within the City of San Jose, however SJWC data reports do not separate total demand between businesses within San Jose and businesses outside of San Jose. Additionally, the vast majority of SJWC’s industrial connections, which typically use more water than all other types of connections, are within CSJ limits. Therefore, this WSA conservatively assumes 85 percent of all SJWC 2005 business demand was generated by San Jose businesses. The following table estimates business demand for each of the three largest water suppliers in San Jose.

**Table 4: Business Demand in San Jose**

<b>Name</b>	<b>2005 Business Demand</b>
San Jose Water Company <sup>(1)</sup>	- 44,651 acre-feet
San Jose Municipal Water <sup>(2)</sup>	- 4,824 acre-feet
Great Oaks Water Company <sup>(3)</sup>	- 2,500 acre-feet
<b>Total</b>	<b>- 51,975 acre-feet</b>

- (1) Assumes 85% of all SJWC business usage is within San Jose
- (2) Based on CSJ Municipal Water 2005 UWMP
- (3) Estimated (Great Oaks Water Co. combines domestic and business demand in their 2005 UWMP)

According to the City of San Jose Berryessa General Plan Amendment, San Jose had approximately 363,380 jobs in 2005. Therefore, by comparing the ratio of SJWC business demand to all City of San Jose business demand and multiplying that percentage by the total number of San Jose jobs, SJWC supplied water to approximately 312,175 jobs within San Jose in 2005. SJWC’s past and projected job growth within San Jose is shown in the following table. Similar to the population projections, Scenarios 1-C, 2-E, 3-K, 4-J, 5-H, 6 and SJ 2020 are assumed to follow a constant annual job growth rate between 2005 and 2035.

**Table 5: SJWC’s Past and Projected Jobs in San Jose**

	2005	2010	2015	2020	2025	2030	2035*
2005 San Jose Jobs	312,175	-	-	-	-	-	-
Scenario 1-C	-	336,137	361,938	389,719	419,633	451,843	486,525
Scenario 2-E	-	337,498	364,875	394,472	426,471	461,065	498,465
Scenario 3-K	-	335,749	361,103	388,371	417,699	449,241	483,165
Scenario 4-J	-	351,378	395,503	445,170	501,074	563,999	634,825
Scenario 5-H	-	342,646	376,091	412,800	453,093	497,318	545,860
Scenario 6	-	344,791	380,816	420,604	464,550	513,087	566,695
SJ 2020	-	328,430	345,531	363,522	382,450	402,364	423,315

Scenarios 1-C, 2-E, and 3-K anticipate an annual growth rate of approximately 1.5 percent within SJWC’s service area. Scenarios 5-H and 6 anticipate annual job growth rates of approximately 1.9 percent and 2.0 percent respectively. Alternatively, scenario 4-J anticipates an annual job growth rate of nearly 2.4 percent. This scenario doubles the 2005 number of jobs which SJWC supplies water to in San Jose.

**Past and Future Water Use**

SJWC typically calculates anticipated demand, used to determine sizing for service connections, based upon fixture counts. This practice is consistent with American Water Works Association standards. However, because the 2040 CSJ Envision General Plan is intended to be used as land-use guide for City officials, exact service counts with corresponding fixture units is not possible. To determine existing usage SJWC compared estimated 2005 population and job figures to their corresponding actual demand values.

**Table 6: SJWC’s Estimated Demand Per Person in San Jose\***

Type	2005 Quantity	2005 Demand (Acre-ft/yr)	Daily Demand
Population	935,300	81,613	78 Gallons Per Person
Business Jobs	312,175	44,651	128 Gallons Per Job

\*Population figures and demand assumptions are based on SJWC’s entire service area. Business jobs and business demand assumptions are for San Jose only.

The majority of connections to SJWC’s distribution system are either residential or business. However, SJWC also provides water to private fire services, fire hydrants and agricultural connections. Existing residential demand was calculated to be 78 gallons per person per day (one acre-foot of water is about 325,850 gallons). In San Jose, business demand was found to be 128 gallons per employee per day. Future development in San Jose will likely incorporate low water usage fixtures and landscaping for water conservation. City regulated aggressive conservation would translate into water usage savings beyond the anticipated demand predicted in this WSA.

**Table 7: Projected SJWC Water Demands of Envision 2040 General Plan**

<b>Demand Scenario</b>	<b>Residential Demand (Acre-ft)</b>	<b>Business Demand (Acre-ft)</b>	<b>Total (Acre-ft)</b>
Scenario 1-C	88,097	69,757	157,854
Scenario 2-E	98,633	71,469	170,102
Scenario 3-K	103,540	69,275	172,816
Scenario 4-J	88,085	91,020	179,105
Scenario 5-H	98,633	78,265	176,897
Scenario 6	91,696	81,252	172,948
SJ 2020	83,880	60,694	144,574

SJWC total demand is not limited to the above estimated customer use. Between six and seven percent of the water produced (pumped, treated, or purchased) is unaccounted for, and as a result, is not billed. Unaccounted for water includes authorized unmetered uses such as fire fighting, main flushing and public use. The remaining unaccounted for water is attributed to meter reading discrepancies, reservoir cleaning, malfunctioning valves, leakage and theft. The following table shows the projected amount of total system demand in 2035, including other cities served by SJWC.



**Table 8: SJWC Projected Potable Water Demand in 2035 (Entire System)**

<b>Demand Scenario</b>	<b>Residential Demand (Acre-ft)</b>	<b>Business Demand (Acre-ft)</b>	<b>*Unaccounted Water (Acre-ft)</b>	<b>Potable Water Demand (Acre-ft)</b>
Scenario 1-C	107,396	82,038	13,260	202,693
Scenario 2-E	117,931	84,051	14,139	216,121
Scenario 3-K	122,839	81,471	14,302	218,612
Scenario 4-J	107,383	107,044	15,010	229,437
Scenario 5-H	117,931	92,043	14,698	224,672
Scenario 6	110,995	95,556	14,459	221,009
SJ 2020	103,178	71,379	12,219	186,776

\*This report estimates unaccounted for water comprises 7% of total system demand

SJWC is an active participant and retailer for the South Bay Water Recycling (SBWR) Program and currently has seventy active recycled water customers that used approximately 1,300 AF/yr for landscape irrigation in 2009. SJWC has estimated that recycled water usage will increase by three percent annually. SBWR, operated by the cities of San Jose, Santa Clara, and Milpitas, sells drought-proof recycled water from the San Jose/Santa Clara Water Pollution Control Plant for use



in landscaping, agriculture, cooling towers, and industrial processes. Recycling water improves the environment and stretches water supply. The following table shows SJWC’s past and projected demand of potable and recycled water for scenario 4-J, which has the largest overall water demand. Rather than showing data for Scenarios 1-C, 2-E, 3-K, 4-J, 5-H and 6 this scenario was

selected because, as shown in Table 8, it requires the maximum SJWC water demand of all six scenarios.

**Table 9: SJWC Projected Total Water Demand in 2035 (Entire System)**

Scenario 4-J	2005	2010	2015	2020	2025	2030	2035
Potable Water Demand	143,394	154,717	166,988	180,511	195,390	211,568	229,437
Recycled Water Demand*	1,451	1,682	1,950	2,261	2,621	3,038	3,522
<b>Total Demand</b>	<b>144,845</b>	<b>156,399</b>	<b>168,938</b>	<b>182,771</b>	<b>198,011</b>	<b>214,606</b>	<b>232,959</b>

\*If recycled water demands increase due to expansion of the recycled water system, then there should be a corresponding decrease in potable water usage

**Water Rights, Contracts and Entitlements**

SJWC has “pre-1914 surface water rights” to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted and it grandfathered in all existing water entitlements to license holders. SJWC filed for a license in 1947 and was granted license number 10933 in 1976 by the State Water Resources Control Board to draw 6240 AF/yr from Los Gatos Creek. SJWC has upgraded the collection and treatment system that draws water from this watershed to increase the capacity of this entitlement to approximately 11,200 AF/yr for an average rain year.

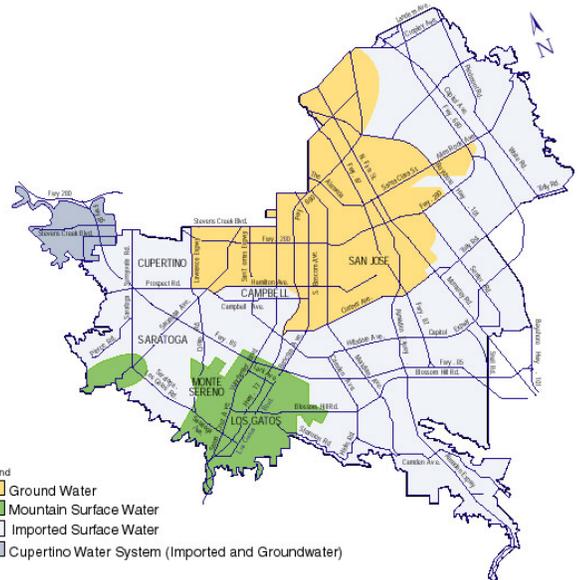


In 1981, SJWC entered into a 70-year master contract with SCVWD for the purchase of treated water. The contract provides for rolling three-year purchase schedules establishing fixed quantities of water to be purchased during each period. The maximum peak day rate for delivery of water from SCVWD under the 2004 - 2005 schedule is 108 MGD. The water is treated at one of the three SCVWD-operated treatment plants (Rinconada, Penitencia and Santa Teresa). SJWC and SCVWD currently have a three year treated water contract (Appendix A), with minimum contract supply ranging from 67,516 AF/yr in fiscal year 2008-2009 to 70,440 AF/yr in fiscal year 2010-2011.

SJWC asks for and receives underground water rights in conjunction with new developments. SJWC has the right to withdraw groundwater from aquifers below said property when in compliance with SCVWD and California Department of Public Health permitting requirements. In Santa Clara County, this right is subject to a groundwater extraction fee levied by SCVWD based on the amount of groundwater pumped into SJWC’s distribution system. SJWC generally uses the most economical source of water, which is largely determined by SCVWD’s groundwater extraction fee rates and contracted water rates.

**Sources of Potable Water**

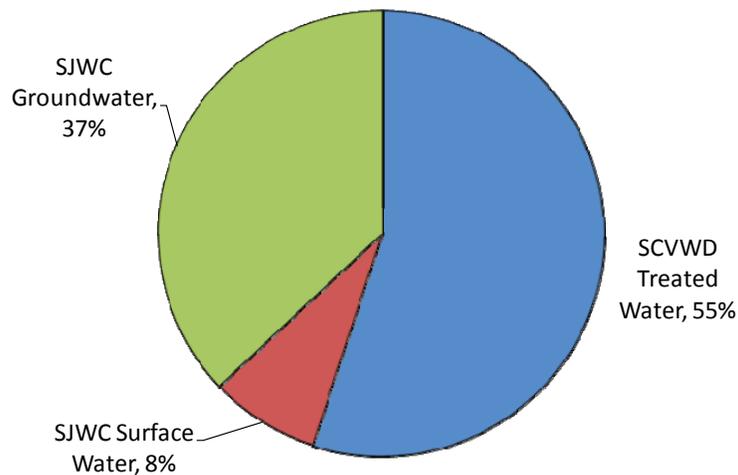
SJWC has three sources of potable water supply: groundwater, imported treated surface water and local surface water. A map of where each source is the predominant source is shown to the right. On average, groundwater comprises just over one third of SJWC’s water supply. Ninety-one active, five standby and sixteen inactive wells pump water from the major water-bearing aquifers of the Santa Clara Valley subbasin. These aquifers are recharged naturally by rainfall and streams, and artificially mainly by recharge ponds operated by SCVWD.



SJWC is under contract with SCVWD for the purchase of just over fifty percent of the needed water supply. This water originates from several sources including local reservoirs, but primarily from the State Water Project and the federally funded Central Valley Project. Water is piped into SJWC’s system at various turnouts after it is treated at one of the three SCVWD water treatment plants (Rinconada to the west side pipeline and Penitencia and Santa Teresa to the east side pipeline).

SJWC’s final source of supply is from surface water in the local watersheds of the Santa Cruz Mountains. It provides approximately five to ten percent of the water supply depending on the amount of annual rainfall. A series of dams and intakes collect water released from SJWC’s lakes. The water is then sent to SJWC’s Montevina Filter Plant for treatment prior to entering the distribution system. SJWC’s Saratoga Treatment Plant draws water from a local stream.

**SJWC Sources of Water (5-Year Average 2004-2008)**



The following table shows the amount of water supplied to SJWC’s distribution system from each source in 2005 as well as projections until 2035 for Task Force Scenario 4-J. The amount of surface and groundwater for 2010 and forward is based on a five year annual average percentage. The groundwater and SCVWD Treated Water projections include SJWC’s plan to acquire additional water needed for development projects by increasing well production within the distribution system and by purchasing additional treated water from SCVWD and recycled water from the South Bay Water Recycling Program. The overall long-term strategy for groundwater as discussed in the 2003 SCVWD Integrated Water Resource Planning Study (IWRP) Draft is to maximize the amount of water available in the groundwater basins to protect against drought and emergencies. SCVWD seeks to maximize the use of treated local and import water when available.

**Table 10: Past and Planned Potable Water Supply – With Conservation (AF/yr)**

<b>Scenario 4-J</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>	<b>2030</b>	<b>2035</b>
SCVWD Treated Water	86,400	85,378	93,109	101,628	111,002	121,194	132,451
Groundwater	41,839	57,245	61,786	66,789	72,294	78,280	84,892
Local Surface Water	15,155	12,094	12,094	12,094	12,094	12,094	12,094
<b>Total w/out Conservation</b>	<b>143,394</b>	<b>154,717</b>	<b>166,988</b>	<b>180,511</b>	<b>195,390</b>	<b>211,568</b>	<b>229,437</b>
Conservation <sup>(1)</sup>	0	-4,868	-11,012	-18,449	-27,292	-37,492	-49,453
<b>Total with Conservation</b>	<b>143,394</b>	<b>149,849</b>	<b>155,976</b>	<b>162,062</b>	<b>168,098</b>	<b>174,076</b>	<b>179,984</b>
<b>2005 UWMP Total<sup>(2)</sup></b>	<b>152,942</b>	<b>158,783</b>	<b>165,278</b>	<b>172,795</b>	<b>178,577</b>	<b>183,958</b>	<b>-</b>

(1) Conservation rate matches 2005 UWMP, but initial conservation quantities have been adjusted since 2005.

(2) 2005 UWMP total potable water demand with conservation in entire system.

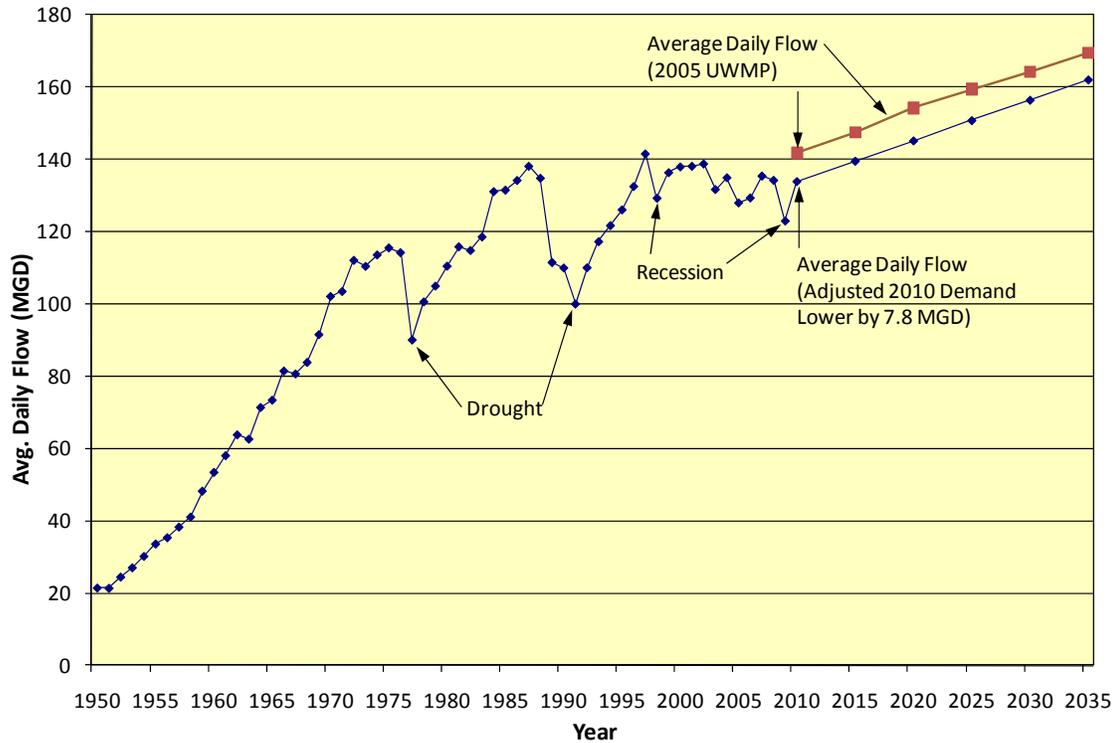
SJWC’s 2005 UWMP assumed an overall increase in conservation of three percent every five years throughout the existing service area beginning in year 2005. It is estimated that overall system water usage growth will be at a rate much lower than population growth. Conservation lowers groundwater and SCVWD treated water needs. The growth in conservation is anticipated as a result of an increase in the use of ultra-low-flush toilets, low-flow showerheads, low water demand washers and dryers, individual conservation, and reductions in landscaping due to development trends. Conservation is assumed to be spread among the residential and business categories in proportion to their anticipated usage. Future groundwater quantities in the Santa Clara Valley subbasin were assumed to follow SJWC’s five-year groundwater trend and comprise 37 percent of total system demand.



Over the four years since SJWC’s 2005 UWMP was approved, the annual average daily flow throughout SJWC’s system has decreased. It is believed that a portion of this decrease can be attributed to efforts by both SJWC and SCVWD to change water-use behavior in response to the

drought over the past few years. In addition, this decrease in usage may be partially attributed to the economic downturn and a shift in San Jose away from single family houses towards condominium, townhome and multi-family residential development which use less landscaping. This WSA anticipates the same growth rate for average daily flow, as reported in SJWC’s 2005 UWMP. However, due to observed usage and demand trends, the 2010 annual average daily flow has been lowered by nearly eight MGD.

**PAST AND PROJECTED SJWC AVERAGE DAILY FLOW  
(ANNUAL AVERAGE MGD)**

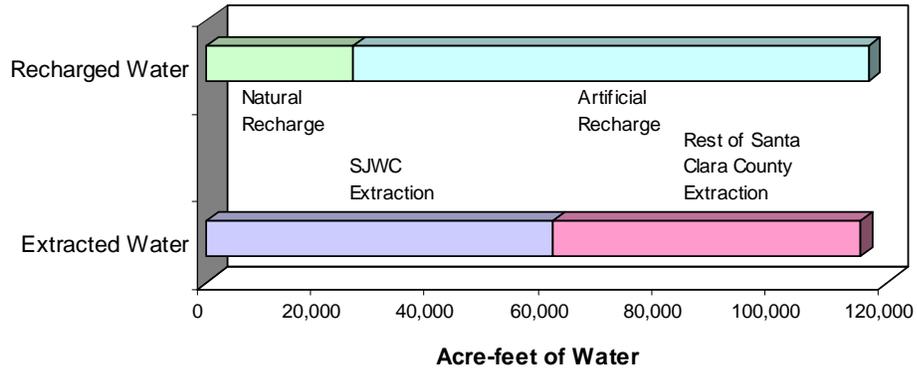


**Groundwater Analysis**

SJWC draws water from the Santa Clara Valley subbasin (basin) in the north part of Santa Clara County. The basin extends from near Coyote Narrows at Metcalf Road to the County’s northern boundary. It is bounded on the west by the Santa Cruz Mountains and on the east by the Diablo Range; these two ranges converge at the Coyote Narrows to form the southern limit of the basin. The basin is 22 miles long and 15 miles wide, with a surface area of 225 square miles.

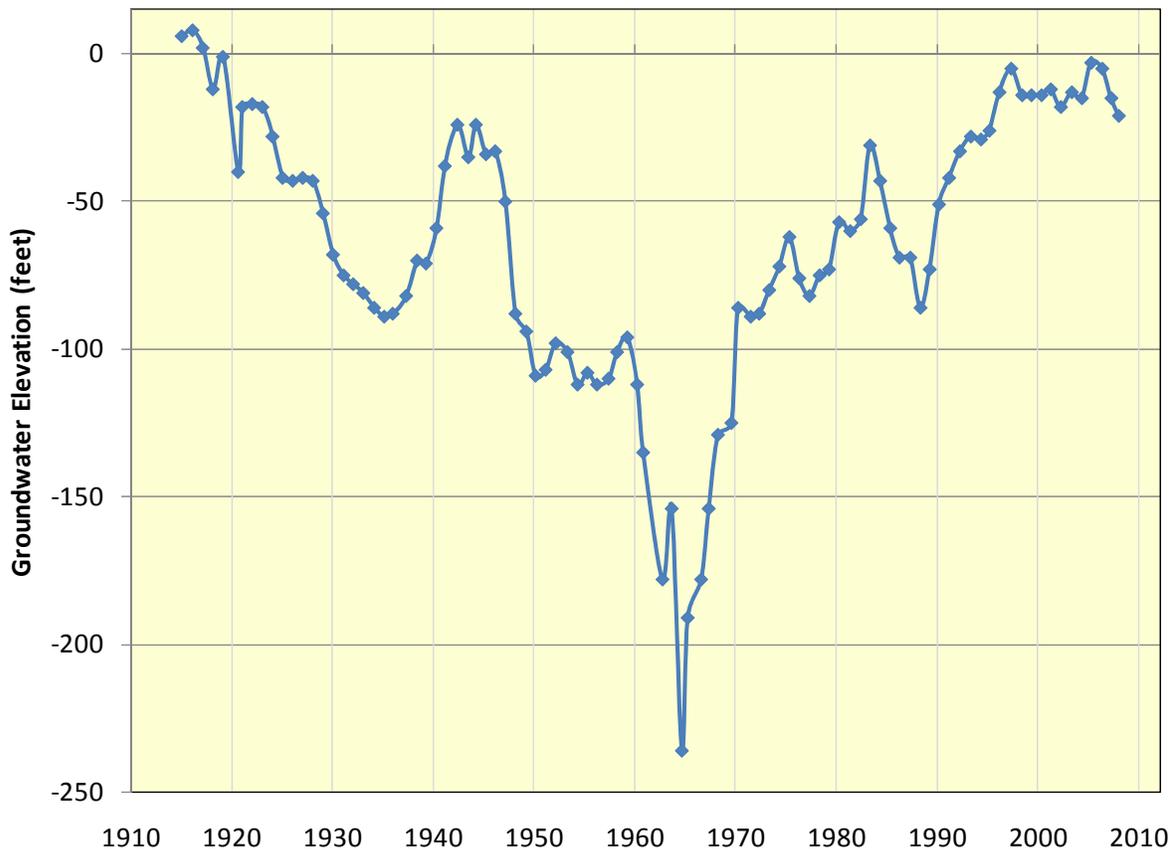
According to SCVWD, 115,358 acre-feet of groundwater was extracted from the basin in 2001. SCVWD estimates that 26,000 acre-feet were naturally recharged to the basin and 90,700 acre-feet were artificially recharged to the basin, mainly through recharge ponds. The following chart shows the water balance of the basin in 2001.

**Santa Clara Valley Groundwater Basin Water Balance (2001)**



The groundwater elevation in the basin has been steadily on the rise for the past 40 years under the management of the SCVWD. The following chart shows groundwater elevation since 1915 using the well surface elevation as the datum. SCVWD has set up a successful artificial recharge system employing local reservoirs, percolation ponds, and an injection well to supplement the natural recharge of the basin to prevent overdraft. The groundwater basin level is currently high at most SJWC well fields and historically better prepared for the effects of a multi-year drought.

**Groundwater Elevation in San Jose Index Well**



**Groundwater Elevations in San Jose Index Well**

SCVWD has advised SJWC against significantly increasing groundwater use in the future. SJWC has discussed the projected increases in supply from groundwater and district treated water with SCVWD. The SCVWD’s 2005 UWMP states operational storage capacity of the basin is estimated to be 350,000 acre-feet. SCVWD’s 2003 IWRP states “although supplies are adequate to meet needs in wet and average years, the expected dry-year shortages will grow over time from approximately 50,000 AF/yr in 2010 to 75,000 AF/yr in 2040.” Based on this, SCVWD has advised groundwater users that exceeding a maximum of 200,000 acre-feet of groundwater extraction per year, or allowing groundwater elevations to drop below subsidence threshold elevations, would risk resumption of unacceptable levels of land surface subsidence.

Over the past five years, SJWC has annually pumped an average of 55,115 AF/yr from the Santa Clara Valley subbasin. Groundwater from the basin is a substantial source of water for SJWC’s entire distribution system. In the past five years, groundwater has been the source for 37 percent of SJWC’s total supply. Based on SJWC’s projections, groundwater will continue to be a vital source of water supply. The following table shows pumping projections and groundwater as a percentage of total supply until 2035.

**Table 11: Amount of Groundwater Projected to be Pumped by SJWC (AF/yr)**

Basin Name	2005	2010	2015	2020	2025	2030	2035
Santa Clara Valley Subbasin	41,839	57,245	61,786	66,789	72,294	78,280	84,892
% of Supply (w/out Conservation)	29.2%	37.0%	37.0%	37.0%	37.0%	37.0%	37.0%

**Water Supply Vulnerability**

In all scenarios groundwater by itself will not be sufficient to serve San Jose by 2035. Diversity and redundancy in water supply, and the possibility to have emergency water supplies available in the event of disaster is crucial to sustainability. SCVWD encourages water retailers to provide at least two different sources of supply to ensure emergency water supplies are available in the event treated water supplies are interrupted by disaster. SJWC’s current three sources of water supply and connections to other retail water agencies contribute to SJWC’s ability and flexibility to respond in the event of emergency situations. For added backup, SJWC incorporates diesel fueled generators into its facilities system which will operate wells and pumps in the event of power outages.

SCVWD’s 2003 IWRP predicts shortages in water supply, and the frequency and magnitude of these shortages may be increased in the future. Since SCVWD has influence over approximately 90 percent of SJWC’s annual water supply, SJWC will continue to work with SCVWD to ensure the water supply is reliable, while the impact to the existing Santa Clara Valley subbasin is minimal.

SCVWD recommended in their 2003 IWRP that water supply sources be maintained at 95 percent reliability during significant water shortages that occur during multiyear droughts. To accomplish

this, SJWC can use less groundwater in certain areas or zones to achieve the overall balance which best meets the SCVWD's and SJWC's operational goals.

Imported water supplies from both the Central Valley Project (CVP) and the State Water Project (SWP) have come under increased regulatory restrictions, resulting in less imported water than what was stated in SCVWD's 2005 UWMP. Based on the December 2008 US Fish and Wildlife Services' Delta smelt Biological Opinion, SCVWD's CVP and SWP water supplies have been reduced by approximately 15 to 30 percent, depending on water year conditions. In addition, a recent Biological Opinion on salmon has the potential to further reduce imported water supply allocations. Water supply issues associated with the San Joaquin Delta will continue to be a large concern until this problem is resolved.

**Transfer and Exchange Opportunities**

SJWC's distribution system has interties with the following retailers in the San Jose area: City of Santa Clara, City of San Jose Municipal Water, Great Oaks Water and the SCVWD West Pipeline in Cupertino. The connection to the SCVWD West Pipeline allows SJWC to provide water to the Cupertino leased system that SJWC operates. SJWC currently has no plans to use these interties for normal system operation as they are exclusively in place for potential emergency sources.

**Supply Reliability**

To evaluate drought scenarios SJWC applied the base years SCVWD used for the average water year, single-dry water year and multiple-dry water years in the 2005 UWMP. The water years used by SJWC are listed in the following table.

**Table 12: Basis of Water Year Data**

<b>Water Year Type</b>	<b>Base Year(s)</b>
<b>Average Water Year</b>	1985
<b>Single-Dry Water Year</b>	1977
<b>Multiple-Dry Water Years</b>	1987-1991

Documented in the following table is the quantity of water SJWC received from each source of water during the average water year, single-dry water year and multiple-dry water years. SCVWD added the 100 MGD Santa Teresa Water Treatment Plant in 1989 to increase capacity and redundancy in their source of supply.

**Table 13: Historical Water Supply Allocation (AF/yr)**

	Average Water Year	Single-Dry Water Year	Multiple-Dry Water Years				
Water Source	Year (1985)	Year (1977)	Year 1 (1987)	Year 2 (1988)	Year 3 (1989)	Year 4 (1990)	Year 5 (1991)
SCVWD Treated	47,061	36,220	57,879	65,935	81,405	64,143	63,093
Local Surface	5,410	1,364	4,576	3,548	6,500	3,719	6,435
Groundwater	94,853	72,962	92,257	81,964	37,020	55,363	42,513
<b>Totals</b>	<b>147,325</b>	<b>110,545</b>	<b>154,712</b>	<b>151,447</b>	<b>124,925</b>	<b>123,225</b>	<b>112,042</b>

The following table takes the supply received in each of the drought years and divides it by the supply received in the average water year to generate a percentage of normal supply SJWC may expect to see during a future drought period.

**Table 14: Water Supply Allocation as a Percentage of Normal Water Year (1985)**

	Single-Dry Water Year	Multiple-Dry Water Years				
Water Source % of Normal	Year (1977)	Year 1 (1987)	Year 2 (1988)	Year 3 (1989)	Year 4 (1990)	Year 5 (1991)
SCVWD Treated	77.0%	123.0%	140.1%	173.0%	136.3%	134.1%
Local Surface	25.2%	84.6%	65.6%	120.1%	68.7%	118.9%
Groundwater	76.9%	97.3%	86.4%	39.0%	58.4%	44.8%
<b>Totals</b>	<b>75.0%</b>	<b>105.0%</b>	<b>102.8%</b>	<b>84.8%</b>	<b>83.6%</b>	<b>76.1%</b>

Besides a drought, other factors which could cause SJWC’s sources of supply to become inconsistent are summarized below.

**Table 15: Causes of Supply Inconsistency**

Supply	Legal	Environmental	Water Quality	Climatic	Mechanical
Local Surface			x	x	x
Ground Water		x	x	x	x
SCVWD Treated Water	x	x	x	x	x

*Legal* - SCVWD is responsible for managing water resources in Santa Clara County, including the long-range planning for additional supplies and/or conservation needed to meet future water demands. SJWC and other retailers work closely with SCVWD to coordinate the purchase of treated imported water and the extraction of groundwater from retailer-owned wells. This activity is important to the operation of the countywide water supply and distribution system and the retailers are dependent on SCVWD’s long-range resource planning.

In determining the long-range availability of water, considerations must also be given to decisions at the state or federal level that are out of the SCVWD’s control. The SCVWD has contracts for

water deliveries with both the State Water Project (SWP) and the Federal Central Valley Project (CVP). Due to flow restrictions for the protection of water quality and the habitat of fish and wildlife in the Delta, water deliveries may be reduced from previous levels. During critical dry periods the SCVWD can expect additional reductions in water deliveries. Long-range planning success depends on the SCVWD's ability to obtain adequate imported water supplies and on proper management of the local groundwater basin.

*Environmental & Climatic* - SCVWD contracts with the State of California to receive raw water from the California Central Valley through the SWP. Water supplied through this aqueduct (which originates from the Sacramento-San Joaquin Delta) may be limited because of subsidence problems which are beginning to occur in that area and due to pumping restrictions associated with the protection of endangered species. SCVWD has also contracted with the CVP to supply raw water from the San Joaquin Valley via the Santa Clara Conduit. The reliance of water from inland sources through the SWP or the CVP is very critical; the loss of any or all of these sources due to pipe failure, levee failure, earthquake, or human intervention can have an extreme effect on SJWC's water supply. Given the above factors which could result in an inconsistent water supply, it is crucial that SJWC have sufficient backup wells and pumping capacity to supply customers for as long as several months solely from groundwater sources. SJWC believes it has this capacity in an emergency if mandatory conservation is enacted.



*Water Quality* - The quality of groundwater in the basins, surface water from the Santa Cruz Mountains, or the raw water supply to SCVWD's treatment plants could decrease or be contaminated such that existing treatment facilities are not adequate to meet current drinking water standards. Contamination could cause a source of supply to become unusable until further treatment techniques are utilized, or the contamination is no longer a threat to the source of supply.

*Mechanical Failures* - All sources of water require mechanical equipment to bring water to the public. Mechanical failures may cause water service shutdowns until repairs are made. To reduce the occurrence of failures, SJWC routinely inspects above-grade facilities at all stations. In addition, SJWC has created and implemented infrastructure replacement programs for all wells and pipelines. To reduce the impact of mechanical failures, SJWC's maintenance department is staffed 24-hours, seven-days a week to respond to and repair any water related emergency.

**Water Demand Management Measures**

SJWC provides a full range of water conservation services to both residential and commercial customers, the cornerstone of which is the water audit program.

- In 2005, SJWC’s three Water Conservation Inspectors performed over 1,900 water audits. These water audits consist of a SJWC Water Conservation Inspector doing a thorough investigation of the customer’s home or business. The inspector carefully examines the property for leaks and measures the flow rates of all showers, faucets and toilets. The program targets the top 10 percent of users in each water use sector. Actual water savings as a result of audits performed in 2005 were estimated to be 310 AF/yr. The goals of this program are to identify the source of the customer’s water consumption and recommend more efficient water use methods.
- 
- SJWC participates in SCVWD’s residential clothes washer rebate program in which customers can receive a \$100 - \$150 rebate for qualifying high efficiency washing machines. SJWC informs the customers of this program through the water audits, at retail outlets where washing machines are sold, and through the SJWC website. SJWC also augments its water audit program by providing customers with free low flow showerheads and faucet aerators which are purchased by SCVWD. These fixtures are distributed during water audits, at times during customer visits to SJWC’s main office, and during customer participation in public events.
  - SJWC is a wholesale retailer for the South Bay Water Recycling Program which takes treated wastewater that would normally be discharged into the San Francisco Bay and pipes it back for non-potable uses such as landscape irrigation.
  - SJWC has a regular schedule of meter calibration and replacement for all meter types in the distribution system. Larger meters are routinely replaced, repaired and tested based on consumption. Meters 1” and smaller are replaced according to the manufacturer’s recommended service life. If a customer believes the water meter is faulty, the meter is removed and tested. The customer is invited to witness the test in accordance with California Public Utility Commission (CPUC) regulations.
  - SJWC provides and participates in numerous consumer education programs. SJWC has encouraged water conservation to its customers in many ways, including: providing water-efficient plumbing fixture brochures in conjunction with the City of San Jose; providing a landscape irrigation brochure encouraging efficient outdoor water use; and providing annual water quality reports as a bill insert.

- SJWC also attempts to reach the community in ways that go beyond the development and distribution of written materials. These methods include speaking to service groups, civil clubs, school groups and participating in annual Water Awareness Month activities. SJWC also participates in school education programs including: San Jose Unified School SCVWD’s “Adopt a School” program, classroom presentations, and funding for annual science-related field trips.



**Supply and Demand Comparison**

To strengthen water supply reliability, SJWC has established a well replacement program. The adopted program identifies and replaces two wells per year based on numerous criteria, including a well’s production and observed water quality problems. The replacement of older wells and optimization of existing wells should allow SJWC to meet future groundwater demands. SJWC’s projected supply and demand for Task Force Scenario 4-J is listed in the following table. The following table shows SJWC’s projected supply is sufficient to meet projected demand for Scenario 4-J. This means there is sufficient supply to meet all Task Force scenarios.

**Table 16: Supply and Demand Comparison – With Conservation (AF/yr)**

Scenario 4-J	2005	2010	2015	2020	2025	2030	2035
<b>Supply</b>	143,394	149,849	155,976	162,062	168,098	174,076	179,984
<b>Demand (Scenario 4-J)</b>	143,394	149,849	155,976	162,062	168,098	174,076	179,984
<b>Difference (All scenarios)</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)

\*If conservation is not as anticipated, a combination of more treated surface water and groundwater will be needed.

Listed in the following tables are comparisons between the 2005 and 2035 projected supply and demand during normal, single-dry and multiple-dry year droughts for Scenario 4-J. These numbers were generated by multiplying the 2005 and 2035 demands (including conservation) by the percentages of normal water supply SJWC experienced during the 1977 single year and the 1987-1992 multi-year droughts. During these drought times, SJWC may experience shortages of supply and will enact the current Water Shortage Contingency Plan (Appendix B). Although there appears to be shortages during droughts, in reality voluntary and involuntary water conservation greatly reduces demand. SJWC foresees meeting all demands in the future.

**Table 17: 2005 Supply and Demand for Normal, Single-Dry and Multiple-Dry Years (AF/yr)**

2005 Supply & Demand (Scenario 4-J)	Normal Water Year	Single-Dry Water Year	Multiple-Dry Water Years				
			Year 1	Year 2	Year 3	Year 4	Year 5
<b>Supply Total</b>	143,394	107,546	150,564	147,409	121,598	119,877	109,123
<b>Demand Total</b>	143,394	107,546	150,564	147,409	121,598	119,877	109,123
<b>Difference</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)

**Table 18: 2035 Projected Supply and Demand for Normal, Single-Dry and Multiple-Dry Years (AF/yr)**

2035 Supply & Demand (Scenario 4-J)	Normal Water Year	Single-Dry Water Year	Multiple-Dry Water Years				
			Year 1	Year 2	Year 3	Year 4	Year 5
<b>Supply Total</b>	179,984	134,988	188,983	185,024	152,627	150,467	136,968
<b>Demand Total</b>	179,984	134,988	188,983	185,024	152,627	150,467	136,968
<b>Difference</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)

**Summary**

SJWC plans on meeting the water supply needs for all City of San Jose Task Force scenarios presented in the CSJ 2040 Envision General Plan. SJWC will continue to work with SCVWD to ensure that needed water supplies are reliably available. With growth, comes an increased need for groundwater supply to be pumped from the Santa Clara Valley subbasin. SCVWD will need to continue to manage groundwater recharge to meet these needs. SJWC will also rely on SCVWD to provide treated surface water necessary for future growth as treated surface water will continue to be the largest portion of future water needs. Additionally, aggressive encouragement of recycled water use and expansion and city regulated conservation would translate into water usage savings beyond the anticipated demand predicted in this WSA.

With regards to costs, SJWC does not anticipate additional storage capacity will be required to meet projected demand. However, development associated with any Task Force land use scenario will require isolated areas of infrastructure improvement. These improvements will typically be paid for by developers on a project specific basis.



# APPENDIX A

Business Unit Manager  
Water Utility Enterprise  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, Ca. 95118-3686

Dear Ms. Baker:

Attached are the Contract Delivery Schedules in acre feet for the next three-year contract period beginning July 1, 2008. I have separated the deliveries into three schedules as follows:

Cupertino Water System – Rinconada Treatment Plant  
San Jose Water Company System – Rinconada Treatment Plant  
San Jose Water Company System – Penitencia/Santa Teresa Treatment Plants

The SJWC system deliveries for contract year 2008/2009 have been reduced by 1,524 AF from contract year 2007/2008, the highest year of the previous contract. The reduction is within 95% or the highest year of the previous contract, as allowed in the contract. Deliveries for contract years 2009/2010 and 2010/2011 have increased from contract year 2007/2008 by 103 AF and 1,401 AF. The reasons for conservative contract delivery projections for 2008 through 2010 are:

1. Unaccounted for water in the SJWC system has continued to decrease.
2. Recycled water use has increased and plans for promoting this resource have been enhanced.
3. SJWC customers have responded successfully to voluntary conservation messaging.

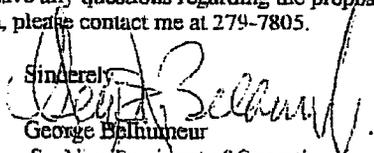
All of the above have contributed to projected system sales that are not increasing significantly at this time.

The contract deliveries for the Cupertino system have increased from the previous contract primarily due to growth and limited non contract water availability at Rinconada.

Regarding the take-or-pay requirements of the contract under reduced deliveries by the district such as rationing or State and Federal water contract cutbacks, it is my understanding that Article C, Sections 4, 4a and 4c of the contract address this issue. If the district is for any reason is unable to deliver treated water or should place into effect a water reduction program in excess of 10% of the monthly contract amount, the take-or-pay requirements of the contract would be adjusted to equal the reduced deliveries less 10%.

Please verify with your counsel that this contract interpretation is correct and respond in writing to San Jose Water Company. The contract deliveries as submitted in the attached schedule are contingent on this interpretation. San Jose Water Company reserves the right to change the contracted deliveries if the district does not agree with this interpretation.

Please review and return a signed copy for our files. If you have any questions regarding the proposed delivery schedules as presented or the contract interpretation, please contact me at 279-7805.

Sincerely,  
  
George Belliveau  
Sr. Vice President of Operations

CC: w/enc.

Angela Yip, Palle Jensen, Rich Roth; SJWC  
Ralph Qualls; Director of Public Works, City of Cupertino  
Gienna Brambill; Santa Clara Valley Water District



5750 ALMADEN EXPWY  
SAN JOSE, CA 95118-3614  
TELEPHONE (408) 265-2600  
FACSIMILE (408) 266-0271  
www.scvwd.dst.ca.us  
AN EQUAL OPPORTUNITY EMPLOYER

April 2, 2008

Mr. George Belhumeur  
Vice President Operations  
SAN JOSE WATER COMPANY (CITY OF CUPERTINO)  
1221 South Bascom Avenue  
San Jose, California 95128

Dear Mr. Belhumeur:

Enclosed you will find a monthly delivery schedule of volume of water in acre-feet you anticipate receiving from the Rinconada, Santa Teresa and Penitencia Water Treatment Plants in each month of the fiscal year 2008-09. Your contract amounts for 2008-2011 are already completed for your convenience. The scheduled amounts are for operating and planning purposes and do not constitute a commitment by the contractor to receive those amounts. The schedule does establish the monthly amounts of treated water to be delivered to the contractor for certain payment provisions under Article C of the Contract. The anticipated monthly delivery schedules for the succeeding 5 fiscal years will be used by the District for planning purposes. An electronic copy of this form is being sent to help expedite your return.

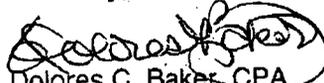
As in the past, additional water will be made available when treatment plant capacity allows. In the event that demand from Rinconada, Santa Teresa and Penitencia exceeds plant capacity; retailers taking deliveries in excess of their proportional allotment will be asked to cut back according to the proportional allotments. The schedule of proportional allotment will be mailed under separate cover by May 31, 2008.

Please provide the monthly allocation of the Annual Total and the peak day delivery equal to 180% of the average daily flow based upon the annual contract volume delivery for succeeding fiscal years. A response to Glenna Brambill's attention by April 30, 2008 is appreciated. If you are sending electronically please send to [gbrambill@valleywater.org](mailto:gbrambill@valleywater.org).

The approved Proposed Three Year Delivery Schedule is enclosed for your records. You will also find enclosed a copy of legal counsel's response to your January 11, 2008 letter.

If you have any questions regarding the schedules, feel free to contact me at 265-2607 extension 2578 or Glenna Brambill at 265-2607 extension 2408. Thank you.

Sincerely,

  
Dolores C. Baker, CPA  
Business Unit Manager  
Water Utility Enterprise

Enclosures

cc/enc: L. Acosta, G. Brambill, E. Cote, J. Micko, D. Taylor, R. Yep  
db:gb

W:\WU Business Admin\Treated Water Contract\TWContract Letters\SAN JOSE WATER\April 2 2008.docx

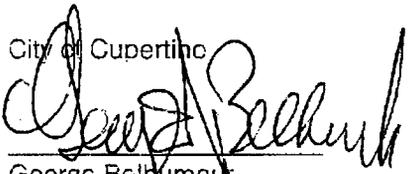


Proposed Three Year Delivery Schedule

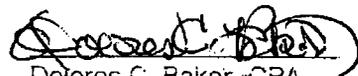
Quantity of Water Requested in Acre-Feet  
CITY OF CUPERTINO SYSTEM - REXCOWADA TREATMENT PLANT  
(OPERATED BY SAN JOSE WATER COMPANY)

Fiscal year 2008 - 2009	Fiscal year 2009 - 2010	Fiscal year 2010 - 2011
3,400	3,500	3,500

Approved:

City of Cupertino  
  
George Belhumeur

Santa Clara Valley Water District

  
Dolores C. Baker, CPA

1/11/09  
Date

3/8/08  
Date

Proposed Three Year Delivery Schedule

Quantity of Water Requested in Acre-Feet

SAN JOSE WATER COMPANY - BUENAVISTA TREATMENT PLANT

Fiscal year 2008 - 2009	Fiscal year 2009 - 2010	Fiscal year 2010 - 2011
20,255	20,743	21,132

Approved:

Santa Clara Valley Water District

*George Belhumeur*  
 George Belhumeur

Santa Clara Valley Water District

*Dolores C. Baker*  
 Dolores C. Baker CPA

1/11/08  
 Date

3/8/08  
 Date

Proposed Three Year Delivery Schedule

Quantity of Water Requested in Acre-Feet

SAN JOSE WATER COMPANY - SANTA TERESA / PENITENCIA TREATMENT PLANTS

Fiscal year 2008 - 2009	Fiscal year 2009 - 2010	Fiscal year 2010 - 2011
47,261	48,400	49,308

Approved:

San Jose Water Company

*George Benhamour*  
George Benhamour

Santa Clara Valley Water District

*Dolores C. Baker*  
Dolores C. Baker, CPA

1/11/08  
Date

3/8/08  
Date

# APPENDIX B

## **WATER SHORTAGE CONTINGENCY PLAN**

for

San Jose Water Company  
374 West Santa Clara Street  
San Jose, CA 95196

Phone No. (408) 279-7922  
Fax No. (408) 279-7934

Prepared by: Robert Day  
Water Conservation Specialist

Submitted: January 30, 1992

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## INTRODUCTION

San Jose Water Company (SJWC) is a public utility in the business of providing water service to a population of approximately 750,000 people in the metropolitan San Jose area. Its service area includes most of San Jose, parts of Cupertino and unincorporated Santa Clara County as well as the entire cities of Campbell, Los Gatos, Monte Sereno and Saratoga. The Company's service area encompasses about 134 square miles and continues to attract residential and commercial development. The number of metered connections on December 31, 1991 was 203,239.

SJWC has three general sources of supply: a) groundwater, b) imported surface water and c) local surface water.

- a) **Groundwater**  
Approximately 20 billion gallons of groundwater are pumped annually from 148 wells, fulfilling 45% of the customers' needs.
- b) **Imported Surface Water**  
Another 45% of the water supply originates from the State Water Project and the federal Central Valley Project (CVP) San Felipe Division. This "imported" water is purchased from the Santa Clara Valley Water District and piped into SJWC's system.
- c) **Local Surface Water**  
Surface water from local watersheds in the Santa Cruz Mountains typically provides the remaining 8-10% of the total water supply.

## Section One

## Coordinated Planning

Due to the significant amount of imported surface water obtained by San Jose Water Company, the Company coordinated planning of this Water Shortage Contingency Plan with the Santa Clara Valley Water District (District). Several meetings and discussions have been held to share information and provide an accurate analysis of the local water supply situation.

On October 30, 1991 SJWC participated in a day-long workshop sponsored by the Department of Water Resources. At that meeting, DWR and District officials were present to provide guidance in the preparation of this plan. Additionally, representatives from SJWC, the District, local cities and other water companies have been meeting regularly since 1989 to coordinate water shortage response. These meetings are scheduled to continue at least as long as the water supply situation remains critical.

## Section Two

## Projected Water Demand

Projections of San Jose Water Company customer demand are based on historical trends in total service connections, usage per service and future growth projections. Prior to 1990 demand for service connections were growing at about 1,200 per year with total usage varying significantly because of drought conditions. Water demand projections for the 20-year period beginning with 1990 will be at levels below the pre-drought levels of 1985.

SJWC projects that water demand will remain relatively flat over the next 20 years. The Company expects to experience growth in both the number of service connections as well as water deliveries. But the growth rate will be at a slower pace than was experienced in the 1980's. Total water deliveries are anticipated to grow by 7.6 per cent between 1985 and 2010. Average water use per capita will grow slowly, but will not approach the pre-drought 1985 year of per capita use.

Table one indicates annual customer demand at the end of 12, 24 and 36 months:

**TABLE ONE**                      **CUSTOMER TYPES AND DEMAND**

<u>Customer Type</u>	<u>Connections</u>	<u>Projected 1992 AF</u>	<u>Projected 1993 AF</u>	<u>Projected 1994 AF</u>
Res/Industrial	203,186	116,442	118,430	120,417
Agricultural	6	9	79	68
Wholesale	37	515	500	485

SJWC does not currently distinguish between single family, multifamily, commercial, industrial and governmental accounts.

Overall demand is expected to increase at a much slower pace in the next three years than prior to 1985. This is because of permanent conservation measures, awareness of the drought and limited growth in the local economy.

SJWC, the District and the City of San Jose have been working with the residential and commercial sectors to develop a comprehensive plumbing retrofit program in an effort to realize permanent water savings. This may include incentives for the installation of Ultra Low Flush toilets and the distribution and possible installation of low-flow showerheads and faucet aerators. This major conservation effort will likely result in a significant reduction in customer demand during the next several years.

Agricultural demand is expected to diminish as the metropolitan area continues to grow. SJWC expects to have fewer than a dozen agricultural customers by 1995.

### **Section Three** **Worst Case Water Supply Scenarios**

As outlined in the Introduction, San Jose Water Company purchases most of its water from the Santa Clara Valley Water District. The District is the lead agency in ensuring adequate water supplies, not only for SJWC, but for twelve other water retailers in Santa Clara County.

The District has developed a "worst-case" scenario for 1992-94 in which imported water from the San Felipe Project would be reduced each year to 50 per cent of the full entitlement. Water from the State Water Project would be reduced to 20 per cent of the full entitlement. The scenario also projects a decrease in local water supplies. The District said it would respond to the worst-case scenario by pursuing aggressive conservation programs and by seeking additional water transfers to help alleviate the supply shortfall.

### **Section Four** **Stages of Action**

Although San Jose Water Company has the authority to declare a water shortage emergency under Sections 350-358 of the State Water Code, it has historically followed the leadership of the Santa Clara Valley Water District's Board of Directors. During the current drought situation, for example, SJWC has agreed to implement each conservation goal approved by the District's Board of Directors.

The District has approved a four-stage plan that addresses shortages of up to 50% of full supply. A copy of this plan is included in **Appendix A**.

## **Section Five**

## **Mandatory Prohibitions on Water Use**

San Jose Water Company included as part of its mandatory water rationing plan, a list of water uses that are classified as "nonessential or unauthorized". These prohibited uses, possible penalties and the enforcement mechanism are outlined in Rule Number 14.1 on file with the California Public Utilities. A copy of Rule 14.1 is included in **Appendix B**.

## **Section Six**

## **Consumption Limits**

In March of 1991, the Santa Clara Valley Water District's Board of Directors asked all local water retailers to increase the conservation goal of mandatory water rationing plans from 20% to 25%. San Jose Water Company responded by filing for a change to its mandatory water rationing program, reflecting the 25% figure. This change was ultimately approved by the California Public Utilities Commission.

In order to meet the 25% annual usage reduction, SJWC implemented different conservation goals for winter and summer months. A winter-summer program was chosen because during the winter it is more difficult to make large water savings solely from indoor use. Landscape watering during the summer offers the most opportunity to reach higher water savings. From April to October, the goal is 30%. The conservation goal for November to March is 15%. The year upon which customer water allocations are based continues to be 1987. The allocation for each customer using process water is 90% of the amount used in 1987.

Under SJWC's rationing program, customers have the right to appeal their allocations. If a customer feels his allocation is inadequate for his particular situation, he may appeal the allocation in writing.

SJWC's conservation goals comply with the request made by the Santa Clara Valley Water District. In the event the District determines the need for additional water usage reductions, SJWC would adjust the conservation goals as appropriate.

## **Section Seven**

## **Fees for Excess Use**

As outlined in Section Six, each San Jose Water Company customer is given a water allocation. This is the amount of water that can be used by the customer without penalty. In the event the customer exceeds the allocation in a two-month billing period, a conservation fee is assessed. No penalties are applied to any dwelling unit that uses 12 ccf or less of water during any two-month allocation period. Additionally, no penalties are applied to any account that has cumulatively used less water than allocated since the rationing plan began. This concept is termed "banking".

Banking allows a customer who uses less water than allocated to "bank" the difference. The extra water can be used during future allocation periods without penalties. If the customer exceeds the allocation and pays penalties, that money can be recovered by using less water than allocated during a future allocation period.

Under authority of the California Public Utilities Commission, SJWC may, after one verbal and two written warnings, install a flow-restricting device on the service line of any customer observed by Company personnel to be using water for any nonessential or unauthorized use as stated in the rationing plan. The flow-restricting device may be removed by the Company only after a three-day period and following payment of removal charges. The removal charges are \$25.00 for meter sizes 5/8" to 1"; \$50.00 for meter sizes 1-1/2" to 2" and the actual cost for meter sizes 3" and over.

## **Section Eight**

## **Financial Impact Analysis**

San Jose Water Company's annual revenues from water sales are projected to be \$90,960,000 for 1992 before conservation. Since SJWC is a regulated utility, the Company cannot increase rates without the approval of the Public Utilities Commission (CPUC). Appendix C delineates the projected normal revenues and expenditures for 1992 which have been approved by the CPUC. Revenues and expenditures under different conservation scenarios, without CPUC rate relief, are projected accordingly. The CPUC has implemented some rate relief procedures to offset the effects of the drought. Appendix C also includes the projected revenues and expenditures for the year, under different conservation scenarios, if rate relief is approved by the Commission.

SJWC purchases imported water from the Santa Clara Valley Water District and also pays a groundwater tax to the District when it pumps water from the ground. The cost of purchased water and the groundwater tax is determined by the District. The CPUC has established an offset procedure whereby any purchased water, groundwater tax and purchased power cost increases incurred by the Company are allowed to be passed on to the customers. The revenues produced with rate relief projected in **Appendix C** do not include any recovery of water production cost increases from the District.

## **Section Nine**

## **Plan Implementation**

San Jose Water Company held a public hearing on the Water Shortage Contingency Plan on January 28, 1992 in the Company offices. The hearing was properly noticed through advertisements which ran January 13 and 20 in the San Jose Mercury News. A copy of this notice has been included in **Appendix D**. No member of the public was present to comment on the plan.

## **Section Ten**

### **Water Use Monitoring Procedures**

San Jose Water Company prepares comprehensive water production statistics on a daily basis. This report compares water production to the same period the previous year and to 1987 upon which the water allocations for rationing are based. Copies of the report are circulated to several key SJWC personnel, including the President.

SJWC submits monthly production totals to the Santa Clara Valley Water District for inclusion in its Drought Status Report.

## **Section Eleven**

### **Plan Adoption Standards**

San Jose Water Company prepared this Water Shortage Contingency plan during December 1991 and January 1992. The Plan includes all the information necessary to meet the requirements of the California Water Code.

## APPENDIX A

#### **4. STAGES OF ACTION**

The District has drawn from its experience in responding to the current drought to develop a staged response plan to water supply shortages. This plan ties action stages to specific reductions in supply. The plan includes both voluntary and mandatory components and addresses shortages of up to 50% of full supply.

Table 4.

Santa Clara Valley Water District  
Rationing Stages and Reduction Goals

<b>Shortage</b>	<b>Stage</b>	<b>Demand Reduction Goal</b>	<b>Program</b>
Up to 15%	Stage 1	Up to 15% Reduction	Voluntary
15-25%	Stage 2	25% Reduction	Mandatory
25-35%	Stage 3	35% Reduction	Mandatory
35-50%	Stage 4	50% Reduction	Mandatory

#### **Description Of Stages**

- Stage 1      Reduction in overall supply (any source) which results in an unserved demand of up to 15% of total projected demand.
- Stage 2      Significant reduction in one or more sources of supply which results in an unserved demand of up to 25% of the total projected demand.
- Stage 3      Serious reduction in two or more sources of supply which results in an unserved demand of up to 35% of the total projected demand.
- Stage 4      Critical reduction in all imported sources and serious shortage in local ground water basins which result in an unserved demand of up to 50% of the total projected demand.

As a wholesale supplier of water, the District must work closely with local retail water agencies to implement any action stages. As part of this cooperative effort, the District relies on these retail agencies to determine priorities for use of available water.

## Water Supply Shortage Management Plan

### Stage 1. 10% Voluntary Program

- Institute voluntary water use reduction goals and water use prohibitions.
- Coordinate water conservation program with local retail agencies.
- Initiate Public Information Program.
- Offer water conservation kits to the public.
- Prepare and distribute water conservation literature through local retail water suppliers and other agencies.
- Initiate a media campaign including news releases and an advertising campaign.

### Stage 2. 25% Mandatory Program

- Continue and intensify all activities undertaken during Stage 1.
- Institute mandatory water use reduction program.
- Institute additional water use prohibitions.
- Promote the installation of water saving devices such as ULF Toilets and showerheads.
- Seek to acquire water transfers to augment sources of imported water.
- Enhance water supply system operation to increase efficiency.
- Monitor and report on monthly production to ensure compliance with necessary reductions.

### Stage 3. 35% Mandatory Program

- Continue and intensify all activities undertaken during Stages 1-2.
- Institute additional water use prohibitions.
- Coordinate with local agencies to defer installation of all new landscape.

### Stage 3 (continued)

- Lobby local agencies to enforce ban on use of water from hydrants or other unmetered sources.
- Monitor and report on weekly production to ensure compliance with necessary reductions.

### Stage 4. 50% Mandatory Program

- Continue and intensify all activities undertaken in Stages 1-3.
- Implement inclining rate for ground water pumping.
- Institute a ban on all irrigation.

## APPENDIX B

Rule No. 14.1

MANDATORY WATER RATIONING PLAN

GENERAL INFORMATION

When water supplies are projected to be insufficient to meet normal customer demand, the utility may elect to implement voluntary conservation using the portion of this plan set forth in Section A of this Rule after notifying the Commission's Water Utilities Branch of its intent.

If, in the opinion of the utility more stringent water conservation measures are required, the utility shall request Commission authorization to implement the mandatory conservation and rationing measures set forth in Section B.

The Commission shall authorize mandatory rationing by approving Schedule No. 14.1, Mandatory Water Rationing Plan, Fees and Allocations upon the earliest Commission meeting after the utility files an advice letter petitioning such request. When Schedule No. 14.1 has expired or is not in effect, mandatory rationing measures will not be in force. Schedule No. 14.1 will set forth water use allocations, excess water use penalties, charges for removal of flow restrictors, and the period during which mandatory rationing measures will be in effect.

When Schedule No. 14.1 is in effect and the utility determines that water supplies are again sufficient to meet normal demands and mandatory rationing measures are no longer necessary, the utility shall rescind Schedule No. 14.1 upon five days' written notice to the Commission.

In the event of a water supply shortage requiring a voluntary or mandatory program, the utility shall make available to its customers water conservation kits as required by Rule No. 20. The utility shall notify all customers by bill insert of the availability of conservation kits.

A. PROHIBITION OF NONESSENTIAL OR UNAUTHORIZED WATER USE

No customer shall use utility-supplied potable water for nonessential or unauthorized uses as defined below:

(continued)

(To be inserted by utility)	Issued by	(To be inserted by Cal. P.U.C.)
Advice No. <u>239</u>	<u>Fred R. Meyer</u>	Date Filed <u>NOV 25 1991</u>
	<u>Vice President,</u>	Effective <u>JAN 4 1992</u>
Dec. No. <u>91-10-042</u>	<u>Regulatory Affairs</u>	Resolution No. _____
	TITLE	

(N)

(N)

(T)

Rule No. 14.1  
(continued)

MANDATORY WATER RATIONING PLAN

A. PROHIBITION OF NONESSENTIAL OR UNAUTHORIZED WATER USE (continued)

1. Use of water through any connection when the utility has notified the customer in writing to repair a broken or defective plumbing, sprinkler, watering or irrigation system and the customer has failed to make such repairs within 7 days after receipt of such notice.
2. Use of water which results in flooding or run-off in gutters, waterways, patios, driveways, or streets.
3. Use of water for washing aircraft, cars, buses, boats, trailers or other vehicles without a positive shutoff nozzle on the outlet end of the hose, except for the washing of vehicles at commercial or fleet vehicle washing facilities operated at fixed locations where equipment using water is properly maintained to avoid wasteful use.
4. Use of water for washing buildings, structures, sidewalks, walkways, driveways, patios, parking lots, tennis courts, or other hard-surfaced areas unless required for health and/or safety.
5. Use of water for construction purposes, such as consolidation of backfill, dust control, or other uses unless no other source of water or other method can be used.
6. Use of water for new landscaping in connection with any new construction unless required by a public authority.
7. Use of water for outside plants, lawn, landscape and turf areas during certain hours when specified in Schedule No. 14.1.
8. Use of water for watering outside plants and turf areas using a hand-held hose without a positive shut-off valve.
9. Use of water for decorative fountains or the filling or topping off of decorative lakes or ponds.
10. Service of water by any restaurant except upon the request of a patron.

(T)

(T)

(N)

(N)

(continued)

(To be inserted by utility)	Issued by	(To be inserted by Cal. P.U.C.)
Advice No. <u>239</u>	<u>Fred R. Meyer</u>	Date Filed <u>NOV 25 1991</u>
Dec. No. <u>91-10-042</u>	<u>Vice President,</u>	Effective <u>JAN 4 1992</u>
	<u>Regulatory Affairs</u>	Resolution No. _____
	TITLE	

Rule No. 14.1  
(continued)

MANDATORY WATER RATIONING PLAN

A. PROHIBITION OF NONESSENTIAL OR UNAUTHORIZED WATER USE (continued)

11. Use of water to flush hydrants, except where required for public health or safety. (L)

B. RATIONING OF WATER USAGE

In the event the conservation measures required by Section A are insufficient to control water use, the utility shall, upon Commission approval, impose mandatory rationing. The water allocated for each customer, the time period during which rationing shall be in effect, and any additional conditions, will be set forth in Schedule No. 14.1, which shall be filed for this purpose at the time such rationing is approved by the Commission. (N)

Before rationing is authorized by the Commission the utility shall hold public meetings and take all other applicable steps required by Sections 350 through 358 of the California Water Code. (N)

C. CONSERVATION FEE (Effective only when Schedule 14.1 is effective) (T)

1. A conservation fee per 100 cubic feet of water used in excess of the applicable allocation during each read to read billing period shall be charged by the utility on all read-month bills rendered on and after the effective date of Schedule 14.1 (which include services rendered during the effective dates of the plan as set forth under special conditions in Schedule 14.1). Such conservation fees shall not apply to any customer and/or dwelling unit whose consumption per billing period per dwelling unit is less than the minimum allocation set forth in Schedule 14.1. Where multiple dwellings are served by one meter, the customer must notify the utility in writing of the number of dwelling units. Additionally, a conservation fee does not apply to any customer whose total consumption to date during the period this rationing plan has been in effect does not exceed the total allocated usage for said period. The conservation fee charged for excessive use is set forth in Schedule 14.1. (T)

(continued)

(To be inserted by utility)	Issued by	(To be inserted by Cal. P.U.C.)
Advice No. <u>239</u>	<u>Fred R. Meyer</u>	Date Filed <u>NOV 25 1991</u>
	<u>Vice President,</u>	Effective <u>JAN 4 1992</u>
Dec. No. <u>91-10-042</u>	<u>Regulatory Affairs</u>	Resolution No. _____
	TITLE	

Rule No. 14.1  
(continued)  
MANDATORY WATER RATIONING PLAN

C. CONSERVATION FEE (Effective only when Schedule 14.1 is effective)  
(continued)

(N)

2. The procedure defined in 1 above is more commonly referred to as "Banking".

"Banking" is the product of the cumulative allocation process.

Allocations are set based on a level of usage which is the result of reducing a base period usage, set forth in Schedule 14.1, for the metered service being billed by the target conservation goal also set forth in Schedule 14.1. After this base allocation, allocation adjustments may be given but upon written appeal only. The allocations are based upon two-month periods because the meters are read every other month. All allocations and the resulting bank status are shown on each months' bill.

The current mandatory rationing goal is shown in Schedule 14.1.

"Banking" allows a customer who uses less water than allocated to "Bank" the difference. The over-conserved water can be used during future allocation periods without the customer being assessed a conservation fee.

If a customer exceeds his allocation and pays a conservation fee, he can receive a refund of those fees by using less water than allocated during a future allocation period. The limit of recovery is the amount of conservation fees paid by that customer.

"Banks" are specific to a metered service. If a customer moves, he cannot transfer his "Bank" to his new address. In addition, the new resident at the previous address will receive a zero "Bank" balance. All new customers begin with a zero "Bank" balance.

"Banks" terminate when Schedule 14.1 is rescinded and will not be carried forward from one rationing period to another non-continuous rationing period if 12 months or more separate the two periods unless permitted by the Company.

(N)

(continued)

(To be inserted by utility)	Issued by	(To be inserted by Cal. P.U.C.)
Advice No. <u>239</u>	<u>Fred R. Meyer</u>	Date Filed <u>NOV 25 1991</u>
Dec. No. <u>91-10-042</u>	<u>Vice President,</u>	Effective <u>JAN 4 1992</u>
	<u>Regulatory Affairs</u>	Resolution No. _____
	TITLE	

Rule No. 14.1

MANDATORY WATER RATIONING PLAN  
(continued)

C. CONSERVATION FEE (Effective only when Schedule 14.1 is effective)  
2. (continued)

(N)

If a customer feels his allocation is inappropriate for his particular situation, he may appeal to the utility, in writing. Appeal forms are available at the utility office or by calling the Customer Service Department. Appeals are not handled by phone.

Appeals for periods prior to the most recent read month bill will not be approved. Allocation adjustments will apply to the current and future billing periods only.

(N)

- 3. Any monies collected by the utility through conservation fees, after reduction for refunds under "banking" and normal business adjustments for billing errors, leak policy adjustments, collection adjustments, allocation adjustments etc., shall be accounted for through a suspense account as authorized by the California Public Utilities Commission.

(L)

(L)

D. ENFORCEMENT (Effective when Schedule 14.1 is effective)

(T)

- 1. The water use restrictions of the conservation program in Section A of this rule become mandatory when Schedule 14.1 is effective whether or not the customer exceeds the monthly water allocation.
- 2. Upon inception of the mandatory provisions of this Rule the utility may, after one verbal and two written warnings, install a flow-restricting device on the service line of any premises where utility personnel observe water being used for any nonessential or unauthorized use as defined in Section A.
- 3. A flow restrictor shall not restrict water delivery by greater than 50% of normal flow and shall provide the premises with the minimum amount per dwelling unit set forth in Schedule 14.1. The restrictor may be removed only by the utility, after a three-day period has elapsed, and upon payment of the appropriate removal charge as set forth in Tariff Schedule No. 14.1.

(T)

(N)

(N)

(continued)

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Dec. No. <u>91-10-042</u>	TITLE	

Rule No. 14.1  
(continued)

MANDATORY WATER RATIONING PLAN

D. ENFORCEMENT, (Effective only when Schedule 14.1 is effective)  
(continued)

(N)

- 4. After the removal of a restricting device, if any nonessential or unauthorized use of water continues, the utility may install another flow-restricting device. This device shall remain in place until rationing is no longer in effect and upon payment of the appropriate removal charge as set forth in Schedule No. 14.1.
- 5. Each customer's water allocation shall be shown on the water bill. Water allocations may be appealed in writing as provided in Section C.3. of this Rule. If a customer uses water in excess of the allocated amount, the utility may charge the conservation fee shown in Schedule No. 14.1.
- 6. If despite installation of such flow-restricting device pursuant to the provisions of the previous sentence, any such nonessential or unauthorized use of water shall continue, then the utility may discontinue water service to such customer. In such latter event, a charge as provided in Rule No. 11 shall be paid to the utility as a condition to restoration of service. It is the intent of the utility that restriction devices will not be installed in a customer's service for exceeding a monthly allocation if a customer's accumulated usage does not exceed his accumulated allocation beginning with bills rendered after the effective date of Schedule 14.1.

(N)

E. APPEAL PROCEDURE

Any customer seeking a variance from any of the provisions of this water rationing plan shall notify the utility in writing, setting forth in detail the grounds therefore. The utility shall respond to each such request. Any customer not satisfied with the utility's response may file an appeal to the Staff of the Commission requesting relief. The customer and the utility will be notified of the disposition of such appeal by letter from the Executive Director of the Commission. If the customer disagrees with such disposition, he shall have the right to file a formal complaint with the Commission. Except as set forth in this Section E, no person shall have any right or claim in law or in equity, against the utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this water rationing plan.

(continued)

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	<u>Regulatory Affairs</u>	Resolution No. _____
	TITLE	

SAN JOSE WATER COMPANY (U168W)  
San Jose, California Canceling

Original Cal. P.U.C. Sheet No. 760-W

Cal. P.U.C. Sheet No. \_\_\_\_\_

Rule No. 14.1

(continued)

MANDATORY WATER RATIONING PLAN

F. PUBLICITY

In the event the utility finds it necessary to implement Schedule 14.1, it shall notify customers and hold public hearings concerning the water supply situation, in accordance with Chapter 3, Water Shortage Emergencies, Sections 350 through 358, of the California Water Code. The utility shall also notify customers of the details of the plan by one or more of the following means - billing insert, special mailing, poster, flyer, newspaper advertisement, television or radio spot/advertisement, community bulletin board or other appropriate method(s). The utility shall provide customers with periodic updates regarding its water supply status and the results of customers' conservation efforts through the above mentioned media.

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 239

Fred R. Meyer

Date Filed NOV 25 1991

Vice President,

Effective JAN 4 1992

Dec. No. 91-10-042

Regulatory Affairs

Resolution No. \_\_\_\_\_

TITLE

## APPENDIX C

Projected Revenues & Expenditures With No Rate Relief

	<u>Normal</u>	<u>Conservation with No Rate Relief</u>			
		15%	25%	35%	50%
Revenue	90,960.0	89,280.0	81,417.0	73,556.0	61,762.0
Operating Expenses					
Variable production costs	43,233.8	42,160.8	37,202.8	32,243.8	24,805.8
Administrative, Operation & Maintenance Expenses	25,103.8	25,103.8	25,103.8	25,103.8	25,103.8
Other Taxes	2,825.3	2,825.3	2,825.3	2,825.3	2,825.3
Income Taxes	<u>6,984.9</u>	<u>6,740.9</u>	<u>5,570.9</u>	<u>4,403.9</u>	<u>2,649.9</u>
Total expenses	78,147.8	76,830.8	70,702.8	64,576.8	55,384.8
Income before Interest Expense	<u>12,812.2</u>	<u>12,449.2</u>	<u>10,714.2</u>	<u>8,979.2</u>	<u>6,377.2</u>

Projected Revenues & Expenditures With Rate Relief

	<u>Normal</u>	<u>Conservation Levels With Rate Relief</u>			
		15%	25%	35%	50%
Revenue	90,960.0	89,707.8	84,924.8	80,143.8	72,968.8
Operating Expenses					
Variable production costs	43,233.8	42,160.8	37,202.8	32,243.8	24,805.8
Administrative, Operation & Maintenance Expenses	25,103.8	25,103.8	25,103.8	25,103.8	25,103.8
Other Taxes	2,825.3	2,825.3	2,825.3	2,825.3	2,825.3
Income Taxes	<u>6,984.9</u>	<u>7,021.9</u>	<u>7,196.9</u>	<u>7,374.9</u>	<u>7,637.9</u>
Total expenses	78,147.8	77,111.8	72,328.8	67,547.8	60,372.8
Income before Interest Expense	<u>12,812.2</u>	<u>12,596.0</u>	<u>12,596.0</u>	<u>12,596.0</u>	<u>12,596.0</u>

## APPENDIX D

**NOTICE OF TIME AND PLACE  
OF PUBLIC HEARING ON  
WATER SHORTAGE  
CONTINGENCY PLAN FOR  
SAN JOSE WATER COMPANY**

NOTICE that on January 28, 1992 at 10:00 AM at the office of San Jose Water Company, 374 West Santa Clara Street, San Jose, California, a public hearing will be held to receive comments and recommendations on the Water Shortage Contingency Plan for San Jose Water Company.

Said Plan is on file in the office of San Jose Water Company, 374 West Santa Clara Street, San Jose, and may be seen there by any interested person.

At the time and place fixed for said hearing, the Company will consider all written and oral objections to the Plan. Upon conclusion of the hearing the Plan will be submitted to the California Department of Water Resources.