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# FINAL ENVIRONMENTAL IMPACT REPORT

FOR THE  
**OAKS BUSINESS PARK**  
SCH No. 2001032069

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***Prepared for:***

City of Livermore  
Department of Community Development  
1052 South Livermore Avenue  
Livermore, California 94550

***Prepared with the assistance of:***

Pacific Municipal Consultants  
585 Cannery Row, Suite 304  
Monterey, California 93940



January 2004



## **1.0 INTRODUCTION**

## **2.0 COMMENTS AND RESPONSES**

### **Letter Number and Commentator (Revised Draft EIR September 2003)**

1. California Regional Water Quality Control Board
2. Department of Toxic Substances Control
3. Alameda County Congestion Management Agency
4. Alameda County Flood Control and Water Conservation District
5. Bay Area Air Quality Management District
6. Contra Costa County Community Development Department
7. East Bay Regional Park District
8. Wheels, Livermore Amador Valley Transit Authority
9. Allen, Matkins, Leck, Gamble & Mallory
10. Barbara Hickman
11. Howard, Rice, Nemerovski, Canady, Falk & Rabkin (with October 11, 2002 Comment Letter Attached)
12. Nina Stallkamp
13. Wendel Rosen Black & Dean
14. Wendel Rosen Black & Dean Follow Up
15. Livermore Area Recreation and Park District
16. Governor's Office of Planning and Research, State Clearinghouse
17. Planning Commission Hearing Public Comments

## **3.0 ERRATA TO THE REVISED DRAFT EIR**

### **APPENDIX**

Complete October 11, 2002 submittal from Howard, Rice, Nemerovski, Canady, Falk & Rabkin, with Exhibits.



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# 1.0 INTRODUCTION

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## **Purpose of the EIR Process**

The EIR is an informational document prepared for the City of Livermore in order to evaluate the environmental impacts of the Oaks Business Park project. The primary objectives of the EIR process under the California Environmental Quality Act (CEQA) are to inform decision makers and the public about a project's potential significant environmental effects, identify possible ways to lessen or avoid the significant effects, and describe reasonable alternatives to the project. This EIR has been prepared objectively by the City's consultant, Pacific Municipal Consultants, and independently reviewed by City staff for completeness and adequacy in accordance with CEQA and the CEQA Guidelines.

## **Document Format**

As prescribed by (CEQA) Section 15088, the Lead Agency (City of Livermore) is required to evaluate comments on environmental issues received from persons who have reviewed the Revised Draft EIR (RDEIR) and to prepare written responses to these comments. This document, together with the RDEIR, constitute the Final Environmental Impact Report (FEIR) for this project. Pursuant to the requirements of CEQA, the City of Livermore must certify the FEIR as complete and adequate prior to final approval of the project.

This FEIR contains individual responses to each written and verbal comment received during the public review period for the RDEIR. This FEIR also contains a summary of all changes, corrections and additions made to the EIR text between the Draft and Final stages. This summary, or errata, is an important reference tool used to identify specific text modifications.

## **Material Revised and Recirculated in September 2003**

The City prepared a two-volume Draft EIR dated August 2002 ("Draft EIR") that was circulated for public comment for 45 days between August 29, 2002 and October 14, 2002. Comments were received on the Draft EIR, however, no Final EIR was prepared for the project. Prior to the preparation of the Final EIR, the applicant proposed an alternative drainage system for the project. Also, since preparation of the prior Draft EIR, the North Livermore Urban Growth Boundary Initiative was passed by the Livermore City Council, creating an urban growth boundary around the North Livermore area and affecting some of the traffic patterns analyzed in the prior Draft EIR. In addition, since the preparation of the prior Draft EIR, the City prepared a draft General Plan Update and accompanying EIR, for which the public review process began June 13, 2002. In order to better address public comments on the prior Draft EIR, the new drainage system options, and changes in circumstances, the City determined that a Revised Draft EIR ("RDEIR") would be prepared and recirculated for public review and comment pursuant to CEQA Guidelines section 15088.5.

The RDEIR includes an environmental analysis of a second, alternative drainage system for the Project, as well as various revisions and updates to the environmental analyses presented in the prior Draft EIR including, but not limited to, Traffic, Land Use, Hydrology and Water Quality, and Growth Inducing Impacts. These revisions and updates take into account changes in existing conditions and circumstances within the City since preparation of the Draft EIR, such as the General Plan Update traffic modeling, and address environmental issues raised in the public comments on the prior Draft EIR.

Pursuant to CEQA Guidelines section 15088.5(f)(1), the comments on the prior Draft EIR are part of the administrative record, but written responses to those comments are not required. The City has responded, however, to the October 11, 2002 comment letter prepared on behalf of Rhodes & Jamieson. The issues raised in the letter are specifically referenced in the comments on the RDEIR, and therefore have been responded to in their entirety despite the fact that changes to the project and resulting environmental analysis render many of the comments inapplicable. The public was notified of this approach to the FEIR within the Notice of Availability prepared for the RDEIR.

### **EIR Certification Process and Project Approval**

In accordance with the requirements of CEQA and the procedures of the City of Livermore, the City Council must certify the Final EIR as complete and adequate prior to taking action on the Project. The certification process for the EIR will begin with a hearing before the City of Livermore Planning Commission and then will go before the City Council. Once the EIR is certified and all information considered, using its independent judgment, the City can take action to approve the preferred Project, make changes in the project, or select an alternative to the project. The agency must respond to each significant effect and mitigation measure identified in the EIR by making findings concerning their ultimate disposition.



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## 2.0 COMMENTS AND RESPONSES

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**California Regional Water Quality Control Board  
San Francisco Bay Region**



Gray Davis  
Governor

Post-It* Fax Note	7671	Date	11/10/03 5/22/03	# of pages	2
To	Clemens, K. W. P.	From	BRIAN WINES		
Co / Dept.		Co.	RWQCB		
Phone #		Phone #	510-622-5680		
Fax #	916-323-3418	Fax #	510-622-2460		

www.swrcb.ca.gov  
Oakland, California 94612  
FAX (510) 622-2460

Letter 1

November 10, 2003  
File No. 2198.09 (BKW)

**RECEIVED**  
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Paul Spence, Associate Planner  
City of Livermore Planning Division  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

**Re: Revised Draft Environmental Impact Report for the Oak Business Park, City of Livermore; SCH # 2001032069**

Dear Mr. Spence:

Regional Water Quality Control Board (Regional Board) staff have reviewed the *Revised Draft Environmental Impact Report (DEIR) for the Oak Business Park (Project)*. The Project will rezone 178 acres for development of offices, research, warehousing, manufacturing and limited business supporting commercial uses. Regional Board staff appreciate the opportunity to comment on this document and have the following comments on the DEIR.

**Comment 1**

**Section 2.0, Project Description, Site Drainage, page 2-38, Bullet Item 3.**

Regional Board staff appreciate the inclusion of post-construction stormwater best management practices (BMPs) in the drainage plan for the Project. One of the BMPs mentioned in bullet item 3, is an oil and grease separator. Oil and grease separators are most effective when used to treat oily wastewaters from service facilities that use oils and fuels. The effluent stream from a well-functioning oil/water separator usually contains oil and grease at concentrations on the order of 10 to 15 milligrams per liter. Since stormwater runoff from parking lots and streets typically contains oil and grease in the range of 10 to 15 milligrams per liter, even a well-functioning oil/water separator would not be expected to significantly improve the quality of urban stormwater runoff.

Therefore, Regional Board staff recommend deleting oil and grease separators from the list of potential BMPs at the site.

1-1

**Comment 2**

**Section 2.0, Project Description, Site Drainage, page 2-39, Bullet Item 5.**

Text in item 5 refers to the use of a slow release pipe to regulate flow from the new storm drain system to the existing channels. Regional Board staff encourage designing the release pipe to allow a 48-hour draw down time for the 2-year storm event. A 48-hour draw down time should provide sufficient residence time in the proposed stormwater basin(s) to provide water quality benefits

1-2

*California Environmental Protection Agency*



**Comment 3**

*Section 3.7, Hydrology and Water Quality, page 3.7-24, Bullet Item 3.*

See Comment 1 above.

1-3

**Comment 4**

*Section 3.7, Hydrology and Water Quality, page 3.7-24, Bullet Item 6.*

See Comment 2 above.

1-4

**Comment 5**

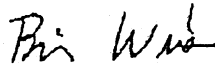
*Section 3.7, Hydrology and Water Quality, page 3.7-31, MM3.7-2b*

Text in the first line of MM3.7-2b should read "Section 401 Water Quality Certification" instead of "Section 401 Water Quality Certification waiver".

1-5

If you have any questions, please contact me at (510) 622-5680 or e-mail [bwines@b2.swrcb.ca.gov](mailto:bwines@b2.swrcb.ca.gov).

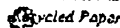
Sincerely,



Brian Wines  
Alameda-Santa Clara Watershed Section

cc: State Clearinghouse, Attn: Katie Shulte Joung, P.O. Box 3044, Sacramento, CA 95812-3044

*California Environmental Protection Agency*



## **RESPONSES TO LETTER 1 – CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

### **Response to Comment 1-1**

Stormwater BMPs. The RWQCB's comments regarding the effectiveness of oil and grease separators for this type of project are noted for the record. As described on page 2-38 of the RDEIR, this possible component of Drainage Option A is listed as an alternative to biofiltration, and would only be employed if such a measure would be effective. The water quality controls will be the responsibility of each individual lot owner. Please see Response to Comment 1-2 below.

### **Response to Comment 1-2**

Slow Release Pipe. The comment suggests that the slow release pipe be designed to allow a 48-hour draw down time. As the function of the detention basins under both drainage options is for flood control (not water quality control) the settlement value of a 48-hour drawdown design is not applicable in this case. The water quality controls for the business park will be the responsibility of each individual lot owner. As the basin proposed for Drainage Option A may ultimately be used by Zone 7 in the future as the Mocho bypass channel, the channel needs to be lined to avoid impacts to the neighboring quarry.

For Option B, the basins are only proposed for flood control purposes. The primary water quality controls will also be the responsibility of each individual Lot owner. The basins are also lined to prevent percolation, and their primary function is not for water quality treatment.

### **Response to Comment 1-3**

Stormwater BMPs. See Response to Comment 1-1 above.

### **Response to Comment 1-4**

Slow Release Pipe. See Response to Comment 1-2 above.

### **Response to Comment 1-5**

Section 401 Waiver. Comment noted. The mitigation text on page 3.7-31 has been edited in the errata to reflect the correct name: "Section 401 Water Quality Certification waiver."



Department of Toxic Substances Control



Edwin F. Lowry, Director  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

Letter 2

Gray Davis  
Governor

Winston H. Hickox  
Agency Secretary  
California Environmental  
Protection Agency

October 10, 2003

RECEIVED

OCT 15 2003

PLANNING DIVISION

Mr. Paul Spence  
Associate planner  
Administration Building  
1052 South Livermore Avenue  
Livermore, California 94550-4899

Dear Mr. Spence:

Thank you for the opportunity to comment on the Draft Revised Environmental Impact Report for the Oaks Business Park [SCH# 2001032069]. As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Responsible Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project to address the California Environmental Quality Act (CEQA) adequately addresses any required remediation activities which may be required to address any hazardous substances release.

The proposed project is for the construction of between 2.63 and 2.9 million square feet of light industrial, research and development, professional office and ancillary commercial uses on 177 gross acres. The site is located southwest of the junction of West Jack London Boulevard and Isabel Avenue, adjacent to the Livermore Municipal Airport. The Draft Revised EIR indicates that the site was used for agriculture purposes and included a dairy operation and possibly a trash dump. Section 3.2 (Health Hazards/Risk of Upset) references a Kleinfelder, Inc. Phase I Environmental Site Assessment (ESA) that analyzed environmental conditions at the site. The analysis regarding potential soil contamination relied upon the analysis conducted in the Phase I ESA. DTSC reviewed the Phase I ESA that was included as Appendix K and found that the previous site use as a dairy farm and the possible existence of a trash dump were not considered in their evaluation. The existence of petroleum fueling areas, solvent storage/use areas, confirmation of the contents of the known trash dump, existence of additional dump sites, cattle dipping facilities and pesticide use associated with dairy farming operations should be investigated. If these features are confirmed, sampling should be conducted to determine whether there is an issue which will need to be addressed in the CEQA compliance document. If hazardous substances have been

2-1

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).*

♻️ Printed on Recycled Paper

Mr. Paul Spence  
October 10, 2003  
Page 2

released, they will need to be addressed as part of this project.

For example, if the remediation activities include the need for soil excavation, the CEQA document should include: (1) an assessment of air impacts and health impacts associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust levels and noise; (3) transportation impacts from the removal or remedial activities; and (4) risk of upset should be there an accident at the Site

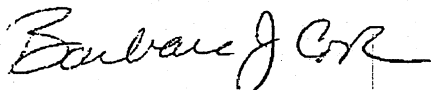
2-1  
(cont.)

DTSC can assist your agency in overseeing characterization and cleanup activities through our Voluntary Cleanup Program. A fact sheet describing this program is enclosed. We are aware that projects such as this one are typically on a compressed schedule, and in an effort to use the available review time efficiently, we request that DTSC be included in any meetings where issues relevant to our statutory authority are discussed.

2-2

Please contact me at (510) 540-3843 if you have any questions or would like to schedule a meeting. Thank you in advance for your cooperation in this matter.

Sincerely,



Barbara J. Cook, P.E., Chief  
Northern California - Coastal Cleanup  
Operations Branch

Enclosures

cc: without enclosures

Governor's Office of Planning and Research  
State Clearinghouse  
P. O. Box 3044  
Sacramento, CA 95812-3044

Guenther Moskat  
CEQA Tracking Center  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806



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DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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## The Voluntary Cleanup Program

In 1993, the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) introduced this streamlined program to protect human health and the environment, ensure investigation and cleanup is conducted in an environmentally sound manner and facilitate the reuse and redevelopment of these same properties. Using this program, corporations, real estate developers, other private parties, and local and state agencies entering into Voluntary Cleanup Program agreements will be able to restore properties quickly and efficiently, rather than having their projects compete for DTSC's limited resources with other lower-priority hazardous waste sites. This fact sheet describes how the Voluntary Cleanup Program works.

Prior to initiation of the Voluntary Cleanup Program, project proponents had few options for DTSC involvement in cleaning up low-priority sites. DTSC's statutory mandate is to identify, prioritize, investigate and cleanup sites where releases of hazardous substances have occurred. For years, the mandate meant that, if the site presented grave threat to public health or the environment, then it was listed on the State Superfund list and the parties responsible conducted the cleanup under an enforcement order, or DTSC used state funds to do so. Because of staff resource limitations, DTSC was unable to provide oversight at sites which posed lesser risk or had lower priority.

DTSC long ago recognized that no one's interests are served by leaving sites contaminated and unusable. The Voluntary Cleanup Program allows motivated parties who are able to fund the cleanup – and DTSC's oversight – to move ahead at their own speed to investigate and remediate their sites. DTSC has found that working cooperatively with willing and able project proponents is a more efficient and cost-effective approach to site investigation and cleanup. There are four steps to this process:

- ✓ Eligibility and Application
- ✓ Negotiating the Agreement
- ✓ Site Activities
- ✓ Certification and Property Restoration

The rest of this fact sheet describes those steps and gives DTSC contacts.

August 1999

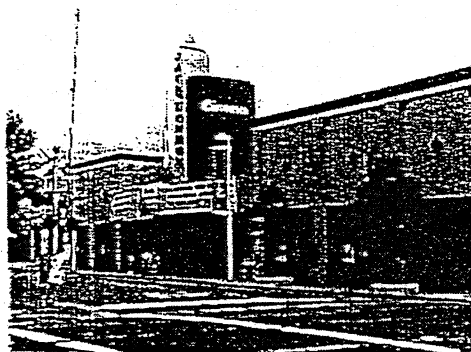


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# The Voluntary Cleanup Program

## Step 1: Eligibility and Application

Most sites are eligible. The main exclusions are if the site is listed as a Federal or State Superfund site, is a military facility, or if it falls outside of DTSC's jurisdiction, as in the case where a site contains only leaking underground fuel tanks. Another possible limitation is if another agency currently has oversight, e.g. a county (for underground storage tanks). The current oversight agency must consent to transfer the cleanup responsibilities to DTSC before the proponent can enter into a Voluntary Cleanup Program agreement. Additionally, DTSC can enter into an agreement to work on a specified element of a cleanup (risk assessment or public participation, for example), if the primary oversight agency gives its consent. The standard application is attached to this fact sheet.



**Jack London Square Theater, Oakland:** Under the Voluntary Cleanup Program, a nine-screen theater was built atop a former Pacific Gas & Electric town gas site, creating a regional entertainment hub.

If neither of these exclusions apply, the proponent submits an application to DTSC, providing details about site conditions, proposed land use and potential community concerns. No fee is required to apply for the Voluntary Cleanup Program.

## Step 2: Negotiating the Agreement



**Romero Ranch, Santa Nella:** A Voluntary Cleanup Agreement enabled the Nature Conservancy to use the land to preserve natural habitat and promote wildlife development rights.

Once DTSC accepts the application, the proponent meets with experienced DTSC professionals to negotiate the agreement. The agreement can range from services for an initial site assessment, to oversight and certification of a full site cleanup, based on the proponent's financial and scheduling objectives.

The Voluntary Cleanup Program agreement specifies the estimated DTSC costs, project scheduling, and DTSC services provided. Because every project must meet the same legal and technical cleanup requirements as State Superfund sites, and because DTSC staff provide oversight, the proponent is assured that the project will be completed in an environmentally sound manner.

August 1999



SECTION 2 SITE INFORMATION (continued)

Current Owner Name _____ Address _____ Phone (     ) _____
Background: Previous Business Operations Name _____ Type _____ Years of Operation _____ If known, list all previous businesses operating on this property _____ _____ _____
What hazardous substances/wastes have been associated with the site? _____ _____ _____
What environmental media is/was/may be contaminated? <input type="checkbox"/> Soil <input type="checkbox"/> Air <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface water
Has sampling or other investigation been conducted? <input type="checkbox"/> Yes <input type="checkbox"/> No Specify _____ _____
If Yes, what hazardous substances have been detected and what were their maximum concentrations? _____ _____ _____

SECTION 2 SITE INFORMATION (continued)

Are any Federal, State or Local regulatory agencies currently involved with the site? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes, state the involvement, and give contact names and telephone numbers			
Agency	Involvement	Contact Name	Phone
What is the future proposed use of the site? _____ _____			
What oversight service is being requested of the Department? <input type="checkbox"/> PEA <input type="checkbox"/> RI/FS <input type="checkbox"/> Removal Action <input type="checkbox"/> Remedial Action <input type="checkbox"/> RAP <input type="checkbox"/> Certification <input type="checkbox"/> Other (describe the proposed project)			
Is there currently a potential of exposure of the community or workers to hazardous substances at the site? <input type="checkbox"/> Yes <input type="checkbox"/> No                      If Yes, explain			
_____ _____			

SECTION 3 COMMUNITY PROFILE INFORMATION

Describe the site property (include approximate size) _____ _____ _____
Describe the surrounding land use (including proximity to residential housing, schools, churches, etc.) _____ _____ _____
Describe the visibility of activities on the site to neighbors _____ _____

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In the agreement, DTSC retains its authority to take enforcement action, if, during the investigation or cleanup, it determines that the site presents a serious health threat, and proper and timely action is not otherwise being taken. The agreement also allows the project proponent to terminate the Voluntary Cleanup Program agreement with 30 days written notice if they are not satisfied that it is meeting their needs.

### **Step 3: Site Activities**

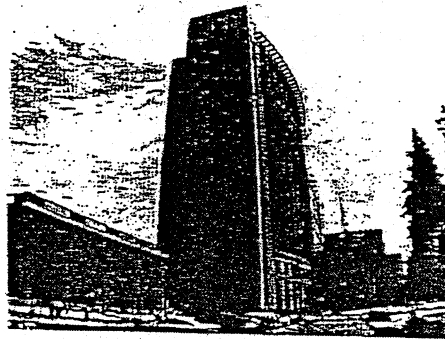
Prior to beginning any work, the proponent must have: signed the Voluntary Cleanup Program agreement; made the advance payment; and committed to paying all project costs, including those associated with DTSC's oversight. The project manager will track the project to make sure that DTSC is on schedule and within budget. DTSC will bill its costs quarterly so that large, unexpected balances should not occur.

Once the proponent and DTSC have entered into a Voluntary Cleanup Program agreement, initial site assessment, site investigation or cleanup activities may begin. The proponent will find that DTSC's staff includes experts in every vital area. The assigned project manager is either a highly qualified Hazardous Substances Scientist or Hazardous Substances Engineer. That project manager has the support of well-trained DTSC toxicologists, geologists, engineers, industrial hygienists, specialists in public participation, and other technical experts.

The project manager may call on any of these specialists to join the team, providing guidance, review, comment and, as necessary, approval of individual documents and other work products. That team will also coordinate with other agencies, as appropriate, and will offer assistance in complying with other laws as needed to complete the project.

### **Step 4: Certification and Property Restoration**

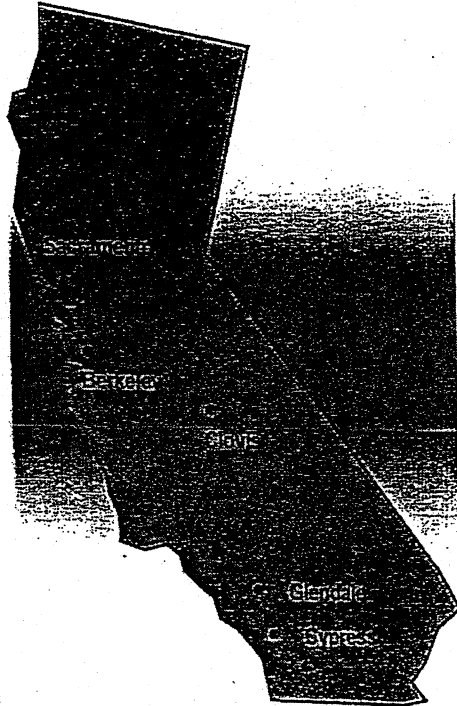
When remediation is complete, DTSC will issue either a site certification of completion or a "No Further Action" letter, depending on the project circumstances. Either means that what was "The Site," is now property that is ready for redevelopment or other reuse.



**The new Federal Courthouse,  
Sacramento: The largest construction  
project in the city's history benefited from  
the Voluntary Cleanup Program when  
cleaning up a railyard site.**

August 1999

To learn more about the Voluntary Cleanup Program, contact the DTSC representative in the Regional office nearest you:



DTSC office locations

**North Coast California**  
Lynn Nakashima / Janet Naito  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721  
(510) 540-3839 / (510) 540-3833

**Central California**  
Megan Cambridge  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
(916) 255-3727

**Central California -  
Fresno Satellite**  
Tom Kovac  
1515 Tollhouse Road  
Clovis, California 93611  
(209) 297-3939

**Southern California  
(Glendale and Cypress)**  
Rick Jones  
1011 Grandview Avenue  
Glendale, California 91201  
(818) 551-2862

*Additional information on the Voluntary Cleanup Program and other DTSC Brownfields initiatives is available on DTSC's internet web page:*

<http://www.dtsc.ca.gov>

## RESPONSES TO LETTER 2 – DEPARTMENT OF TOXIC SUBSTANCES CONTROL

### Response to Comment 2-1

Hazardous Substances. The comment suggests that soil sampling may be necessary to determine if pesticides or other hazardous substances remain in the soil. A Phase I Environmental Site Assessment report was prepared for this project site (Kleinfelder, 2000). The report analyzed the environmental conditions of the site based on past and current uses and researched past activities, practices, and materials that are subject to environmental regulation governing contamination of soil and/or groundwater. The report identified agriculture as a prior use of the property. However, the Phase I ESA does not identify the site as a former dairy site or the location of a trash dump. The source of this information in the comment is unclear. As part of the Phase I ESA, the consultant conducted a comprehensive site reconnaissance on April 20, 2000 in order to observe environmental conditions involving the use, storage, disposal and handling of hazardous substances, including agricultural chemicals. Based on the findings of the report, as described on Page 3.2-9 of the RDEIR, a Phase II Soil Investigation Report is not warranted with this project as pesticides and herbicides are not generally used for the type of dry farming (hay and safflower) which has historically occurred at the site.

### Response to Comment 2-2

Voluntary Cleanup Program. Comment noted. The City of Livermore appreciates DTSC's efforts to assist with any cleanup activities.



ALAMEDA COUNTY  
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2165  
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

**AC Transit**

Director  
- See City File

**Alameda County**

Director  
Deputy  
County Manager

**City of Alameda**

Mayor  
- See City File

**City of Albany**

Mayor  
- See City File

**BART**

Chairman  
Director  
- See City File

**City of Berkeley**

Mayor  
- See City File

**City of Dublin**

Mayor  
- See City File

**City of Emeryville**

Mayor  
- See City File

**City of Fremont**

Mayor  
- See City File

**City of Hayward**

Mayor  
- See City File

**City of Livermore**

Mayor  
- See City File

**City of Newark**

Mayor  
- See City File

**City of Oakland**

City Chamber  
Council  
- See City File

**City of Piedmont**

Mayor  
- See City File

**City of Pleasanton**

Mayor  
- See City File

**City of San Leandro**

Mayor  
- See City File

**City of Union City**

Mayor  
- See City File

**Executive Director**

- See City File

November 17, 2003

Letter 3

Mr. Paul Spence  
Planning Division  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550-4899  
Alameda, CA 94501

SUBJECT: Comments on the Revised Draft Environmental Impact Report for the Oaks Business Park in the City of Livermore

Dear Mr. Spence:

Thank you for the opportunity to comment on the City of Livermore's Revised Draft Environmental Impact Report (RDEIR) for the Oaks Business Park. The project consists of approximately 177 acres of light industrial, professional offices and ancillary commercial uses, research institutions, warehousing, manufacturing, and limited business supporting commercial uses. The project will support between 2.63 and 2.9 million square feet of development at build out. The site is located southwest of the junction of West Jack London Boulevard and Isabel Avenue, adjacent to the Livermore Municipal Airport.

The ACCMA has reviewed the RDEIR and submits the following comments. These comments are consistent with the comments we made in response to the NOP for the RDEIR on April 18, 2003. Where possible, RDEIR page numbers are referenced.

- Pages 3.3-79 and 3.3.-80, sections on Year 2005 With and Without Project and Year 2025 With and Without Project: The last sentence in both of these sections must be deleted. The LOS E standard is for the LOS Monitoring Element of the CMP that monitors *existing* conditions. This project is subject to the requirements of the Land Use Analysis Program of the CMP and for that element the Alameda County CMA does not have a policy for determining a threshold of significance. Rather professional judgment should be applied to determine the significance of project impacts.

3-1



- Page 3.3.-80. section on Year 2025 With and Without Project: Even though east bound Stanley Boulevard west of Isabel Avenue operating at LOS F would be an existing condition, this does not preclude the project from identifying feasible mitigation for this route. 3-2
  
- The 2001 CMP uses Highway Capacity Manual (HCM) 1985 for LOS standards. Table 3.3-1 on page 3.3-13 shows that LOS standards adopted in the RDEIR was based on HCM 1985. However, on page 3.3-81, freeway capacity of 2300 pc/h/ln has been used for LOS analysis, which is not consistent with the HCM 1985 wherein 2000 pc/h/ln is the standard for freeway capacity. Therefore, table 3.3-81 should be revised using the HCM 1985 standard of 2000 pc/h/ln. for freeway capacity. 3-3
  
- Page 3.3.81. Table 3.3.14. Notes: ACCMA model year '2005' is missing. Please add this year. 3-4
  
- Page 3.3.83, section on LAVTA (Livermore-Amador Valley Transit Authority) - Wheels: The report assumes that LAVTA would introduce new bus lines to accommodate the approximately 4000 to 6000 monthly riders that would be generated by the project. Are these new bus lines part of LAVTA's Short-Range Transit Plan? How will the project mitigate the impact on the LAVTA lines? Specifically, who will pay for the additional buses and routes needed? How will the project contribute its fare-share of the cost? 3-5
  
- Page 3.3-97. Bicycle and Pedestrian Impacts: The RDEIR should also acknowledge the Alameda Countywide Bicycle Plan facilities in the project area. The Alameda Countywide Bicycle Plan was approved by the ACCMA Board on June 28, 2001 and can be found on our website: [accma.ca.gov](http://accma.ca.gov). 3-6
  
- Page 3.3-98. Transportation Demand Management Mitigation Measures: When a Comprehensive Transportation Demand Management (TDM) program for the proposed development that reduces peak hour project traffic volumes by a minimum of five percent is prepared; a copy should be submitted to the CMA. If an employee shuttle is included in the TDM program, the program should also include how it will be funded for capital & operating costs. 3-7
  
- The environmental document should provide information on how all of the mitigation measures on the MTS will be funded. 3-8

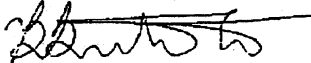
Mr. Paul Spence  
November 17, 2003  
Page 3

- Mitigation Measures: The mitigation measures should include this project's contribution to the Tri-Valley traffic impact fees for improving the regional transportation network.

3-9

Once again, thank you for the opportunity to comment on this DEIR. Please do not hesitate to contact me at 510/836-2560 if you have any questions.

Sincerely,



Saravana Suthanthira  
Associate Transportation Planner

cc: file: CMP - Environmental Review Opinions - Responses - 2003

## RESPONSES TO LETTER 3 – ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

### Response to Comment 3-1

CMA Thresholds of Significance. The comment notes an error in the EIR regarding Year 2005 and Year 2025 CMA LOS standards. Comment noted. The referenced text on pages 3.3-79 and 3.3-80 are clarified in the errata.

### Response to Comment 3-2

Mitigation for Stanley Boulevard. The notes at the bottom of Table 3.3-14 note that in the year 2025 condition, the Stanley Boulevard/Isabel Avenue interchange is assumed to be completed, including the widening of Stanley Boulevard to 6 lanes. This would result in an improvement in levels of service to Stanley Boulevard west of Isabel Avenue to LOS D.

The City of Livermore's Traffic Impact Fee (TIF) program includes adding two lanes to the existing four-lane section of Stanley Boulevard within the City of Livermore. Funding for improvements to the portion of Stanley Boulevard west of the City limits are under the jurisdiction of the County. Widening of Stanley Boulevard to six lanes will improve the Level of service to LOS B in the a.m. and LOS C in the p.m., with or without the project. The applicant will pay its fair share of this mitigation by paying the City's TIF requirements.

### Response to Comment 3-3

2001 CMP and Consistency in LOS Standards. In the nearly 20 years since the publication of the 1985 Highway Capacity Manual, freeway capacities have been increased to 2,300 vehicles per hour per lane. However, using the 1985 values, the changes to Table 3.3-14 for I-580 would be as follows:

Road Section	2005				2025			
	No Project		Project		No Project		Project	
	V/C	LOS	V/C	LOS	V/C	LOS	V/C	LOS
Airway to Isabel – Eastbound	1.06	F	1.06	F	1.06	F	1.07	F
– Westbound	0.66	B	0.66	B	0.73	C	0.73	C
Isabel to Livermore – Eastbound	1.06	F	1.06	F	1.06	F	1.07	F
– Westbound	0.66	B	0.66	B	0.73	C	0.74	C

It can be seen that there are no changes in levels of service with or without the project on I-580 using the 1985 capacity values.

### Response to Comment 3-4

ACCMA Model year. Comment noted. The referenced table notes have been updated in the errata.

### **Response to Comment 3-5**

LAVTA - Wheels Service. The most likely form of increased Wheels service would be in the form of rerouting of nearby existing lines, primarily line 12, to take advantage of increased employment density within the Oaks Business Park. This would result in more cost-efficient use of this line, and could result in cost savings for Wheels. The changes to this line are not specifically included in the Short-Range Transit Plan but are acknowledged by the Wheels staff (See comment letter 8). It is noted that the TDM plan requires frequent scheduling of shuttle buses between Oaks Business Park and the nearest BART station.

### **Response to Comment 3-6**

Bicycle and Pedestrian Impacts. The comment states that the EIR should discuss the Countywide Bicycle Plan facilities in the area. In the vicinity of the project, the Countywide Bicycle Plan includes both proposed Class 1 Bike Paths and Class 2 Bike Lanes on both Isabel Avenue and in the Jack London Boulevard corridor. These facilities are adjacent to the site. In addition, a Class 1 Bike Path is proposed along the Arroyo Mocho, south of the site. An existing Bike Path along with a separate equestrian path is located on the east side of Isabel Avenue. The project will provide access to these paths via the signalized intersection of Discovery Drive and Isabel Avenue. On Jack London Boulevard, bike lanes will be provided on both sides of the street along the project frontage. In addition, the City of Livermore has conditioned the project to provide trail improvements along the north and west project boundaries. These trail improvements will provide connecting segments to regional trail systems, as well as future connections between the project site and the planned system along the Arroyo Mocho south of the site.

### **Response to Comment 3-7**

TDM Mitigation Measures. The City will require a TDM plan for this project and the plan will be forwarded to ACCMA upon adoption. An employee shuttle is included in the plan, including funding sources.

### **Response to Comment 3-8**

Funding for MTS. The City will require a TDM plan for this project and the plan will be forwarded to ACCMA upon adoption. An employee shuttle is included in the plan, to be funded by the Oaks Business Park Owners Association (OBPOA). The OBPOA will also seek other funding sources, which may include TIF, TUTC, STIP, Measure B funds, or other sources.

**Response to Comment 3-9**

Mitigation Contribution. The City will collect all mandated fees for the Tri-Valley Transportation Development Fee program.



November 12, 2003

Letter 4

Mr. Paul Spence, Associate Planner  
Community Development Department  
City of Livermore  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

Re: Draft Revised Environmental Impact Report for Oaks Business Park

Dear Mr. Spence:

Zone 7 has reviewed the referenced CEQA document. We have several comments which are made in the context of Zone 7's responsibilities to provide wholesale treated water, non-potable water for agriculture and irrigated turf, flood protection, and groundwater and stream management in the Livermore-Amador Valley. Please also refer to our previous comment letters (copies enclosed): our first letter, dated October 14, 2002 with comments on the original August 2002 DEIR and our second letter, dated April 23, 2003, with comments on the NOP of the Revised DEIR. Those comments are still applicable for the Revised Draft EIR, as modified by our review of the new document. At this time, our additional comments are as follows:

General

During the development and refinement of our Stream Management Master Plan (SMMP) projects, Zone 7 has confirmed the need for the Arroyo Mocho Bypass. The purpose of the bypass will be to divert flood flows from Arroyo Mocho and into storage in the Chain of Lakes area during high flow events. As a result, Zone 7 requests that the bypass be an integral part of any plans for the business park.

4-1

3.7 Hydrology and Water Quality

Impact 3.7-1, p 3.7-22: Implementation of the project will result in the creation of impervious surface areas. Mitigation for the creation of impervious surface areas within the Livermore-Amador Valley is addressed through the collection of Special Drainage Area 7-1 drainage fees. The City of Livermore collects the fees for Zone 7 for any new buildings, improvements, or structures to be constructed that increase the imperviousness of the land surface.

4-2

Impact 3.7-1, p 3.7-23, first paragraph: The DEIR mentions that when Zone 7 takes the necessary action to implement a regional project, utilizing the detention basin being improved to Zone 7 standards by the project applicant, that the project applicant would then work with Zone 7 to implement the second system without further revisions being required to the EIR; there are no such conditions in place and no plans to have the project applicant work with Zone 7 on the regional solution of providing an Arroyo Mocho

4-3

Bypass. If Zone 7 proceeds with the Arroyo Mocho Bypass, there is sure to be an environmental document that will be required.

4-3  
(cont.)

Impact 3.7-1, OPTION "A": Zone 7 Plan, p. 3.7-23: The detention basin is called out as being a 220' wide lined detention basin. The actual lining of the detention basin will only include the top width of the detention basin of 118.5' with 2½:1 channel bank slopes; the total right-of-way width will be 220' wide. The layout will provide approximately 100' of setback away from the gravel-mining pit, located directly west of the proposed detention basin. In addition, it should be mentioned that the project applicant has entered into a Special Drainage Area 7-1 Agreement to make improvements to the detention basin to serve future Zone 7 needs. The detention basin will be improved to meet Zone 7 design guidelines and specifications.

4-4

Impact 3.7-1, OPTION "A": Zone 7 Plan, p.3.7-23: It should be noted that maintenance of the detention basin, as mentioned under will be provided through a landscape maintenance district or other funding mechanism initiated by the City of Livermore. The City plans to retain maintenance responsibilities of the detention basin owned by Zone 7, until Zone 7 is able to convert the basin into a flood control facility, the Arroyo Mocho Bypass.

4-5

Impact 3.7-1, OPTION "A": Zone 7 Plan, Feature 1, p.3.7-23: It should be noted that the 3.5 deep mortar lined swale will be constructed at the bottom of the basin to assist in the conveyance of stormwaters and to insure that ponding does not become a problem.

4-6

Impact 3.7-1, Impacts to Arroyo Mocho Under Option "A", p. 3.7-25, last paragraph: First sentence should read: "the study shows that the entire *project site* will drain..." instead of "*watershed*".

4-7

Impact 3.7-1, Impacts to Arroyo Mocho Under Revised Option "B", p. 3.7-28, second paragraph: There is mention of an outfall that will extend through City of Livermore and Zone 7 property. It should be noted that the outfall design should conform to Zone 7's standard detail for an outfall, SF-605.

4-8

Mitigation Measures, MM 3.7-2a, p3.7-31, first paragraph: The mitigation states that Zone 7 shall accept the stormwater outfall to the Arroyo Mocho. It should read that the outfall shall be designed and constructed in accordance with Zone 7 standard detail, SF-605. Zone 7 shall only accept the outfall if it meets Zone 7's standards.

4-9

### 3.11 Public Services and Utilities

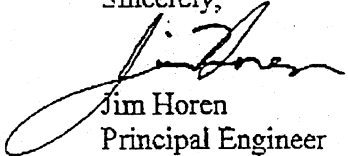
Project Impacts and Mitigation Measures, Water Demand, Impact 3.11-1, p 3.11-20: Additional recycled water use over the central groundwater basin is not allowed under the RWQCB's Basin Plan or under the Master Recycling Permit. Another source of water must be identified or a firm plan to mitigate 100% of the additional recycled water salts must be identified.

4-10

Mr. Paul Spence, Associate Planner  
Community Development  
City of Livermore  
November 12, 2003  
Page 3

If you have any comments, please feel free to contact me at (925) 484-2600, ext. 233, or Steven Ellis at ext. 239.

Sincerely,



Jim Horen  
Principal Engineer

JH:SJE

Enclosures

c: Mark Roberts, Community Development Director, City of Livermore  
Dan McIntyre, Publics Work Director, City of Livermore  
Ed Cummings, Assistant General Manager, Zone 7  
John Mahoney, Engineering Services Manager, Zone 7  
Y.K. Chan, Principal Engineer, Zone 7  
Dave Lunn, Water Resources Manager, Zone 7  
Joe Seto, Senior Engineer, Zone 7  
Matt Katen, Senior Engineer, Zone 7  
Mona Olmsted, Associate Civil Engineer, Zone 7  
Steven Ellis, Assistant Engineer, Zone 7



## **RESPONSES TO LETTER 4 – ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (ZONE 7)**

### **Response to Comment 4-1**

Arroyo Mocho Bypass. The comment requests that the Arroyo Mocho Bypass be an integral part of any plans for the business park. Drainage Option A is the applicant's preferred drainage alternative and would accommodate Zone 7's plans for Arroyo Mocho flood control. The Arroyo Mocho bypass channel is currently included in the proposed design of the business park and incorporated into the proposed Vesting Tentative Map.

### **Response to Comment 4-2**

Drainage Fees. The project will be subject to all applicable fees, including Special Drainage Area 7-1 drainage fees.

### **Response to Comment 4-3**

Additional Environmental Review. The RDEIR text referred to in the comment states that no further environmental review would be required by the City with regard to the Oaks Business Park project if Zone 7 were to implement a regional drainage system. However, the future approval of any such regional drainage system by Zone 7 would require environmental review by Zone 7 as lead agency for that regional project.

### **Response to Comment 4-4**

Option A Detention Basin Design. Comments regarding basin design are noted. Pursuant to the Special Drainage Area 7-1 Agreement, the basin will be improved to meet Zone 7 design guidelines as suggested.

### **Response to Comment 4-5**

Option A Detention Basin Maintenance. Comments regarding detention basin maintenance responsibilities are noted. For both basin options, the maintenance will be performed by the City with funding provided by the project by the formation of a landscape maintenance district or other approved funding mechanism. For basin Option A, when Zone 7 converts the basin to a channel, the maintenance responsibilities may then be transferred to Zone 7.

### **Response to Comment 4-6**

Option A Detention Basin Design. The comments regarding design details of the detention basin are noted.

**Response to Comment 4-7**

Option A Impacts to Arroyo Mocho. The comment and clarification are noted and reflected in the Errata.

**Response to Comment 4-8**

Revised Option B. The comment regarding outfall design is noted and reflected within the Errata.

**Response to Comment 4-9**

Revised Option B Outfall Design. The comment regarding outfall design is noted and reflected within the Errata.

**Response to Comment 4-10**

Recycled Water. The City of Livermore is in compliance with all State of California rules and regulations regarding the production and use of recycled water. The City's recycled water system operates within a defined service area pursuant to permits issued by the Regional Water Quality Control Board.

The City of Livermore continues to support the development of a valley-wide Salt Management Program (SMP) as outlined in Regional Water Quality Control Board Order 93-159 to offset the salt loading from the use of imported surface water as well as recycled water. The City has previously supported Zone 7's efforts to develop a Salt Management Program utilizing wellhead demineralization, and is currently working with Zone 7 to address the disposal of brine generated during wellhead demineralization. The valley-wide SMP should address any additional salt loading caused by the use of recycled water.



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MANAGEMENT  
DISTRICT

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(Chairperson)  
Nate Miley  
Shelia Young

CONTRA COSTA COUNTY  
Mark DeSaulnier  
Mark Ross  
Gayle Ulkerna  
(Secretary)

MARIN COUNTY  
Harold C. Brown, Jr.

NAPA COUNTY  
Brad Wagenknecht

SAN FRANCISCO COUNTY  
Willie Brown, Jr.  
Chris Daly  
Jake McGoldrick

SAN MATEO COUNTY  
Jerry Hill  
Marland Townsend  
(Vice-Chairperson)

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Patrick Kwok  
Julia Miller  
Dena Mossar

SOLANO COUNTY  
John F. Silva

SONOMA COUNTY  
Tim Smith  
Pamela Torlatt

William C. Norton  
EXECUTIVE OFFICER/APCO

November 7, 2003

Letter 5

RECEIVED

NOV 14 2003

PLANNING DIVISION

Paul Spence  
Associate Planner  
City of Livermore  
Administration Building  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

Subject: Oaks Business Park

Dear Mr. Spence:

Bay Area Air Quality Management District (District) staff have received your agency's Revised Draft Environmental Impact Report (DEIR) for the Oaks Business Park Project. The 178 acre site will be rezoned from Light Industrial to Planned Development Industrial and subdivided into approximately 38 lots that will support the development of between 2.5 and 2.9 million square feet of office, research and development, warehousing, manufacturing and business-supporting commercial uses. The project includes the construction of corresponding public infrastructure including streets, street frontage landscaping, and all public utilities.

Similar to the earlier version, the Revised DEIR concludes that both project-level air quality impacts and cumulative air quality impacts would remain significant and unavoidable after implementation of proposed mitigation measures. Given the proposed project's size and the number of new vehicle trips that may be generated (an estimated 17,429 trips per day), air quality impacts from project operations could be significant. Therefore, we strongly encourage the City to require implementation of all feasible mitigation measures to reduce the project's air quality impacts as much as possible.

In our April 15, 2003 letter responding to the City's Notice of Preparation for this DEIR, we referred to our September 18, 2002 comment letter, which made recommendations on mitigation measures to reduce air quality impacts from this project in response to the earlier version of this DEIR. We were disappointed to note that the Transportation Demand Management (TDM) program elements listed in Mitigation Measure 3.6-3 (page 3.6-12) does not include several important trip reduction strategies that were mentioned both in the air quality technical appendices and in our first comment letter. We strongly encourage the City to consider the inclusion of the following additional mitigation measures in the proposed TDM program.

While we understand that no buildings or specific development plans are proposed at this time, we urge the City to carefully consider the project's design with regards to alternative modes of transportation and the amount of on-site parking. Providing infrastructure such as bus turnouts/bulbs and bus shelters can help facilitate future transit service to the site. In addition, linking the project site

5-1

5-2

5-3

with local and regional bicycle and pedestrian network can encourage alternative modes of transportation. Many projects of the scope and scale of the Oaks Business Park tend to provide much more parking than is required by the City. This over-supply of parking is one of the many reasons why more commuters do not consider alternatives to driving alone. We recommend that the City reduce the number of parking spaces and implement a parking cash-out program. Parking cash-out requires employers to provide transit and/or ridesharing subsidies to non-driver employees in amounts equivalent to the value of subsidized parking, thereby encouraging those who would normally drive alone to consider a commute alternative.

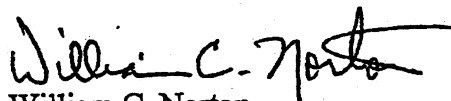
5-3  
(cont.)

TDM measures listed under Mitigation Measure 3.6-3 in the DEIR are equally important and should be vigorously implemented, but they remain a generic list without defined roles for implementation. We urge the City to specify which of the City's departments will be responsible for overseeing the implementation of each mitigation measure. For example, the City might indicate that their Public Works Department will be responsible for working with both the project sponsor and transit service providers to implement shuttle services from the Oaks Business Park to major transit nodes and activity centers. The District endorses the City's requirement that the implementation of such specific and comprehensive TDM measures be part of the conditions of project approval. We continue to urge the City to consider increasing the minimum five percent peak hour trip reduction requirement to a higher percentage in order to more significantly mitigate the air quality impacts of this project.

5-4

If you have any questions regarding these comments, please contact Suzanne Bourguignon, Environmental Planner, at (415) 749-5093.

Sincerely,

  
William C. Norton  
Executive Officer/APCO

WN:SB

cc: BAAQMD Director Roberta Cooper  
BAAQMD Director Scott Haggerty  
BAAQMD Director Nate Miley  
BAAQMD Director Shelia Young

## RESPONSES TO LETTER 5 – BAY AREA AIR QUALITY MANAGEMENT DISTRICT

### Response to Comment 5-1

Air Quality Mitigation. The comment discusses the significant and unavoidable air quality impacts and requests all feasible mitigation measures to be implemented. Mitigation Measures 3.6-1 and 3.6-3 are provided to reduce project impacts, and include a TDM program to reduce regional emissions by a minimum of 5 percent.

### Response to Comment 5-2

Draft TDM Program/Mitigation Strategies. The comment references previous District comments on the prior EIR and NOP regarding implementation of the TDM measures. The proposed TDM program (included as Appendix M of the Technical Appendices) contains extensive procedures for program phasing and compliance, implementation, management, monitoring and reporting. Mitigation Measure 3.6-3 simply summarizes the major elements of the TDM program. Adoption of the TDM program will result in adoption of all of the program elements listed in Technical Appendix M.

### Response to Comment 5-3

Parking. The City coordinates with transit providers during the development process to ensure that any planned bus turnouts and shelters are consistent with the ridership and routing plans of those providers. Please see also responses to Letter 8 regarding location of required bus turnouts.

This comment also urges the City to implement a parking cash-out program to encourage ridesharing and carpooling. Regarding a potential parking cash-out program, the City at this time has no requirements or provisions for such a program. Based on the general uses proposed and without a specific site development plan, the City will maintain its existing parking standards and only consider such a program if included as a component of specific site development proposals. Standards allowing a parking cash-out program will be considered by the City Council for this project as component of the Planned Development District zoning for the project, but will not be required as a mitigation measure. The parking cash-out program permitted by the Planned Development zoning would be an option for the development of individual parcels within the business park and would be permitted through a Conditional Use Permit.

It should also be noted that bus turnouts on Discovery Drive can fit within the proposed right of way, and some offsite parking could be eliminated to accommodate bus turnouts. As noted in the RDEIR, the project will provide pedestrian facilities within the park; connections to existing and proposed pedestrian, bicycle and trail systems; and bus turnouts to serve both rerouted Wheels buses and employer-funded shuttle services.

#### **Response to Comment 5-4**

TDM Mitigation Measures. A five percent reduction in trips is considered a significant and measurable air quality benefit that the project can be reasonably expected to achieve without creating an undue hardship on future businesses with the Oaks Business Park. See also Response to Comment 5-2.

Community  
Development  
Department

County Administration Building  
651 Pine Street  
4th Floor, North Wing  
Martinez, California 94553-0095

Phone: (925) 335-1243

Contra  
Costa  
County



Dennis M. Barry, AICP  
Community Development Director

Letter 6

November 12, 2003

Mr. Paul Spence, Associate Planner  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

Dear Mr. Spence,

The following are the Transportation Planning Division's comments on your Draft Revised Environmental Impact Report for the Oaks Business Park project.

The EIR mentions that the Tri-Valley Transportation Model was used in evaluating the traffic impacts of the project. The EIR should verify that the latest version of the model was used. The Tri-Valley Transportation Model underwent a rigorous update from 1990 to 2000 baseline conditions. The update and validation process was documented by Fehr & Peers Associates in the Draft EIR for the Camino Tassajara Combined General Plan Amendment Study.

6-1

Please let me know if you have any questions on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "John Cunningham".

John Cunningham  
Transportation Planning Division

c: Steve Goetz, CDD

G:\Transportation\Cunningham\sent\memo\oaks\_business\_park03.doc

Office Hours Monday - Friday: 8:00 a.m. - 5:00 p.m.  
Office is closed the 1st, 3rd & 5th Fridays of each month

## RESPONSES TO LETTER 6 – CONTRA COSTA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

### Response to Comment 6-1

Tri-Valley Transportation Model. The comment requests confirmation that the most recent version of the Tri-Valley Transportation Model was used to evaluate traffic impacts. The Revised Draft EIR utilized three transportation models: the Tri-Valley Transportation Model, the Alameda County CMA model, and the new City of Livermore General Plan Update Model. The use of the Tri-Valley Transportation Model preceded the development of the Fehr and Peers Camino Tassajara Combined General Plan Amendment Study. However, the model used in this EIR includes more significant and more local upgrades to the Tri-Valley Transportation Model such as removal of the North Livermore residential components, additions of specific approved land development proposals in east Dublin, and other changes in the Pleasanton and Livermore areas.



EAST BAY REGIONAL PARK DISTRICT



Letter 7

BOARD OF DIRECTORS

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General Manager

November 10, 2003

Paul Spence, Associate Planner  
City of Livermore Planning Division  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

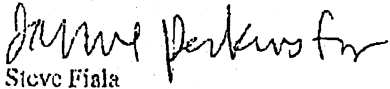
RE: Livermore Regional Trails -Draft Revised Environmental Impact Report  
Oaks Business Park

Dear Mr. Spence:

The East Bay Regional Park District (EBRPD) has received the Draft Revised Environmental Impact Report (DREIR) for the proposed Oaks Business Park project. EBRPD, as a responsible agency under the State CEQA guidelines, would like to resubmit our previous letter of Oct. 16, 2002 in response to the DREIR.

Thank you for this opportunity to comment. If you have any questions, please contact me at (510) 544-2602.

Sincerely,

  
Steve Fiala  
Trails Development Program Manager



2950 Persilla Oaks Court P.O. Box 5381 Oakland, CA 94605-0381  
Tel. 510 635-0135 Fax 510 569-4319 TDD 510 635-0160 www.ebparcs.org

EAST BAY REGIONAL PARK DISTRICT



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General Manager

October 16, 2002

Paul Spence, Associate Planner  
City of Livermore Planning Division  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899  
via fax 925-373-5135

RE: Comments regarding Livermore Regional Trails - DEIR for the Oaks Business Park

Dear Mr. Spence:

The East Bay Regional Park District (EBRPD) has received the Draft Environmental Impact Report (DEIR) for the Oaks Business Park and would like to submit the following comments at this time.

The EBRPD Master Planned Trails Map, the City of Livermore Bike Plan, and the Livermore Area Regional Park District (LARPD) Master Plan show the Shadow Cliffs to Morgan Territory Regional Trail as a key regional north-south trail multi-use feature which will serve and connect a number of areas in the Livermore Valley region from Morgan Territory and Mt. Diablo State Park to the Iron Horse Regional Trail. This trail will also connect to job centers, Las Positas College, residential and commercial destinations. In addition, planning for the Iron Horse Regional Trail's future extensions eastward through the Livermore Valley to the San Joaquin County line are underway. The City of Livermore's General Plan also calls for an east-west multi-use trail parallel to Jack London Blvd that would link the Cities of Livermore and Pleasanton and provide future connections to Hacienda Business Park and other important destinations and residential areas. In addition to recreational value, the trails are also non-motorized transportation corridors, which when utilized by the public, reduce vehicle emissions and provide for alternative commute routes. With the completion of these proposed trail segments in the project's vicinity, connections can be made to access downtown Livermore, additional residential neighborhoods, the Pleasanton/Dublin BART Station, Wheels Bus stations, ACE commuter train stations, business parks, schools, and the extensive regional parks and trails network throughout Contra Costa and Alameda Counties.

Impacts on Land Use, Traffic and Circulation, and Air Quality identified in the DEIR indicate the need for non-motorized transportation opportunities in the project vicinity. As discussed in the Impacts Analysis, impacts indicate the need for mitigations including the formulation of measures to reduce regional traffic impacts and vehicle emissions in addition to an increased need for additional bicycle and pedestrian facilities for the purposes of personal transportation and recreation.

7-1



2850 Paralta Oaks Court P.O. Box 5381 Oakland, CA 94605-0381  
Tel: 510 633-0135 Fax: 510 569-4319 TDD: 510 633-0460 www.ebparks.org

Specific comments on the document are as follows:

Fig 2-2. Please indicate the proposed north-south Shadow Cliffs to Morgan Territory Regional Trail and the proposed east-west cross valley Iron Horse Regional Trail as well as the City's trail to connect Livermore and Pleasanton along West Jack London Blvd. | 7-2

Fig 2-3A. Map does not appear to have trail improvements, sidewalks or bike lanes. It is difficult to read. Please provide additional information. | 7-3

Figure 2-6A. In the proposed roadway cross sections on Discovery and Voyager Sts., there are no bike lanes indicated. Similarly on the Jack London Blvd. cross section, it is not clear if the 14-foot sidewalk is including a multi-use trail. Please clarify. | 7-4

Figure 2-6C. The trail is indicated on the typical section of Isabel Ave; however it would better to have the equestrians inboard of paved trail rather than adjacent to road. Trail surfaces to accommodate equestrian use are generally "soft" ¼ to dust rock surfacing. | 7-5

Under Chapter 3.1 Land Use, Page 3.1-3, 2<sup>nd</sup> paragraph. Please indicate the name of the recreation trail that parallels the future Hwy 84/Isabel Avenue as the *Shadow Cliffs to Morgan Territory Regional Trail*. | 7-6

Figure 3.1-1. Please indicate the Shadow Cliffs to Morgan Territory Regional Trail. | 7-7

Figure 3.1-3. Please indicate the Shadow Cliffs to Morgan Territory Regional Trail. | 7-8

Under Chapter 3.1 Land Use, Page 3.1-14. Please include the following three plans as adopted Land Use Policy documents: East Bay Regional Park District Master Plan, Livermore Area Recreation and Park District Master Plan, and the City of Livermore Bicycle and Equestrian Plan. | 7-9

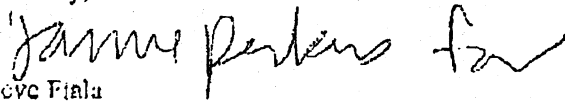
Under Chapter 3.1 Land Use, Page 3.1-28. Similarly, please include the following three plans as adopted Land Use Policy documents of which the proposed project is measured against for consistency and significance analysis; East Bay Regional Park District Master Plan, Livermore Area Recreation and Park District Master Plan, and the City of Livermore Bicycle and Equestrian Plan. | 7-10

Under Chapter 3.3. Traffic and Circulation. Page 3.3-1, paragraph 4. The referenced Project Study Report currently being developed by the City of Livermore should include the conditioning of proposed projects to pay for trail improvements (trail construction) along the future Isabel Avenue frontage. These trail improvements need to be developed along the frontage road with Isabel Ave. and possibly Jack London. In addition the City of Livermore should consider requiring the applicant to obtain off-site easements to connect this project to the Iron Horse Trail in order to link to a major east-west regional non-motorized alternative transportation corridor. | 7-11

Conditioning the applicant to construct trail from their project site location to the Iron Horse Corridor would ensure connectivity. | 7-12

Thank you for this opportunity to comment. If you have any questions, please contact me at (510) 514-2602.

Sincerely,



Steve Fiala  
Trails Development Program Manager

cc: Kenneth Craig, LARPD Superintendent of Planning and Parks

## RESPONSES TO LETTER 7 – EAST BAY REGIONAL PARK DISTRICT

### Response to Comment 7-1

Regional Trail Plans. General comments regarding existing trail planning efforts and the need for non-motorized transportation opportunities are noted. Please see specific responses below.

### Response to Comment 7-2

Figure 2-2. Comment asks that several proposed trails be shown on the project area map. Figure 2-2 provides a project vicinity map. The map is not intended to demonstrate trail systems. Trails are addressed in Sections 3.3, Traffic and Circulation, and 3.11, Public Services and Utilities. Please see the map of existing and proposed trails, Figure 3.3-3, within the RDEIR.

### Response to Comment 7-3

Figure 2-3A. Comment states that Figure 2-3A is difficult to read and does not show trail information. Figure 2-3A is a tentative map provided to illustrate the proposed Tentative Map. The figure is not intended to demonstrate trail systems; however, it should be noted that 5-foot wide sidewalks are proposed on both sides of Discovery Street, and on one side of all other interior streets. Please see the map of existing and proposed trails, Figure 3.3-3, within the RDEIR.

### Response to Comment 7-4

Figure 2-6A. Discovery and Voyager Streets are facilities internal to the business park and are not designed with dedicated bike lanes. On Jack London Boulevard, bike lanes are provided on both sides of the street along the project frontage. Along the project frontage on the south side of the street, a 14-foot wide area has been designated for a meandering sidewalk. The sidewalk itself will have a width of 8 feet. It should be noted that 5-foot wide sidewalks are proposed on both sides of Discovery Street, and on one side of all other interior streets.

The City of Livermore has conditioned the project to provide trail improvements along the north and west project boundaries. These trail improvements will provide connecting segments to regional trail systems, as well as future connections between the project site and the planned trail system along the Arroyo Mocho south of the site.

### **Response to Comment 7-5**

Figure 2-6C. The comment suggests that the locations of trails indicated on Isabel Avenue be slightly modified. The trail along the east side of Isabel Avenue has already been constructed.

### **Response to Comment 7-6**

Name Clarification. The comment requests that area trails be named in the document. The noted paragraph on page 3.1-3 is revised as follows for the Errata:

Future State Highway 84/Isabel Avenue borders the eastern edge of the project site. The Shadow Cliffs to Morgan Territory Regional Trail ("Isabel Avenue Trail" in the City of Livermore Bikeways and Trails Master Plan) A recreation trail and a 15-foot high earthen berm run parallel to, and east of, Isabel Avenue. Single-family residential neighborhoods, including Murrietta Meadows, lie further east and are separated from the berm and regional recreation-trail by a strip of vacant land.

### **Response to Comment 7-7**

Figure 3-1.1. Comment requests that trail be indicated. Figure 3.1-1 is a reproduction of the City General Plan Map, and is not intended to demonstrate trail systems. Please see the map of existing and proposed trails, Figure 3.3-3, within the RDEIR.

### **Response to Comment 7-8**

Figure 3.1-3. Comment requests that trail be indicated. Figure 3.1-3 is intended to illustrate surrounding land uses, and is not intended to demonstrate trail systems. Please see the map of existing and proposed trails, Figure 3.3-3, within the RDEIR.

### **Response to Comment 7-9**

Adopted Policy Documents. The comment notes that three area recreation and park plans are not mentioned and suggests that they be described briefly. The noted section of page 3.1-14 is revised per the Errata to identify the three plans as follows:

#### EAST BAY REGIONAL PARK DISTRICT MASTER PLAN

The East Bay Regional Park District Master Plan (1997) defines the vision and mission of the district and sets priorities through 2007. It explains the District's multi-faceted responsibilities and provides policies and guidelines for achieving the highest standards of service in resource conservation, management, interpretation, public access and recreation. The Master Plan is designed to maintain a careful

balance between the need to protect and conserve resources and the recreational use of parklands for all to enjoy now and in the future. It was prepared with the active participation of the District citizen-based Park Advisory Committee and with extensive review and comment from the community. The District's first Master Plan was approved in 1973. Since then, the Plan has been revised every six to seven years to reflect new circumstances to which the District must respond.

LIVERMORE AREA RECREATION AND PARK DISTRICT MASTER PLAN

The Livermore Area Recreation and Park District Master Plan establishes goals, policies and standards to guide the future of the District. The District encompasses 245 square miles, known as the Murray Township, stretching from the Contra Costa County border on the north to the Santa Clara County border to the south, and from the San Joaquin County line on the east to the City of Pleasanton and City of Dublin on the west. LARPD is responsible for developing and operating parks, recreation facilities and programs serving the Livermore area.

CITY OF LIVERMORE BIKEWAYS AND TRAILS MASTER PLAN

The Bikeways and Trails Master Plan provides a comprehensive and current set of policies, data and programs for pedestrian, equestrian and bicycle facility improvement and development within the City. The Plan sets goals, policies and action steps for the City, including an emphasis on network connectivity and design, planning and interagency coordination, support facilities, safety, education and promotion, maintenance and implementation.

**Response to Comment 7-10**

Adopted Policy Documents. The comment requests that the three relevant park plans be included in the consistency analysis of adopted plans and policies. In response, the following text is added to the impact discussion (page 3.1-30), per the Errata.

EAST BAY REGIONAL PARK DISTRICT MASTER PLAN

The East Bay Regional Park District Master Plan (1997) defines the vision and mission of the district and sets priorities through 2007. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact or impede on any EBRPD lands, utilize park resources, or affect planned trails.

LIVERMORE AREA RECREATION AND PARK DISTRICT MASTER PLAN

The Livermore Area Recreation and Park District Master Plan establishes goals, policies and standards to guide the future of the District. LARPD is responsible for developing and operating parks, recreation facilities and programs serving the

Livermore area. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact existing recreation facilities or impede planned trail systems.

CITY OF LIVERMORE BIKEWAYS AND TRAILS MASTER PLAN

The Bikeways and Trails Master Plan provides a comprehensive and current set of policies, data and programs for pedestrian, equestrian and bicycle facility improvement and development within the City. The Plan sets goals, policies and action steps for the City, including an emphasis on network connectivity and design, planning and interagency coordination, support facilities, safety, education and promotion, maintenance and implementation. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact existing or planned facilities. In fact, the project location and future employees may take advantage of existing and planned bikeways as an alternative to driving, consistent with the goals of the plan.

**Response to Comment 7-11**

Isabel Avenue PSR. The comment states that the project proponent should be required to pay for trail improvements and construction along Isabel Avenue. It is not possible to use a Project Study Report (PSR) as an instrument to require future developers to pay for trail improvements along the frontage of future Isabel Avenue. A PSR can be used to conceptually define the future elements within a transportation corridor—such as a trail. It is the responsibility of the City of Livermore, not the Oaks Business Park project, to plan for future trail improvements in other areas of the City. Please see previous responses regarding the extent of trail planning and implementation along Isabel Avenue.

**Response to Comment 7-12**

Iron Horse Trail. The comment suggests that the City should require the applicant to obtain off-site easements to connect this project to a regional trail to the south. The Iron Horse Trail is located on the south side of Stanley Boulevard. It is not practical, nor is it necessary based on significant environmental impacts, for the applicant to obtain off-site easements that would cross an arroyo, a railroad, and a major highway. However, the applicant proposes a signalized intersection on Isabel Avenue, which provides a direct connection to the existing trail on the east side of Isabel between Jack London Boulevard and Stanley Boulevard. An at-grade connection at this location will also be provided, subject to Caltrans approval.





Livermore Amador Valley Transit Authority

October 31, 2003

Mr. Paul Spence, Associate Planner  
Planning Department, Admin Bldg  
1052 Livermore Avenue  
Livermore, CA 94550-4899

RECEIVED

NOV - 5 2003

RE: Revised Draft EIR - Oaks Business Park

PLANNING DIVISION

Dear Mr. Spence/Paul:

Thank you for the opportunity to comment on the above referenced environmental impact report. This project would be located in the area southwest of the intersection of Isabel Avenue and Jack London Boulevard in Livermore, and would be of primarily light-industrial use on approximately 151 net acres. Most of the following comments were provided as part of the first draft EIR, but are nonetheless repeated for the record.

Current WHEELS bus service in the vicinity is provided by routes 10 and 12. Line 10 operates along Stanley Boulevard, south of the project area, between Lawrence Livermore National Laboratory and Stoneridge Mall. Line 12 operates on Airway Boulevard and Kitty Hawk Road with deviations through Airway Business Park, and runs between the Livermore Transit Center and the East Dublin/Pleasanton BART station (route 10 also serves BART along its route). Service is all day, seven days a week (six for route 12). As the specific project area in question continues to develop, reconfiguration of route 12 is a significant possibility. Therefore, LAVTA will have an interest in the facilitation of design elements that help promote efficient and safe transit access within and around the proposed Oaks Business Park area.

LAVTA's primary interest at this point as far as site design is concerned is that the internal roadway network has a high degree of connectivity (grid, as opposed to cul-de-sacs and offset intersections), while at the same time providing an environment that is pedestrian- and bicycle friendly (sidewalks, safe crosswalks, and moderate vehicular design speeds).

The draft EIR requests that two bus stops be provided as part of the proposed development; one internally and one on Jack London Boulevard. The natural location for the internal bus stop would be somewhere along the proposed Discovery Drive, a collector-type facility that would be aligned between the existing Isabel and Jack London roadways. One potential location could be on the north side of the road, west of Voyager Street (proposed). The Jack London Boulevard stop would likely best be located on the south side of the roadway, between Discovery Drive and Voyager Street. This way, future bus service (should it be justified based on LAVTA's system performance criteria) could either loop around clockwise through the area or - if and when Jack London Boulevard and Stoneridge Drive are extended to connect with one another - serve the business park via a trunk route from Livermore to Pleasanton through this area. These bus stop facilities should be outfitted, at a minimum, as stated in the EIR, ie "with handicapped-accessible landing pads and sidewalks for passengers, one low-maintenance/ high-longevity bench for each bus stop, marked as necessary with striping and a high-visibility sign...[and] shall be constructed in locations where no parallel parking is permitted..." (MM 3.3-7)

8-1

1362 Rutan Court, Suite 100 • Livermore, California 94550  
(925) 455-7555 • fax (925) 443-1375  
www.wheelsbus.com

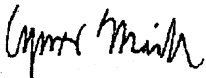
October 31, 2003

LAVTA also concurs with the EIR's proposed Transportation Demand Management (TDM) mitigation measures, which consist of – among other things – bus service to BART and incentives or subsidies to encourage the use of public transportation. It would also require on-site coordinators to provide information to employees and employers about carpooling, bicycling to work, ridesharing, guaranteed ride home programs, and alternative transportation (MM 3.3-8). These measures are also mentioned as necessary to mitigate long-term effects on air quality.

8-2

Your consulting with us on this project is highly appreciated. Thank you for allowing us to work with you to ensure that new developments include a safe, attractive infrastructure for users of public transportation in our community.

Sincerely,



Cyrus Sheik  
Transit Planner

## RESPONSES TO LETTER 8 – WHEELS, LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

### Response to Comment 8-1

Future Bus Service. The comment suggests locations for the two required bus stops and supports Mitigation Measure 3.3-7. As specified by the measure, bus stops shall be constructed consistent with all standards of the LAVTA. The City will consider the ultimate location of the stop(s) considering a number of factors including ultimate roadway design of Jack London Boulevard, pedestrian safety, and route improvements coordinated with LAVTA.

### Response to Comment 8-2

Future Bus Service. The comment supports the Transportation Demand Management mitigation measure (Mitigation Measure 3.3-8). Comment noted.

Allen Matkins Leck Gamble & Mallory LLP  
attorneys at law

Allen Matkins

333 Bush Street 17th Floor San Francisco California 94104-2806  
telephone. 415 837 1515 facsimile. 415 837 1516 www.allenmatkins.com

writer. Michael Patrick Durkee t. 415 273 7455  
file number. L5341-002/SD588963.01 e. mdurkee@allenmatkins.com

Letter 9

November 12, 2003

VIA FAX (925.960.4459)

Mr. Paul Spence  
City of Livermore, Planning Division  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

Re: *Comments Regarding Draft Revised Environmental Impact Report for  
the Oaks Business Park Project -- SCH #2001 032 -069*

Dear Mr. Spence:

On behalf of the Project applicant for the Oaks Business Park, thank you for this opportunity to comment on the Project's Draft Revised EIR. We appreciate the excellent job the City has done on the Draft Revised EIR, and believe it to be legally adequate; the Draft Revised EIR accurately analyzes the Project's impacts, provides appropriate avoidance and mitigation measures to reduce those impacts to a less-than-significant level, and sets forth a reasonable range of alternatives to the Project.

A. *Drainage Options.*

The Draft Revised EIR analyzes two alternative drainage systems that are available to serve the Project. These drainage options provide the City with the ability to consider the environmental effects of both drainage systems and to adopt the option that it believes appropriate, given potential future events. In particular, the City has done an excellent job in updating the analysis of the original drainage option proposed (the detention basin system) in the previously circulated Draft EIR. This update addresses and resolves the concerns raised in the comments received to that first Draft EIR. The second drainage option, the improvement of approximately 16.84 acres along the western boundary of the Property, is also accurately and appropriately analyzed in the Draft Revised EIR. Based on Zone 7's expressed interest to acquire this portion of the Project Site for the future rerouting of the Arroyo Mocho and regional drainage system, the Project applicant agreed to study the second drainage alternative in the Draft Revised EIR, in the event that an agreement was reached with Zone 7. Yet, by also updating and keeping the analysis of the original detention basin drainage system in the Draft Revised EIR, the Project applicant has studied the environmental impacts of a drainage system that will adequately serve the Property and Project Site if the Zone 7 regional project is never implemented. Assessing several design options for this aspect of a Project is appropriate under

9-1

San Francisco Century City Los Angeles Orange County San Diego

Mr. Paul Spence  
November 12, 2003  
Page 2

CEQA, and should remain in the Draft Revised EIR, regardless of the comments of others to the contrary. *See, City of Fremont v. San Francisco Bay Area Rapid Transit District*, 34 Cal. App. 4<sup>th</sup> 1780 (1995)(court upheld EIR that included an evaluation of four design options so that agency could adopt whatever option they ultimately could receive funding for).

9-1  
(cont.)

**B. Benefits of Project.**

In addition to furthering the objectives identified in Section 2.5 of the Draft Revised EIR, the Project provides benefits to the City by implementing many goals, objectives, actions and policies of the City's existing General Plan and proposed General Plan Update ("GP Update"):

1. The Project is consistent with the Low Intensity Industrial land use designation in the General Plan and GP Update and furthers the types of uses envisioned for this area, including professional and administrative offices, manufacturing, assembling, processing, and multi-tenant industrial uses. The GP Update emphasizes that low intensity industrial uses are to be focused around the Municipal Airport. (*See* GP Update: p. 3-19; Goal CIR-8, Policy 2.) The General Plan and GP Update articulate several policies regarding industrial land uses, including the reservation of sufficient space and a variety of locations for industrial uses, the development of an industrial community, and the development of industrial uses in conformity with design principles and performance standards. (*See* General Plan, section III, D, 2, (g), (3); *see also* GP Update: Objective LU-4.3, Policies 1-3; Goal CC-2.)

9-2

The Project implements the General Plan and GP Update regarding the need for industrial uses within the community and provides a new, well-sited and designed development for such uses. The Project maintains the focus of office and light industrial uses required by the existing I-2 zone, and consistent with that, is being zoned to PD-1 to provide a mix of office and light industrial uses intended to attract a variety of large and small businesses. The GP Update encourages the use of the planned development concept. (*See* GP Update, Goal LU-1, Policy 4.) Additionally, the Project includes Design Guidelines to provide consistent, high-quality and attractive development standards for architectural plans, landscaping, signage, design quality and site planning.

2. The General Plan notes that one-half of the Livermore community commutes out of the area, contributing to a host of problems, including an unbalanced community with a lack of commercial and industrial uses and higher wage jobs, traffic congestion, and minimal local employment opportunities. (*See* General Plan, sections III, B, 1, 2 a-b & f (4), 3 a-e; *see also* GP Update: pp. 5-7 – 5-8; Goal ED-1, Action 5; Goal ED-2, Policies 1-2; Goal OSC-6, Policy 5.) The Project helps to satisfy the goals of controlled and balanced population growth while strengthening the community's economic base. Specifically, the Project provides for a business

9-3

Mr. Paul Spence  
November 12, 2003  
Page 3

park with a mix of office and light industrial uses, including manufacturing, assembly, warehouse and distribution facilities, research and development use, professional and administrative office space, and limited business-supporting commercial uses. As a result, while the Project does create more vehicular activity in the immediate area, it also allows businesses to locate in Livermore, providing local employment opportunities and reducing commuting for City residents and associated regional traffic congestion. In addition, by injecting commercial and light industrial economic activity to Livermore, the Project builds a more balanced, economically diverse and self-sufficient community.

9-3  
(cont.)

3. An important goal of the General Plan and GP Update is to avoid urban sprawl by preventing unbalanced residential growth and development unsupported by public services. (See General Plan, III, D & F; see also GP Update: Goal LU-2, Policy 3; Objective INF-1.1, Action 8; Objective INF-1.2, Policy 2; Objective INF-2.1, Policies 3, 5, & 10; Objective INF-3.2, Policy 1.) In particular, the General Plan and GP Update call for the filling in of neighborhoods where development has been scattered or fragmented and encouraging further contiguous neighborhood development. (See General Plan, III, D, 2, a-d & f; see also GP Update, Objective LU-1.1.) The General Plan also highlights the need for phased expansion so as to ensure adequate provision of services such as water, sewage, storm drainage and roadway infrastructure. (See General Plan, III, F, 1.)

The Project helps to reduce urban sprawl on a number of levels. First, it provides light industrial and office uses currently lacking in Livermore and consequently, helps to create a more balanced and self-sufficient community. Also, the Project Site is located in the proximity of the Livermore Municipal Airport which is unsuitable for other types of development and thereby satisfies the goal of filling in undeveloped areas previously passed over, rather than developing outlying areas and expanding the boundaries of urban sprawl.

9-4

As for the need to ensure the provision of adequate public services, the Project includes and is conditioned upon on-site and off-site improvements, including the development of roadways, water, sewer and storm drain services. The Project also includes improvements to the power and telecommunications infrastructure in the Project area.

As noted in the Draft Revised EIR, necessary services are available to service the Project. However, in the event the Project is completed prior to Livermore's Capital Improvement Program for wastewater system improvements, the Project applicant will provide the necessary improvements to the Project area's wastewater system. If the Project is completed after the Capital Improvement Program is implemented, the Project applicant will pay appropriate sewer connection fees to the City.

Allen Matkins Leck Gamble & Mallory LLP  
attorneys at law

Mr. Paul Spence  
November 12, 2003  
Page 4

Furthermore, the Project will be constructed in four phases over a period of several years and will include approximately 60 percent office space and 40 percent industrial space to limit the square footage developed on-site based upon a maximum number of average daily vehicle trips evaluated in the EIR. The ratio of office and industrial uses is not fixed, however, so as to allow for the increase in industrial space which generates fewer vehicle trips per square foot. This planning strategy will aid in controlling the Project's traffic congestion and air pollution impacts. Finally, the Project includes the preparation of a Transportation Demand Management program to reduce peak hour traffic volumes, reduce air pollution and provide for features such as shuttle services to BART, incentives and subsidies to use public transportation, and policies to encourage the use of carpooling, ride sharing and bicycle transportation. (See GP Update, Objective CIR-1.1, Policy 2.)

9-4  
(cont.)

Finally, although the Project will generate the need for housing as identified in the Revised Draft EIR, there is existing housing provided for pursuant to both the General Plan and GP Update to mitigate any impacts the Project may have on housing in the City.

4. The General Plan and GP Update also contain proposed policies to govern business and commercial park construction, including their location along major streets and in the vicinity of freeway interchanges and their inclusion of a mix of office and light industrial uses. (See General Plan, IV, B, 2, g; see also GP Update: Objective LU-1.4, Policy 7; Objective CIR-1.1, Policy 3.)

The Project satisfies these goals through the planning and development process dictated by the Planned Development District, Design Guidelines and Development Agreement. The intended mix of uses and Project characteristics including site planning and high-quality design are discussed above. In addition, the Project area is located along major thoroughways, with access to both Jack London Boulevard and Isabel Avenue (future State Highway 84), and is located in close proximity to I-580 and the future interchange with Isabel Avenue.

9-5

Mr. Paul Spence  
November 12, 2003  
Page 5

5. The General Plan and GP Update call for the protection of the Livermore Municipal Airport from encroaching incompatible uses by encouraging compatible land uses such as light industrial in the airport's immediate vicinity. (See General Plan, III, D, 2, g, (5), (a); IV, B, 3; see also GP Update, Objective LU-4.4, Policy 1.) The Project is located immediately south of the Livermore Municipal Airport, across Jack London Boulevard and provides the light industrial use called for in the General Plan and GP Update. As a result, the Project serves as a buffer between the airport and the residential community located east of the Project area across Isabel Avenue.

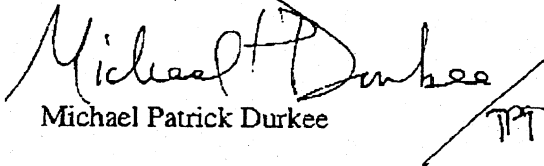
9-6

In short, this Project implements the City's vision for development of this area, as reflected in its General Plan, GP Update, and related land use regulations.

□ □ □ □ □

Again, thank you for this opportunity to comment.

Respectfully submitted,

  
Michael Patrick Durkee

MPD



## **RESPONSES TO LETTER 9 – ALLEN, MATKINS, LECK, GAMBLE & MALLORY**

### **Response to Comment 9-1**

Drainage Options. The comment supports the inclusion and analysis of both drainage options in the RDEIR. Comment noted.

### **Response to Comment 9-2**

Project Benefits and Consistency with General Plan Designation. The comment highlights the project's consistency with both the existing General Plan, as well as the General Plan Update. Comments noted.

### **Response to Comment 9-3**

Balancing Uses in the Community. The comment notes that the project adds a mix of light industrial and office uses that will help reduce commuting out of the City. Comment noted.

### **Response to Comment 9-4**

Preventing Unbalance Residential Growth. The comment notes that the project helps to reduce urban sprawl, will provide all necessary public services, and mitigate traffic impacts. Comment noted.

### **Response to Comment 9-5**

Business Park Development. The comment notes several ways that the project is consistent with City policies that govern business and commercial park development. Comment noted.

### **Response to Comment 9-6**

Buffer Between Airport and Residences. The comment suggests that the project will serve as a buffer between the airport and the residential community located east of the project site, and that the project is a compatible adjacent use to the existing airport. Comment noted.

**Spence, Paul**

**Letter 10**

**From:** Barbara [Barbara@Hickman.net]  
**Sent:** Friday, October 24, 2003 10:45 AM  
**To:** Spence, Paul  
**Subject:** Comment on the RDEIR for ...  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Re: Vesting Tentative Tract Map 7300 (Subdivision 01-004), Planned Development Industrial 01-003, and Development Agreement 02-002**

**Hi Paul -**

My concern centers around the Air Quality, as described on page 5 of the staff report for the Planning Commission meeting of October 21, 2003: "...the project...is...considered to create significant unavoidable air quality impacts."

Since our air quality is already usually bad, and predicted to get worse, with no mitigation available, I question whether any benefits could outweigh this strong negative. The health of residents, particularly children and elderly, would be put at greater risk. What can be worth that?

The loss of Visual Resources is a lesser concern, although still noteworthy. While, like the residents of the area, I would like to see this section remain open or parkland, I suspect that argument is less effective. Still, I would support it.

**Barbara Hickman**

~ ~ ~ ~ ~

(925) 447-2052  
Barbara@Hickman.net  
www.barbara.hickman.net

10-1

10-2

## **RESPONSES TO LETTER 10 – BARBARA HICKMAN**

### **Response to Comment 10-1**

Unavoidable Air Quality Impacts. The City of Livermore is requiring implementation of specific mitigation measures as identified within the RDEIR. Specifically, the RDEIR requires detailed dust control measures, as well as implementation of a Transportation Demand Management program that will reduce vehicle trips (and therefore pollutant emissions) by a factor of 5 to 15 percent. These measures represent the feasible options available to the City and the developer, although the measures will not completely eliminate the project's contribution to regional air quality problems.

If the project is approved, the City of Livermore will need to adopt specific findings and overriding considerations documenting the reasons why the benefits of the project outweigh the unavoidable cumulative air quality impacts. These findings are part of the project approval process, and not the subject of the RDEIR.

### **Response to Comment 10-2**

Visual Resources. Comments regarding visual resources and support for parkland in the location are noted for the record.

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

*A Professional Corporation*

November 6, 2003

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Writer's Information:

Richard C. Jacobs  
Direct: 415.765.4690  
[rjacobs@howardrice.com](mailto:rjacobs@howardrice.com)

**Letter 11**

**BY FEDERAL EXPRESS**

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

Re: Draft Revised Environmental Impact Report for  
the Oaks Business Park: SCH #2001032069

Dear Mr. Spence:

We write on behalf of Rhodes & Jamieson, LLC, Pleasanton Gravel Company, Rancho del Charro, and Douglas Jamieson, with regard to the draft revised environmental impact report ("draft" or "RDEIR") for the proposed Oaks Business Park.

By letter dated October 11, 2002, these parties submitted extensive comments and evidentiary material expressing their concerns about flooding in the Arroyo Mocho and Arroyo Las Positas. Those comments documented the extensive flooding that occurred in 1998 from the Arroyo Mocho and the fact that the Arroyo Mocho cannot provide sufficient carrying capacity for even existing drainage into it. As we then noted, the 1998 flooding essentially shut down Stanley Boulevard for a lengthy period of time, affected railway operations on the rail line along Stanley, and impacted private properties and gravel mining throughout the area. The same risk of serious and extensive flooding remains today and, indeed, it now may even be greater than before.

As we also documented, the only possible long-term solution for this continuing risk of flooding would be a relocation of the Arroyo Mocho using a configuration that would include a site along the southern and western boundaries of the project site.

11-1

11-2

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
November 6, 2003  
Page 2

CalMat Co., dba Vulcan Materials Company, Western Division ("Vulcan") submitted to you by letter dated October 20, 2003, a contract between the developer of the proposed Oaks Business Park and Zone 7 of the Alameda County Flood Control and Water Conservation District ("Zone 7"). This contract obligates the developer, if the project receives all necessary entitlements and proceeds with the proposed project, to improve and pay for a diversion channel along the western boundary of the property which then could become an integral portion of a new relocated Arroyo Mocho.

The RDEIR discusses this diversion channel as Option A for a drainage system for the proposed project. As it notes:

"The first alternative, Option 'A', involves the improvement of approximately 16.84 acres along the western boundary of the Property as a detention basin. Zone 7 has agreed to acquire this portion of the property for the future rerouting of the Arroyo Mocho and regional drainage system. Based on Zone 7's agreement to acquire the property, the project applicant has agreed to include this drainage alternative. . . .

Option A is designed based upon construction of a 220-foot wide lined detention basin along the western property line to be owned by Zone 7. Maintenance of the detention basin will be provided through a landscape maintenance district or other funding mechanism. Zone 7 will reserve the right to convert the detention basin in the future into a portion of the Arroyo Mocho Bypass Channel . . . Upon conversion of the detention basin to a channel, Zone 7 would assume the maintenance responsibilities for the channel area." (RDEIR at 3.7-23)

The RDEIR further reports that that "[a]ll storm drainage from the project site, including drainage from the portion of the site that drains to the Arroyo Mocho, will be directed to the detention basin that will be constructed along the western property boundary within the possible future bypass channel," that the detention basin "will be lined with an impermeable membrane to prevent percolation of the storm water into the groundwater basin," and that this is proposed "in order to eliminate any storm water infiltration into the neighboring quarry." RDEIR at 3.7-23. Finally, the RDEIR reports that the outlet from the basin will be a 24-inch pipe that will allow regulated flows into the storm drain system in West Jack London Boulevard (RDEIR at 3.7-24) and that accordingly Option A "eliminates all flows from the project from draining to the Arroyo Mocho." RDEIR at 3.7-25.

11-2  
(cont.)

Option A is, therefore, an important part of the necessary overall solution to the continuing risk of serious and extensive flooding in the area and a clear step forward towards a relocated Arroyo Mocho.

11-2  
(cont.)

In light of that fact, it is not at all clear why the RDEIR includes a further option, "Option B," relating to site drainage. This option proposes two on-site detention basins, totaling 5.24 acres in size, one located near the northwest corner of the property and the second at the southern perimeter. This text of the RDEIR analyzing this option concludes that there would be no impact to the Arroyo Mocho in the event of 15 and 100 year storms if drainage from the project site is handled using Option B.

This conclusion is seriously flawed for a number of the same reasons articulated in our original letter. In particular, the RDEIR's analysis improperly assumes the full carrying capacity of the Arroyo Mocho while, in fact, significant siltation and increased plant growth over time have significantly reduced that capacity. (See October 11, 2002 letter, at pages 2-3). Moreover, the discussion of Option B fails to address the fact that the western portion of the southern watershed of the property cannot drain into a detention basin as shown on Figure 3.7-1D, because the existing ground along the southern side of the property drops in elevation about 17 feet from the east to the west, and there is no discussion of either the grading that would be necessary to level the site or any pumping that would otherwise be required. (See October 11, 2002 letter at page 4). Likewise, the RDEIR improperly assumes that water from the southern basin "will connect to a 24" pipe that will be constructed to the southeast corner of the project and then routed to the Arroyo Mocho" (RDEIR at 3.7-28), even though this proposal would have water from the basin flowing *uphill*.

11-3

Moreover, even beyond these inadequacies in the discussion of Option B, the RDEIR concedes that "[i]mplementation of the project would contribute to cumulative drainage flows and surface water quality impacts from regional growth and development." (RDEIR at 3.7-34 and 5-7).<sup>1</sup>

11-4

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<sup>1</sup>The RDEIR claims that this cumulative surface runoff and greater runoff contamination would be mitigated to a less than significant level with "implementation of mitigation measures MM 3.7-2a through MM 3.7-2g and MM 3.7-3a. This claim is clearly in error, since those mitigation measures address only surface water quality impacts. They do not address cumulative surface runoff and cumulatively increased flows into the Arroyo Mocho in any way.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
November 6, 2003  
Page 4

Under CEQA, the City must adopt all feasible mitigation measures and/or alternatives to minimize or eliminate significant environmental impacts associated with the project. Public Resources Code §21002. As our Supreme Court has emphasized, “[u]nder CEQA a public agency must . . . consider measures that might mitigate a project’s adverse environmental impact, and adopt them if feasible.” *Mountain Lion Foundation v. Fish & Game Commission*, 16 Cal. 4th 105, 124 (1997). As pertinent here, the Court also emphasized “CEQA’s substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures.” *Id.* at 134.

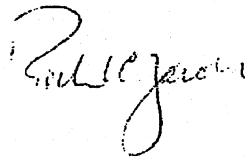
11-4

Here, Option A is admittedly feasible. Under CEQA, the City is therefore legally obligated to select that Option, rather than Option B with its cumulative adverse drainage impacts.

These commenting parties accordingly request that Option B be deleted from the RDEIR and not included in the final EIR, and that the City condition any approval of the project to require Option A and its construction and dedication requirements as specified in the contract between the developer and Zone 7. If the City so acts, these parties no longer oppose the project. If this is not done, these parties remain opposed to the project and reiterate each of their previous comments as set forth in their October 11, 2002 letter.

11-5

Yours very truly,



RICHARD C. JACOBS

cc: Douglas Jamieson  
Zone 7  
Michael P. Durkee, Esq.  
David L. Preiss, Esq.  
Thomas A. Larsen, Esq.

WD 110603/1-1438501/1:13052/v1

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**BY FEDERAL EXPRESS**

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Associate Planner, Planning Division  
City of Livermore  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

Re: Draft Environmental Impact Report for the  
Oaks Business Park: SCH #2001032069

Dear Mr. Spence:

We write on behalf of Rhodes & Jamieson, LLC, Pleasanton Gravel Company, Rancho del Charro, and Douglas Jamieson, with regard to the draft environmental impact report ("draft" or "DEIR") for the proposed Oaks Business Park.

In our view, the draft is seriously deficient, fails to satisfy mandatory requirements of the California Environmental Quality Act ("CEQA"), and cannot legally be certified by the City of Livermore. Without significant changes in both the draft and the project, neither the draft nor the project can be legally approved under California law.

We submit the following comments on the draft, and request that the City respond to each of them in writing:

1. Because of our very significant concerns about flooding in the Arroyo Mocho and Arroyo Las Positas, we retained Mattern & Associates, consulting civil engineers, to analyze the drainage issues involving the project. A copy of David Mattern's resume is attached hereto as Exhibit A demonstrating his qualifications. A copy of one of Mr. Mattern's reports on drainage issues is attached hereto as Exhibit B.



2. The hydrology portion of the draft is significantly flawed for at least the following reasons:

A. As demonstrated by the flooding that occurred in 1998, the Arroyo Mocho will not provide sufficient carrying capacity for even existing drainage into it. We have attached a series of fifteen photographs taken of that 1998 flooding as Exhibit C showing the extensive damage. This flooding essentially shut down Stanley Boulevard for a lengthy period of time, affected railway operations on the rail line along Stanley, impacted private property, and affected mining operations throughout the area. If another flood shuts down mining operations at the Vulcan facility, damages would easily exceed \$25,000 per day.

11-6

B. The only possible long-term solution that will address flooding concerns and the Arroyo Mocho and this project is a relocation of the Arroyo Mocho along the southern and western boundaries of the project site. This project should not be approved without, at the very minimum, conditions that require such a relocation and dedication by the project proponent of the areas necessary for it, and the formation of an assessment district imposing charges on parcel owners in the project so that money will be available for long-term maintenance and operation of the relocated Arroyo Mocho by Zone 7. If these conditions are not required, both the City and Zone 7 will have lost forever the only possible long-term solution to the significant flooding issues.

11-7

C. The drainage plan for the project is wholly unsatisfactory and cannot be accepted by the City of Livermore for at least the following reasons:

1. A dry arroyo roughly bisects the property and is shown on Figures 3.7-1B and 3.9-1 of the draft. As demonstrated and documented in the draft, this arroyo is depressed for up to five feet or more below the surrounding ground level, does not receive any flow from outside the site, and has no outlet. As a result, rainfall and drainage from the site into the arroyo tends to remain there until it percolates into the ground, and thus does not run into either the Arroyo Mocho or the Arroyo las Positas. The dry arroyo therefore acts as a natural retention area. This entire area will be altered and paved over under the proposed project plans, and thus will no longer serve as such a natural retention area.

11-8

Using the topographic maps included in the DEIR, our retained hydrological firm has estimated that only 35.8 acres of the southern watershed (60% of the total southern watershed area of 59 acres) contributes runoff under existing conditions to the

Arroyo Mocho. However, the Storm Drainage Study on which the DEIR's drainage analysis relies improperly assumes that the *entire* southern watershed drains to the Arroyo Mocho under existing conditions.

In order to correctly reflect the effect of the dry arroyo area, the existing flows to the Arroyo Mocho as reported in the study and the DEIR must therefore be reduced from 6.34 cfs to 3.8 cfs for the 10-year flow, and from 9.41 to 5.7 cfs for the 100-year flow.

The DEIR attempts to provide a drainage system that results in a "no increase" project flow to the Arroyo Mocho, and it therefore reports at page 3.7-16 that the flows from the project will be reduced to 6.34 cfs for the 10-year flow and 9.41 cfs for the 100-year flow. As noted, this is not sufficient. Because of the failure of the Study and the DEIR to correctly reflect the effect of the dry arroyo area, particularly the loss of the retention capacity of that area that will occur under project conditions, the areas of the proposed detention ponds must be significantly *increased*, in order to address the actual flows that will occur when the project is built. The current proposed ponds are undersized by at least 40%, because in fact they will not reduce flows into the Arroyo Mocho to 3.8 cfs for the 10-year flow and 5.7 cfs for the 100-year flow. The project as currently designed will thus actually result in increased storm flows to the Arroyo Mocho beyond pre-project conditions, and thus dramatically increase flooding and flooding damage in the Arroyo and surrounding areas.

2. Both the Study and the DEIR assume a certain carrying capacity for the Arroyo Mocho. However, the DEIR does not disclose the assumptions that were used in calculating that carrying capacity, and it does not reveal when that capacity was determined. The failure to publicly disclose those assumptions so that they can be evaluated by interested parties is a major defect in the DEIR because it prevents informed public participation and comment, as well as informed decision making.

This is an important issue, because in fact there has been increased siltation over time in the Arroyo Mocho, and increased plant growth—both of which reduce carrying capacity. We have confirmed with Zone 7 that the "planned development flows for Arroyo Mocho obtained from Zone 7" and the 100-year FEMA design flow to which the draft refers at page 3.7-9 and on which the drainage analyses rely are based on a 1966 Zone 7 analysis that does not take into account increased the significant siltation and increased plant growth that have occurred since then. The assumptions used for the drainage analyses are thus significantly flawed.

11-8  
(cont.)

11-9

Most importantly, we have also confirmed with Zone 7 that it believes that neither the United States Fish & Wildlife Service nor the California Department of Fish and Game would approve any necessary permits to eliminate the siltation and plant growth that has occurred over time and to restore the Arroyo Mocho to the flows that were calculated in 1966.

11-9  
(cont.)

As a result, the hydrology study and the analyses in the draft significantly overestimate the actual carrying capacity of the Arroyo Mocho and are flawed for this additional reason.

3. Further, the Storm Drainage Study on which the draft is based evaluates a concept with a detention pond at the southwest corner of the proposed site, and assumes a free flowing outlet.

However, the 100-year water surface in the Arroyo Mocho at Jamieson Bridge is estimated in the Study at 400 feet—higher than the peak water surface in the detention pond of 399.4 feet. The detention pond outlet would therefore be non-functional during high flows in the Arroyo Mocho. This would result in significant drainage and damage to the Pleasanton Gravel Company property immediately south of the site and to related Vulcan gravel extraction operations, during high water flows in the Arroyo Mocho, as well as to other areas.

11-10

4. The draft does not include the same detention pond for the southern watershed area that was analyzed in the background Study on which the draft is based. Instead, the draft identifies a revised location for the southern detention pond along the middle portion of the southern property line, rather than the one included in the Study that was located in the southwest corner of the site. The draft also indicates that discharge from the pond would be to the southeast corner of the site, rather than to the southwest, as the project's engineers had proposed in their Study.

11-11

The western portion of the southern watershed cannot drain into the detention pond at the location identified in the DEIR, and the pond itself cannot discharge to the east, because the existing ground along the southern side of the property drops in elevation about 17 feet from the east to the west. Water doesn't naturally flow uphill, and there is no pumping proposed in the draft

11-12

This is yet another reason why the draft is manifestly inadequate.

5. The proposed detention ponds are intended to be sized to reduce the 100-year flows to existing levels. However, the storm drains for the project reported in the draft would be sized to carry only a 10-year flow. There is no indication how the remainder of any 100-year flow would be conveyed to the detention ponds.

This is a major issue, because if the 100-year flows are not properly conveyed to the detention ponds and escape beyond the project site, they will cause damage to Pleasanton Gravel Company's property, to Vulcan gravel mining operations, to other properties, or to downstream areas along Arroyo Mocho or Arroyo las Positas.

11-13

6. The proposed detention pond for the southern watershed would be unlined, which would allow stormwater to percolate into the highly porous ground at that location. The higher rate of percolation at that location, as compared with existing conditions, would cause damage to other properties, including mining operations on Pleasanton Gravel Company's adjacent land. This will violate the applicant's legal obligations as a landowner to neighboring property owners, since it will change existing flows and concentrate them instead at a single location where they will significantly affect Pleasanton Gravel Company. The City's approval of such a plan that will inevitably damage Pleasanton Gravel Company's rights will also subject the City to liability for that damage.

11-14

7. There are many other very significant issues concerning this proposed project, and numerous deficiencies in the DEIR. Given the past flooding in the area, however, the significant flaws in the proposed drainage system have to be a significant concern for all those in the area and the City of Livermore.

8. Finally, litigation over this issue is almost certain if not addressed in a way that involves the long-term Arroyo Mocho issues and avoids the massive impacts on neighbors and the public that new flooding would involve. Any such litigation would impose significant liability on not only the applicant, but the City, for repeatedly ignoring the long-term risks of continuing to discharge to the Arroyo Mocho under current circumstances.

3. Attached as Exhibit D is a copy of the 1990 Development Agreement between the City of Livermore and the former owner of the property for an earlier proposed development on the project site. The requirements of that Agreement are inconsistent in several very important aspects with what is now being proposed for the

11-15

Oaks Business Park project, and they demonstrate that what the draft now proposes would ignore what the City has recognized as long-term problems with and policies respecting the Arroyo Mocho.

First, at page 11 the Agreement required the prior developer to develop a storm drainage plan that included an evaluation of "the existing conditions of the downstream receiving facilities." By contrast, there is no evaluation in the current draft of the "existing conditions" of the Arroyo Mocho, and as discussed above the draft simply relies on the outdated 1966 calculation of the then-carrying capacity of the Arroyo. The City obviously was concerned in 1990 with that issue, and the Arroyo Mocho is even less able to carry flows now.

11-15  
(cont.)

Second, at page 12 the Agreement explicitly required the prior developer to modify and improve the Arroyo Mocho:

"The Arroyo Mocho Channel shall be modified and improved as necessary down to El Charro Road to handle the additional flows created by this development without causing flooding over and above the condition that currently exists."

11-16

As discussed above, the drainage analysis in the draft is flawed, and the proposed project will in fact create additional flows to the Arroyo beyond current conditions. A similar condition, or one requiring dedication of land for a relocated Arroyo Mocho, is therefore appropriate for this project.

Third, at page 13 the Agreement also obligated the developer to "dedicate all necessary right-of-way for Arroyo Las Positas and Arroyo Mocho Channel improvements that may be required west of property." Again, a similar condition requiring dedication of land for a relocated Arroyo Mocho along the southern and western boundaries of the project site is therefore appropriate. The City similarly specified that it would not "unreasonably deny permission for development of facilities across City property," thus providing for a relocated Arroyo Mocho that would continue to the Arroyo Las Positas. The City should be doing so, and should be taking a long-term view and offering a long-term solution to flooding in this area.

11-17

4. The proposed action is also inconsistent with prior City actions regarding the Arroyo Mocho for yet another reason. Attached as Exhibit E is the final EIR on the City's "Regional (Major Projects) Component of the Traffic Impact Fee Program." In a

11-18

response to a comment submitted by Pleasanton Gravel Company, the City reported that “depending on the nature of project-specific effects associated with widening of Isabel Parkway and the cumulative effects of all new development within the Arroyo Mocho watershed, a cumulative, or ‘global’ solution may be needed for this area.” That observation remains true today, and the City should therefore require the developer to participate in that global solution as detailed in these comments.

11-18  
(cont.)

Exhibit E also includes a letter written in 1992 by counsel for Pleasanton Gravel documenting a discussion between Pleasanton Gravel and the City and the reasons for dismissing a lawsuit that Pleasanton Gravel had filed against the City. As the letter documents, even in 1992 the City committed that it “would press Zone 7 to commence a program which would address the improvement of the Arroyo Mocho through the property” of Pleasanton Gravel. Even then, Pleasanton Gravel noted that the City’s failure to address the inability of the Arroyo Mocho to handle even then-existing flows would subject the City to liability “in the millions to their property and operations . . . .” Notwithstanding the City’s commitment, that has never occurred, and now the draft proposes to pour even more water into the Arroyo Mocho from the project site without addressing its improvement.

11-19

The only apparent long-term solution to flooding of the Arroyo Mocho and the additional concerns that this project raises is relocation of the Arroyo Mocho, with long-term operation and maintenance by Zone 7 funded by the assessment district discussed above.

5. The proposed detention basin at the southern edge of the property is unlined, and page 3.7-14 states that it would allow stormwater to percolate into the ground at this location. Page 3.7-20 further states that the “southern basin will allow natural infiltration of storm water . . . .” The higher rate of percolation at this location, as compared with existing conditions, would have an adverse impact on nearby property owners including Pleasanton Gravel Company, the immediately adjacent owner. This impact is not reflected in the draft, even though a standard of significance requires analysis of any significant alternation of the direction or volume of surface flows. Please provide that analysis as part of the draft, and recirculate the draft as required by CEQA for further public review and comment.

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6. Any such percolation will also limit and damage Pleasanton Gravel Company’s ability to use the adjacent property for gravel extraction. Any such percolation may thus subject both the property owner and the City to liability. The

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impact on potential gravel operations is also an impact that must be, but is not, analyzed in the EIR.

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(cont.)

7. The draft does not include any requirement for continued operation or maintenance of the detention ponds. Without any such requirement, the ponds will over time silt up and lose effectiveness.

11-22

8. As noted, the proposed detention basin at the southern edge of the property is unlined. This necessarily means that any urban pollutants remaining in flow from the site will be concentrated in that basin and will percolate over time to adjacent properties, including that of Pleasanton Gravel. This contamination may subject both the property owner, owners of the sites in the proposed business park, and the City, to liability.

11-23

9. For all of the reasons stated in these comments, approval of the project will likely result in the loss of gravel extraction opportunities, not only on the adjacent Pleasanton Gravel Company site, but further away because of flooding issues. Page 3.8-9 recognizes that a "loss of availability of a known mineral resources that would be available to the region and the residents of the state," but this impact is not recognized in the draft. Please revise the draft accordingly and recirculate it for public review and comment.

11-24

10. The draft includes a letter dated April 5, 2001 from Zone 7 that reports that the south boundary of the site is adjacent to a future Chain-of-Lakes facility. Although this is correct, the increased flooding from the project, as well as the increased infiltration that the southern detention pond will cause, will likely eliminate the ability of Pleasanton Gravel Company to mine the site. Unless mining is completed, the Pleasanton Gravel Company site will not and cannot be used as District 7 envisions. As a result, Zone 7 will not have that site "for management of its water supply for additional local water storage, groundwater replenishment, potential storage for recycled water, and flood control diversion." The draft therefore must evaluate the potential loss of these facilities as a result of the proposed project and its impacts.

11-25

11. The letter dated April 5, 2001 from Zone 7 also asks the City to require the project applicant to dedicate an easement on the project site along with southern and western edges for a relocated Arroyo Mocho. The City should do this, in the event that it

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decides to approve the project, and should also require the establishment of an assessment district under which owners of parcels at the site would provide funds to Zone 7 for the maintenance and operation of the relocated Arroyo.

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(cont.)

12. The draft recognizes that at buildout the project would attract between 5,000 and 10,000 new employees to the area. However, it fails to analyze the impacts of the housing and services that these new employees would require. 10,000 new employees will require a significant amount of new housing. The single paragraph at page 6-3 touching on this issue doesn't provide an adequate analysis and simply reports conclusions without facts and necessary evidentiary support. In addition, the conclusion that housing demand "may be absorbed" in Livermore is insufficient because it is simply speculation rather than analysis, and the Ruby Hills development is likely to be high-end housing and beyond the means of employees who would work at the site. Please provide an appropriate analysis, and analyze the impacts of providing the necessary housing for this very large number of new jobs.

11-27

13. Page 3.11-21 specifies that 85% of the water delivered to the site will be reclaimed wastewater that will be used for landscape irrigation purposes. The draft also notes that the site is over the main groundwater basin used by Zone 7 for potable water, but the draft never discusses the impacts of using reclaimed wastewater on the site under such circumstances. The draft includes the letter from Zone 7, which notes that there will be at least salt impacts associated with such use, as well as others. The draft is inadequate without this evaluation of the potential impacts to the area's drinking water supply. This issue is especially important since the project area includes substantial gravel deposits and the subsurface is especially porous and permeable.

11-28

14. CEQA requires that a draft define the entirety of the proposed project, and then analyze that entire project. The draft does not do so because a proposed extension of Jack London Boulevard is part of the project. The draft fails to identify this portion of the project, and it fails to analyze the environmental impacts of that part.

That an extension of Jack London Boulevard is part of the project is apparent from several aspects of the draft. First, Figure 3.7-1c shows drainage pipelines necessary to serve the project being placed along a future alignment of Jack London. Second, page 2-34 explicitly specifies that the "proposed storm drain will run approximately 3,300-feet within the *future right of way of West Jack London Boulevard along the border of the northern parcel of the Pleasanton Gravel Company . . .*" (Emphasis added.) That page further specifies that the storm drain system will then make a 90-degree turn to the north,

11-29



Paul Spence  
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City of Livermore  
October 11, 2002  
Page 10

and then run along an adjacent access road for approximately 700 feet. Third, Figure 3.1-3 explicitly shows the alignment of the "future west Jack London Blvd." Fourth, page 3.3-2 reports that the "Jack London Boulevard/Stoneridge Drive extension will constitute a major east-west arterial connecting the cities of Livermore and Pleasanton and will provide relief and support to I-580," and will "have four to six lanes." In addition, the traffic analysis at page 3.3-21 explicitly states that in 2025 17% of the project's traffic will travel to and from the site from the west "via Jack London Boulevard." Likewise, the traffic analysis is expressly based on the assumption that in 2025 "the Jack London connection with El Charro Road in Pleasanton" will be included "in the roadway network." See page 3.3-20. Other portions also indicate such a future expansion. The draft therefore must be completely revised to include this extension in the project description, the impacts of that new roadway must be analyzed, and the draft must be recirculated as required by CEQA for public review and comment.

11-29  
(cont.)

15. The draft fails to identify the entirety of the project for another reason. Page S-1 specifies that the project includes a number of off-site improvements, including a widening of Jack London Boulevard. This widening is demonstrated in Figure 2-6A as being very significant. Figure 3.7-1C shows the drainage pipelines necessary to serve the project being placed along an alignment of Jack London, and in this widening. It also shows property owned by Pleasanton Gravel company as being "42.5" acres. In fact, however, the property is 52 acres. This information thus indicates that the City intends to condemn at least 10 acres of private property for the project, but that fact is not disclosed in either the project description or the draft. Ten acres of this property is valued by the owner to be at least \$300,000 per acre, and taking 10 acres probably is tantamount to taking all 52 acres with a value of over \$17 million. The additional cost of this necessary property for the project thus may be as little as \$3,000,000, and as much as \$17,000,000. These facts are not disclosed, and they must be taken into account as part of the City's process of considering the entire proposed project.

11-30

16. For the reasons specified above, the draft is for all legal purposes an announcement of intent to condemn that, if certified by the City, will subject the City to financial liability for the property to be taken.

17. The draft, at page S-1, also specifies that "[a] public right-of-way dedication will be established for the expansion of W. Jack London Boulevard . . ." See also pp. 2-1 and 2-9. However, the expansion and extension of Jack London that this dedication envisions is also not analyzed in the draft, and the environmental impacts of any such extension/expansion as part of the project are not described.

11-31

18. None of the "off site improvements" identified as necessary for the project are included in the description of the project at page 2-9 and at page S-1. The draft therefore fails to use a stable and precise project description, as required by CEQA. The failure of the draft to fully identify the "off site improvements" as part of the project, and to analyze their environmental implications, necessarily means that the draft violates CEQA. Just as one example, the EIR assumes that Isabel Avenue will be expanded to at least six lanes in order to serve the project, but the environmental impacts of this expansion (including even more drainage into the Arroyo Mocho) are completely ignored. The draft must be revised to specifically define these off-site improvements and analyze their environmental implications. Please do so, and recirculate the draft for further public review and comment as required by CEQA.

11-32

As noted at other places in these comments, the draft also assumes that a very large number of highway and roadway improvements will be made by the year 2025 and that these unbuilt improvements will therefore be available to serve the project. CEQA case law specifies, however, that if such assumptions are made the assumed improvements themselves then become part of the project and the environmental implications of the construction and use of those improvements themselves must be analyzed as part of the EIR. The draft does not do so, and it is therefore inadequate. If these assumptions are to be made, the improvements must therefore be included as part of the project's description and then analyzed in the text of the draft. Please do so, and recirculate the draft as required by CEQA.

11-33

19. The project objectives described at pages 2-2 and 2-3 are improperly narrowed in such way that they illegally preclude consideration of a full range of feasible alternatives to the project.

11-34

20. The proposed project violates the policies in the City's general plan (C.2(4)(f) and (g)), listed on page 3.1-11, since the project will eliminate open space grassland and the City has not encouraged the property owner to enter the agricultural preserve program established under the Land Conservation Act. These policies are not limited only to prime agricultural land, and they thus apply to the project property. Approval of the project is therefore inconsistent with the City's general plan and would violate the requirements of the Planning and Zoning Law.

11-35

21. The draft completely fails to address the impacts of the project on potential gravel extraction operations on Pleasanton Gravel Company property to the west of the site along what is identified as the future extension of Jack London

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Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 12

Boulevard, or to the south of the site. Both of these areas contain high grade gravel deposits, as is evidenced in part by the other gravel extraction operations in the immediate area. The draft recognizes that this area "yields sand and gravel resources of a very high quality (p. 3.1-25)," and that operations have been designed by the State Mining and Geology Board as important mineral resources. The taking of part of the Pleasanton Gravel Company property for the extension and widening of Jack London Boulevard will preclude gravel extraction on that property, and the draft fails to discuss either this fact, the loss of those important gravel materials, or the inconsistency with the Alameda County Surface Mining and Reclamation Ordinance and the state Surface Mining and Reclamation Act.

11-36  
(cont.)

22. The standards of significance used in Chapter 3.1 of the draft violate CEQA, because they do not include all of the standards specified in the CEQA Guidelines. Please include the correct standards of significance in Chapter 3.1 and revise the analysis accordingly.

11-37

23 The air quality analysis for construction impacts is inadequate, since it fails to fully evaluate air pollution from construction. Instead, it focuses only on odors. See p. 3.1-17. This is an inadequate evaluation.

11-38

24. The standard of significance (5 dB) for calculating whether an increase in traffic noise is significant violates CEQA. The CEQA Guidelines instead focus on absolute increases, whether the increase is "substantial," and whether the noise is in excess of standards in applicable plans. The analysis of traffic noise is flawed because it does not analyze these issues.

11-39

25. The analysis of traffic noise violates CEQA for yet another reason. Page 3.1-18 assumes that certain roadway improvements will have been built by the year 2025, and on the basis of those assumed improvements concludes that noise levels will not be significant. CEQA, however, requires an analysis of impacts based on *current* conditions: this is a rule that is embodied not only in the Guidelines, but has been repeated time and time again in CEQA cases. The draft's assumptions of future improvements thus violates CEQA and results in a significant flawed understatement of noise impacts. This is important, since the understatement also necessarily means that the City will not address the noise impacts, required feasible noise mitigation measures, or actual noise impacts in a statement of overriding considerations. This flaw in the draft

11-40

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 13

is critical, for the various additional reasons discussed below why the traffic analysis is further invalid. Please reanalyze traffic noise impacts, and recirculate the draft for public comment.

11-40  
(cont.)

26. The operational impacts analysis of the traffic that would be generated by the project violates CEQA for exactly the same reasons identified immediately above. The analysis of LOS levels and traffic congestion must be based on current conditions—not on assumptions of what the traffic system may or may not be in 2025. As one court recently noted, the requirement that “existing conditions” be used as the baseline for analysis, set out in Section 15125(a) of the Guidelines, “reflect[s] and clarif[ies] a central concept of CEQA, widely accepted by the courts, that the significance of a project’s impacts cannot be measured unless the EIR first establishes the actual physical conditions.” *Save Our Peninsula Committee v. Monterey County*, 87 Cal. App. 4th 99, 125 (2001).

We are quite amazed that this draft EIR has adopted this flawed methodology. The City knows that the methodology is flawed, because of prior CEQA litigation brought by some of these commentors against it involving precisely the same issue. CalMat Co. et al. v. City of Livermore et al., Alameda County Superior Court No. V-016022-3. In that case, the City’s EIR for an auto auction project on El Charro Road was invalidated by Judge Hernandez of the Alameda County Superior Court for using that very same improper methodology. We have attached as Exhibit F a copy of Judge Hernandez’ judgment in that action.

11-41

Moreover, the Petitioners in that case also sought and were awarded \$252,388.73 in attorney’s fees and costs against the City of Livermore and the project applicant for that successful litigation in the trial court. A copy of the Court’s order making that award is attached hereto as Exhibit G. That award was then affirmed by the Court of Appeal, and the Superior Court thereafter awarded additional fees in the amount of \$131,098.50 to the Petitioners against the City and the project applicant for the time spent on appeal. In total, \$383,487.23 in attorney’s fees and costs, plus interest, were awarded because of the City’s reliance on that improper methodology. Some of our further comments below also address this issue.

As a result, certification of the EIR with this serious methodological flaw in it would demonstrate the City’s willful refusal to comply with CEQA.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 13

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As a result, certification of the EIR with this serious methodological flaw in it would demonstrate the City’s willful refusal to comply with CEQA.

27. The draft concludes that traffic impacts on Isabel Avenue will result in unacceptable levels of service, until Isabel is widened to four lanes in this vicinity. See p. 3.1-18. The draft then suggests that these impacts will be reduced to less than significant levels with implementation of Mitigation Measures 3.3-2 and 3.3-2.

However, Mitigation Measure 3.3-3 allows the project developer to develop a full 90% of the project before additional lanes are built. This hardly reduces the impacts on Isabel to less than significant, and the draft does not include any explanation of any sort how this band-aid approach can actually address and eliminate the significant impacts. Under this measure, the developer could develop 90% of the project without providing any significant mitigation for the impacts of that development on Isabel Avenue. This violates CEQA.

11-42

28. The draft's analysis of impacts on the Murietta/Jack London, Isabel Ramp/Stanley Boulevard, Isabel Avenue/Stanley Ramp, and Jack London Boulevard/Hageman Drive intersection analysis reported at page 3.1-19 is flawed and violates CEQA in many ways. For example, Mitigation Measure 3.3-4b relies on a transportation demand management program that is filled with uncertainty, and there is no demonstration of any kind that this program can actually reduce traffic impacts. The conclusion with regard to the Isabel Ramp/Stanley Boulevard intersection relies upon City construction of "the full Isabel Avenue/Stanley Boulevard interchange under 2025 conditions," but this improperly relies on future projects of highway improvements, rather than analyzing impacts by comparison to existing conditions. Here, as elsewhere, the draft simply assumes that certain improvements will somehow eventually be made, but that type of wishful thinking doesn't substitute for the necessary analysis under CEQA. Exactly the same thing can be said about Mitigation Measure 3.3-4c, and this analysis is thus flawed for the same reason.

11-43

29. Mitigation Measure 3.3-5 violates CEQA for the same reasons. The draft improperly bases its conclusions upon the assumptions that, by 2025, some unspecified party or agency will construct a third westbound turn lane on the off-ramp approach, that "[u]nder Year 2025, this intersection and ramps would be configured," that the "southbound left turn lane would be removed and a southbound free-right turn lane onto westbound I-580 would be built," and that with "the new configuration, this intersection is expected to operate acceptably." This analysis, and the conclusion that impacts in Isabel Avenue and the I-580 Intersection and Ramps would be less than significant violates CEQA because it is based on assumptions as to future conditions, and assumes certain improvements will be built by someone, somehow, at sometime, and

11-44

with an unspecified source of funds. This very significant methodological flaw invalidates the analysis and conclusions as to the eight study intersections identified at page 3.1-19 of the draft. As noted earlier, the Alameda County Superior Court invalidated an earlier City of Livermore EIR and awarded more than \$383,487.23 in attorney's fees and costs against the City and the project applicant for relying on precisely that improper methodology.

11-44  
(cont.)

30. The draft admits that the project "would generate additional demand for service from the regional transit authority resulting in a potentially significant impact." See p. 3.1-19. It then concludes that Mitigation Measure 3.3-7 will reduce this impact to a less than significant level.

11-45

However, that mitigation measure only requires the project proponent to provide two curbside bus stops. Providing a place for a bus to stop doesn't in any way address the additional demand for service: it simply provides a place for that additional demand to overload the existing services. This measure is manifestly inadequate under CEQA, and the analysis of this impact therefore also violates CEQA.

31. The same thing may be said about the regional traffic impacts analysis at pages 3.1-19 and 3.1-20, and Mitigation Measure 3.3-8. There is no showing or evidence of any kind that such an ill-defined and unenforceable TDM program can ever result in any reduction of the impacts.

11-46

32. The analysis of traffic impacts on Jack London Boulevard near the school is flawed, because there is in fact no analysis, but simply a reported conclusion. CEQA requires analysis—not conclusions. In addition, additional traffic near a school during peak hours obviously raises concerns about traffic accidents and potential injuries to school children, but the draft never discusses those issues.

11-47

33. The Section of the draft addressing health hazards is manifestly inadequate under CEQA, because it analyzes only risks on the site, and not risks that may be caused offsite by project operations. In fact, the draft, at page 2-34, specifies that the southern detention basin—to be located immediately adjacent to the southern Pleasanton Gravel Company property—will not be lined, and will "filter out particulates, heavy metals and other urban pollutants through a process of natural infiltration without the use of sand filters." This will inevitably concentrate runoff from the site at that location, and thus result in a concentration and "natural infiltration" of pollutants onto the neighboring property. The consequences of this have not been analyzed in the draft, and it is

11-48

inadequate for that reason. Any such system will also subject not only the project applicant and operator, but owners of lots in the project and the City, to liability for knowingly and intentionally contaminating the neighboring property.

11-48  
(cont.)

34. This southern detention basin is also intended to detain runoff from the southern watershed on the site, before discharge to the Arroyo Mocho. All of that runoff will contain, to some extent, urban pollutants which will then be discharged to the Arroyo Mocho and then carried downstream. The draft fails to discuss the health hazard impacts of this discharge.

11-49

35. Page 3.3-1 specifies that Isabel Avenue—although it is now only two lanes—is expected “to be a four to six lane facility, developed to expressway standards.” The traffic and circulation analysis is then built upon this assumption. For all of the reasons previously discussed, this type of analysis violates CEQA, because it is not based on current circumstances but instead on assumptions as to future improvements. This assumption is doubly flawed, because it also violates the “recently adopted” policy of the City of Livermore that Isabel be no more than four lanes. Every part of the analysis that assumes or is based upon any claim that Isabel will be developed to six lanes is invalid under CEQA for these reasons. The fact that the City hasn’t even developed its Project Study Report to define any details of Isabel, and the fact that the City hasn’t even completed the necessary environmental documentation for any improvements on Isabel (see p. 3.3-1) further demonstrates the inadequacy and invalidity of the draft’s analyses.

11-50

As previously noted, if an EIR assumes the construction of certain improvements and assumes that those improvements will be available to serve the project, then the improvements themselves necessarily become part of the project, must be fully described in the EIR, and the environmental implications of the improvements must also be analyzed. The draft does not do so, especially with regard to the proposed improvement of Isabel. Please do so and recirculate the draft for public review and comment as required by CEQA.

36. The traffic analyses are even further flawed, because they assume the extension of Jack London Boulevard all the way to El Charro Road. See p. 3.3-2. Even though the draft reports that there is no “official plan” for any such extension by either Pleasanton or Livermore, the draft has nonetheless assumed the extension as part of the traffic analysis. This is documented above, and by the wholly unsupported claims that this extension “will provide relief and support to I-580,” “will constitute a major east-west arterial connecting the cities of Livermore and Pleasanton,” and is expected to have

11-51



four to six lanes. For example, the traffic analysis for year 2025 conditions explicitly assumes this extension. The project trip distribution likewise explicitly assumes "17 percent" of travel to and from the site, coming from the west via Jack London Boulevard. All of this is based on assumptions—not existing conditions—and these analyses are invalid under CEQA. All of this has resulted in dramatic understatements of traffic impacts on existing streets and I-580.

11-51  
(cont.)

37. The standards of significance reported at page 3.3-17 violate CEQA, because they substantially depart from the standards specified in the CEQA Guidelines. Please reanalyze traffic impacts using the standards specified by the Guidelines.

11-52

38. The traffic and circulation analyses are significantly flawed and significantly understate the draft's reporting of adverse traffic impacts, because the calculations are not based on existing conditions but make numerous improper assumptions as to improvements in the traffic system that may be made in the future. For all of the reasons previously stated, these assumptions violate CEQA and invalidate the traffic analyses.

For example, the traffic and circulation analyses are based upon at least the following improper assumptions:

- a. Jack London Boulevard will be extended to El Charro Road and will include four to six lanes, and will carry at least 17% of the travel from the west to the project. This will reduce impacts on I-580;
- b. Isabel will become a six lane expressway;
- c. By 2025, a new Isabel interchange will be built;
- d. The existing Portola Avenue westbound on ramp and eastbound offramp will be demolished at I-580;
- e. Other new intersections will be built, including Isabel Avenue at Portola, Isabel Avenue at Interstate 580 westbound ramps, and Isabel Avenue at Interstate 580 eastbound ramps;
- f. The various new transportation improvements listed in Mitigation Measure 3.3-5 will be built;

11-53

g. The improvements described in the City's General Plan noted at page 2.23 will be completed by 2005-2005;

h. The full Isabel Avenue/Stanley Boulevard interchange will be built by 2025;

i. New HOV lanes on I-580 between Santa Rita Road in Pleasanton and Vasco Road in Livermore will be constructed;

j. New auxiliary lanes on I-580 between Pleasanton and Isabel Avenue will also be built; and

k. Other projected improvements listed in Table 3.3-4 will be built and in place to serve the project's traffic

Please delete these improper assumptions, conduct a new traffic and circulation analysis, and recirculate the draft. Without a new analysis, the draft quite clearly violates CEQA. Alternatively, as already noted, these new improvements must be described as part and parcel of the project itself, and the EIR must analyze the environmental implications of their construction and use.

39. CEQA requires that the draft not only identify feasible mitigation measures, but explain and have substantial evidentiary support for a conclusion that the mitigation measure will in fact reduce a substantial impact to less than significant. There is no discussion whatsoever how Mitigation Measure 3.3-3 will in fact reduce traffic impacts to less than significant, since 90% of the project could be built and fully operational before the require widening of Isabel Avenue has been completed. Please provide the necessary explanation.

40. Please also provide the required explanation for each of the other traffic mitigation measures. There is no assurance from the face of these measures that they will in fact reduce traffic impacts to less than significant, and there does not appear to be any evidence of any sort to support such conclusions.

41. Page 3.3-84 of the draft notes that the City of Livermore "has recently adopted a policy limiting Isabel Avenue to four lanes south of Stanley Boulevard, but that nonetheless "the traffic model assigns traffic volumes requiring six lanes."

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(cont.)

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11-56

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 19

In light of the City's action, it is improper for the draft to simply assume, as it does, that Isabel will be widened to six lanes. That assumption, evident throughout the traffic analysis, invalidates the draft, since the analysis is based on an assumption that is contrary to City policy. Please revise the traffic analysis to be consistent with this City policy, and recirculate the revised analysis for public analysis and comment.

11-56  
(cont.)

42. As already discussed, the draft improperly bases the traffic analyses on unbuilt traffic infrastructure improvements that the preparers believe will be in place by 2025. This is highly improper under CEQA.

11-57

In addition, with regard to Isabel Avenue and the I-580 westbound intersection and ramps, the draft states that the impacts will still be significant and unavoidable and will require a Statement of Overriding Considerations. Any such Statement, because it would be based on the improper and invalid traffic analyses, would also then necessarily be flawed, since it would not include the CEQA-required recognition of actual impacts based on current conditions, and thus would not involve a true balancing of project impacts versus project benefits. Any such statement based on the current draft would therefore violate CEQA.

11-58

43. Page 3.3-85 of the draft states that it does not include any analysis of parking impacts, and that such an analysis will simply be deferred to future time. This violates CEQA, because CEQA requires an analysis of all impacts at this time, prior to project approval. Deferring that analysis is improper. Please provide an analysis of any required parking facilities and parking/traffic related impacts, and recirculate the draft for public review and comment.

11-59

44. Page 3.3-89 specifies that development of the project would generate additional demand for service from the regional transit authority, but that the impacts are "expected" to be less than significant.

CEQA requires that any analyses be fact-based, and a draft that simply reports conclusions is invalid. This analysis is not fact-based, and is only conclusionary. Please provide the necessary facts so that the public can analyze the impacts of the project on regional transit demand. For example, what is the current demand? What new demand will be created? Is the District currently underfunded? Can it meet demand without new subsidies from the developer? Without an analysis of these and other related questions, the draft is deficient.

11-60

45. Mitigation Measure 3.3-8 includes a number of extremely unspecific and highly speculative measures to address regional traffic impacts. Please provide a fact-based analysis of each of these measures and how the preparers concluded that these measures would in fact reduce these impacts to a less-than-significant level.

11-61

46. The noise analysis fails to comply with CEQA, because it is also based not on current conditions but upon roadway improvements that are assumed to have been constructed by the year 2025 and that would therefore be available for project traffic. Please revise the analysis and recirculate the draft without those improper assumptions.

11-62

47. Page 3.4-5 specifies that baseline conditions were used to assess pre-project levels "since it represents existing plus currently approved project conditions." Tale 3.4-3, however, specifies "existing noise levels" were used. Please explain this discrepancy. Any "currently approved project conditions" must be evaluated in the cumulative impacts section of the draft.

11-63

48. The standards of significance for evaluating noise listed at page 3.4-11 do not include all of the standards specified in the CEQA Guidelines. Please use those required standards, revise the noise analysis, recirculate the draft. Without an evaluation of noise under the mandated standards, the draft is inadequate under CEQA.

11-64

49. The draft predicts traffic noise levels on Stanley Boulevard, based on the assumption that Stanley will be expanded to six lanes. However, as the draft relates, any such expansion would be contrary to recently adopted City policy. Please revise the noise analysis to reflect a four lane Stanley Boulevard, and recirculate the draft.

11-65

51. The air quality analysis in the draft is significantly flawed, because it is based on the assumptions noted above concerning future roadway infrastructure improvements in the area. Undoubtedly, the air quality analysis would show significantly more air pollution impacts if the project were evaluated without those improper assumption. Please revise the analysis, using a baseline of current conditions as required by CEQA, and recirculate the draft.

11-66

53. The draft specifies that air pollution emission factors were generated based on the California Air Resources Board EMFAC7-G computer program. However, this program has now been superseded by the new EMFAC 2001 program, and it is common knowledge that the older program significantly understated air pollution from

11-67

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 21

vehicle traffic by as much as 150%. Please use the most recent program approved by the CARB, revise the analysis, and recirculate the draft. Without that revised analysis, the draft is inadequate under CEQA. This very issue was recently considered by the Court of Appeal in Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners, 91 Cal. App. 4th 1344 (2001), and the court emphasized the obligation of all public agencies to use the most up-to-date computer modeling programs in this important public health area.

11-67  
(cont.)

54 Exactly the same thing may be said about the draft's use of the URBEMIS 7G program to estimate emission that result from various land use development programs. This program has now been superseded by the new URBEMIS 2001 program. Please use the most recent program approved by the CARB, revise the analysis, and recirculate the draft. Without that revised analysis, the draft is inadequate under CEQA. This very issue was recently considered by the Court of Appeal in Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners, 91 Cal. App. 4th 1344 (2001), and the court emphasized the obligation of all public agencies to use the most up-to-date computer modeling programs in this important public health area.

11-68

55. Table 3.6-4 includes the projected project regional emissions of reactive organic gases, nitrogen oxides, and PM<sub>10</sub>. Each of these projected emissions is significantly greater than the BAAQMD threshold of significance. Indeed, the projected emissions of reactive organic gases are more than 300% greater, the emissions of nitrogen oxides are almost 550% greater, and the emissions of PM<sub>10</sub> are more than 200% greater.

11-69

To address these very significant air pollution impacts, the draft suggests a transportation demand program that reduces peak hour project traffic volumes by a minimum of five percent, and that this program "could reduce trips by as much as 10-15 percent." However, there is no factual explanation how this could possibly occur, and CEQA requires such an explanation,

Moreover, this mitigation measure doesn't require anything. All it does is suggest certain things that should be included. This too violates CEQA.

56. The Statement of Overriding Considerations suggested in the draft in response to the significant regional emissions will be flawed, since the air quality analysis is improperly based on anticipated transportation infrastructure improvements and since the Statement therefore will not reflect actual impacts based on existing conditions and

11-70

not a valid balancing of environmental and economic factors. Please revise the entire air quality analysis to eliminate this significant methodological flaw, and recirculate the air quality analysis.

11-70  
(cont.)

57. Section 15065 of the CEQA Guidelines requires that the City make a mandatory finding of significance if the project could substantially reduce the habitat of a fish or wildlife species, or restrict the range of an endangered, rare or threatened species. The draft does not make any such findings, even though it recognizes that development of the project site "would result in the removal of potential San Joaquin kit fox habitat," as well as other protected species. The draft must make mandatory findings of significance in each of these case. Because those findings will reveal greater impacts of the project than are now disclosed by the draft, a new draft must be recirculated for public review and comment.

11-71

58. The draft concedes that this proposed development, along with others, would result in the cumulative loss of species habitat, including numerous endangered and special species. This loss requires compliance by the City and the applicant with the "take" provisions of the state and federal Endangered Species Acts. In addition, authorization by the City of the project may therefore subject the City to liability under those laws for authorizing such a "take" by approving the project. Please recognize this in the draft.

11-72

59. At page 4-2, the draft states that the City is required to consider an alternative only "if it can meet the basic objectives of the project as proposed." The basic objectives then listed are so narrowly defined as to preclude development of the site with anything other than precisely what the applicant wishes.

11-73

This narrow definition violates CEQA. Moreover, CEQA requires an identification and evaluation of alternatives, even if may defeat some of the objectives of the project proponent. The draft therefore misstates CEQA.

60. The draft improperly excludes analysis of a wide range of other potential alternative uses of the site. Residential uses, for example, are not considered. Airport related uses are not considered. Gravel extraction is not considered, even though the site is located immediately adjacent to other properties with high gravel concentrations, and even though the draft concedes that the area has highly important gravel concentrations. The draft apparently does not consider any of these, because the project objectives have been so narrowly and so improperly defined. Since the alternatives analysis under CEQA

11-74

is intended to provide ways of reducing or eliminating environmental impacts, the draft has improperly excluded from consideration various ways that this could be accomplished by other alternatives.

11-74  
(cont.)

61. In light of the fact that the proposed drainage system for the site is significantly undersized and will not reduce project flows to pre-development levels, the City should carefully consider Reduced Density Alternatives 3 and 4, since the draft specifies that this Alternative would reduce drainage from the project site.

11-75

62. At page 6-5, the draft speculates that "the intersection of Isabel Avenue and Vallecitos Road would change its alignment" and would have an "intersecting eastbound approach." This again simply speculates as to what may or may not occur to transportation infrastructure in the area. This is improper under CEQA, because it is not based on existing conditions. Please revise the analyses in the draft to comply with CEQA.

11-76

63. The draft does not include a properly defined "No Project" alternative as required by CEQA. Under CEQA, the draft must include a "No Project" alternative and an analysis of that alternative. This alternative must "discuss the existing conditions . . . as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." CEQA Guidelines Section 15126.6(e).

The draft improperly relies upon Section 15126.6(e)(e)(A) of the Guidelines, but that subsection is inapplicable here. Instead, the language quoted immediately above applies. The draft has ignored that language, and in particular has assumed that the site could inevitably be built out under existing zoning, but it ignores the question whether any such buildout would be "consistent with available infrastructure and community services." Any analysis of the "No Project" alternative is inadequate under CEQA without a full analysis of whether any such buildout would be possible under that limitation.

11-77

In fact, the entire "No Project" discussion is inadequate because it also is based entirely on a string of conclusionary statements, without any detailed factual analysis. Just as one example, page 4-6 claims that traffic, circulation and parking issues "could be exacerbated due to an increase in development intensity and density" and that "[s]ignificant unavoidable impacts would be increased as well." However, there is no factual analysis of any support to support these conclusions. CEQA requires factual

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 24

analyses—not simply conclusions. It is also impossible to credit any conclusion that “parking issues” would be greater, since parking issues aren’t even addressed with regard to the proposed project.

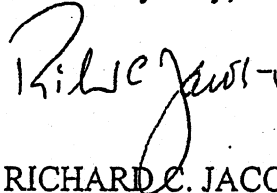
11-77  
(cont.)

Please provide the required “No Project” analysis, and recirculate the draft for further public review and comment as required by CEQA.

These commentors also request that the undersigned be provided with any further notices relating to this project, especially any notice of a hearing to certify the EIR and consider project approval. In addition, the commentors request that they receive, through the undersigned, a copy of any proposed final EIR, with responses to comments and any changes in the text, at least ten days prior to any hearing to certify the EIR or consider project approval.

Thank you for your consideration of these very important issues.

Yours very truly,



RICHARD C. JACOBS

RCJ/bmo  
WD 101102/1/HR-2/USER1/HOME/RCJ/JamiesonOaksEIRComments.doc



## RESPONSES TO LETTER 11 – HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN

### Response to Comment 11-1

Risk of Flooding. The comment cites previous letters and suggests that the Arroyo Mocho does not have sufficient carrying capacity for existing drainage and that flooding has caused extensive damage in the recent past. Section 3.7 of the RDEIR analyzes this issue. The RDEIR concludes that existing Arroyo Mocho has capacity constraints and, in response, proposes two feasible options to provide adequate stormwater detention and drainage for the project site that will not result in significant impacts to existing facilities or watercourses. The Oaks Business Park proposal will not significantly impact the existing 56.5 square mile watershed or the flows within the Arroyo Mocho. The issue that is raised is a regional issue and is not a direct or indirect impact of the development of Oaks Business Park, as evidenced by the results of the hydrology study.

### Response to Comment 11-2

Relocation of Arroyo Mocho as a Long Term Solution. The comment supports Drainage Option A as a preferred method of addressing project drainage. Option A is the preferred drainage option and would further the long-term goals of Zone 7 toward implementing regional drainage improvements. The applicant has also indicated that Option A is the preferred drainage alternative for the project.

### Response to Comment 11-3

Inclusion of Drainage Option B. The RDEIR includes Drainage Option B as an alternative method of providing adequate drainage facilities to address increased flows from the project site. Assessing design alternatives is appropriate and encouraged as part of the environmental review process under CEQA. Both drainage options eliminate all significant impacts downstream from the development, as the pre- and post-project condition of the drainage leaving the site will essentially be the same.

With respect to the current design for Option B analyzed within this EIR, please note that Option B was revised to take into account the comments made in the original letter from the same commentor dated October 11<sup>th</sup>, 2003 (attached). The following changes were made to Option B as reflected and analyzed within this EIR:

- 1) The flow for the existing drainage area was changed to exclude the dry arroyo area in the existing flow calculations. (See Section 1.3.2 of revised drainage study). This watershed has historically included approximately 60 acres of the Oaks Business Park and the 48-acre PGC parcel. This is based on the original Bissel and Karns study and previous agreements with Orchard, Triad Development and Pleasanton Gravel Company. The area used for existing flow calculations to the Arroyo Mocho is calculated to be 39.80 acres to eliminate the

impact that the inclusion of the dry arroyo may have had in the calculations. The dry arroyo has no outlet to the north or to the south and drains through percolation. (See Section 1.3.2 of revised drainage study). The existing peak flow was calculated to be 7 cfs.

- 2) The applicant has changed the design for Option B to mitigate the concern of water backing up from the Arroyo Mocho into the project's detention basin and flooding the project site (and possibly flooding the PGC parcel to the south). The peak outflow from the detention basin will occur much sooner than the peak flow in the Arroyo Mocho. (See Section 1.4 of the drainage study). However, the storm drain system has been designed to adequately handle the impact of the 100-year flow in the Arroyo Mocho on the flows from the detention basin. When the Arroyo Mocho reaches its peak stage, the flow from the orifice from the southern detention basin will be reduced due to the tail water effect. The peak Hydraulic grade line (HGL) for the 100 year storm at the proposed outlet within the Arroyo Mocho is 409.4'. This was obtained from the City of Livermore Plans for the construction of Isabel Avenue dated December 1997. A higher top of bank elevation for the southern detention basin is proposed at elevation 412.0 feet. The basin was also upsized from the proposal analyzed within the previous EIR. Using a freeboard amount of 1 foot in the basin, the calculated allowable peak flow from the basin is 3.3 cfs. The calculations are based on a scenario that the peak storm for both the on-site and offsite occur at the same time. When the Arroyo Mocho is at its peak stage at 19.75 hours, the 100 year peak flow from the project will be decreased to 3.3 cfs. A second 100 yr storm-Hec 1 run was performed assuming a maximum outflow of only 3.3 cfs (which is included in Appendix 4), and the water surface elevation in the basin does not exceed 411.04 per this analysis. This is also less than the existing peak flow to the Arroyo Mocho of 7 cfs. This will only cause a backup at node B21 of 6 inches (See Figure 4 in storm drain report).

In response to technical comments made regarding ground elevations and drainage areas, please consider the following information which clarifies issues raised by the commentor:

- 1) The southwestern portion of the watershed is not shown to drain towards the Arroyo Mocho. Lot 6 (southwest corner of proposed site) would drain towards the north to the northern basin. The drainage boundary lines were altered, and the areas were redistributed to maintain 59.5 acres draining towards the Arroyo Mocho as originally directed by Zone 7 and to satisfy the agreement between Pleasanton Gravel Company, Rhodes-Jamison, Inc and G.W. Jamison with Triad Development Corporation. The Vesting Tentative Map and the storm drainage study within the appendices of the EIR show a drainage pipe stubbed to Lot 6 at the southwest corner of the Heritage Oak Park.

- 2) The pipe from the basin does not drain uphill. The invert of the pipe at the detention basin is 402.3 and the invert draining to Arroyo Mocho in the proposal is 398.15. The slope of the pipe is 0.0015.

#### **Response to Comment 11-4**

Cumulative Drainage Flows and Surface Water Quality. The RDEIR identifies the potential for significant cumulative impacts associated with the combined flows of this project with other area development. The discussion on page 3.7-34 of the RDEIR concludes that these impacts are mitigated by the project design under either Option A or B, and when water quality mitigation measures are applied.

#### **Response to Comment 11-5**

Deletion of Option B. The comment suggests that Option B should be deleted from the EIR. Comment noted. Please see Response to Comment 11-3 above.

#### **Responses to the October 11, 2002 Comment Letter Submitted by Howard Rice, Nemerovski, Canady, Falk (Attachment to Letter 11)**

#### **Response to Comment 11-6**

Capacity of Arroyo Mocho/Existing Conditions. The comment states that the Arroyo Mocho does not have sufficient carrying capacity for existing drainage and that flooding has caused extensive damage in the recent past. See Response to Comment 11-1.

#### **Response to Comment 11-7**

Long Term Solution. The comment states that the only possible solution to the flooding issues presented by Arroyo Mocho is the relocation of the Arroyo on the southern and western boundaries of the project site. See Response to Comment 11-2.

#### **Response to Comment 11-8**

Dry Arroyo and Drainage Analysis. The comment states that the dry arroyo traversing the site acts as a natural retention area and that its alteration will add additional storm runoff to the Arroyo Mocho. The entire watershed that drains to the Arroyo Mocho in this location is 56.5 square miles. This is equivalent to 36,141 acres of land area. The difference in the dry arroyo area that the comment is concerned about represents only 0.0006 of the entire watershed. The flow in the Arroyo Mocho Channel during the 100-year storm is 4,700 cfs based upon the existing Zone 7 Model as referenced by Schaaf and Wheeler in June 2000. The increase of flow that the comment is concerned about is only 0.0008 of the total flow in the channel at peak. This net increase will have no significant impact downstream.

The 59 acres for the Arroyo Mocho watershed on the project site was used to satisfy the agreement between Pleasanton Gravel Company, Rhodes-Jamison, Inc and G.W. Jamison with Triad Development Corporation. The drainage boundaries were agreed upon in that agreement.

Despite these issues, the runoff calculations used in Section 3.7 of the DEIR demonstrate that no water from the dry arroyo is within the existing drainage to the Arroyo Mocho. Peak existing flows have been calculated using the rational method and two different methods to calculate time of concentration. This has been done to show the slight differences that occur based on the method used. Tables 3A and 3B of the Storm Drainage Study show the results based on using both a modified Kirpich formula and the Overland flow equation used in the Alameda County Hydrology for a combination of short green pasture land and cultivated land. The drainage area outside the Arroyo Mocho has been calculated to be 38.19 acres (See Figure 2C in the Storm Drainage Study). The flow to the Arroyo Mocho based on using the two different methods for time of concentration has a variation of 1.5 cfs for peak flows. Based on discussions with Zone 7, a more conservative method used by Alameda County is shown in Table 3B. The existing 100-year flow to the Arroyo Mocho using Alameda County's method is approximately 7 cfs and 5 cfs for the 10-year storm. The southwest basin (under drainage Option B) has a peak storage of 9 acre-feet. This is based on a peak stage of 110.25 for the on-site 100-year storm.

This issue does not exist with Drainage Option A because the drainage from the Arroyo Mocho is rerouted to the Arroyo Las Positas through a much larger detention basin to be constructed along the western edge of the property as mentioned above. All existing flows would be eliminated for the project from the Arroyo Mocho. See Response to Comment 11-3, as well as responses to Letter 4 (Zone 7).

#### **Response to Comment 11-9**

Arroyo Mocho Carrying Capacity. The comment states that the EIR does not disclose assumptions used in calculating the Arroyo Mocho capacity and that this failure to disclose is an impediment to proper evaluation by the public. Because the pre- and post-project condition of drainage leaving the site will essentially be unchanged by the project, the issue of the condition, siltation, and plant growth within the Arroyo (the existing condition) is not essential to the analysis of the project's significant effects on the environment. Therefore, there is no proposal to modify or restore any segment of the existing Arroyo Mocho channel.

Under Drainage design alternative Option A, Zone 7 would purchase the 16.84 acres of land proposed for a detention basin along the western perimeter of the project site. Zone 7 may choose to use this land in lieu of using the land directly east of the project for a future bypass channel.

Please see Response to Comment 11-3 documenting the modifications to the project to address drainage issues.

#### **Response to Comment 11-10**

Proposed Detention Pond. The comment notes that the Storm Drainage Study for the EIR evaluates a concept with a detention pond at the southwest corner of the proposed site and that this pond would be nonfunctioning during high flows. These issues are not relevant if the alternative detention basin system on the western boundary (Option A) is adopted. In addition, see Response to Comment 11-3 which documents changes to the Option B pond design in response to this comment.

#### **Response to Comment 11-11**

Detention Basin. The comment questions the location of the detention basin on the southern part of the site. See Response to Comment 11-3.

#### **Response to Comment 11-12**

Site Drainage. The comment suggests that drainage in the western portion of the southern watershed will not drain into the proposed detention pond at the proposed location. See Response to Comment 11-3.

#### **Response to Comment 11-13**

Planned Detention Ponds. See Response to Comments 1-1 and 1-3. In addition, please refer to the project storm drain study (included in the RDEIR Technical Appendices), that includes provisions for a combination of overland conveyance and pipe capacity to accommodate the 100-year storm to the proposed basins under both drainage options.

#### **Response to Comment 11-14**

Southern Detention Pond. See Response to Comment 1-3.

#### **Response to Comment 11-15**

1990 Development Agreement. With the project modifications and inclusions of Drainage Option A, the comment regarding the 1990 Development Agreement is no longer relevant. The development plans proposed by the former owner, the subject of the agreement, are significantly different from the current Oaks Business Park proposal analyzed in the RDEIR. The original proposal in 1990 by Orchard Properties proposed a developed flow of 50 cfs compared to the current proposal to maintain pre-existing flows by constructing detention basins on-site. The proposed Arroyo Mocho flows under the 1990 Development

Agreement were over 6 times greater than what has been proposed for the Oaks Business Park. See also Response to Comment 11-1.

#### **Response to Comment 11-16**

1990 Development Agreement. See Response to Comment 11-15.

#### **Response to Comment 11-17**

1990 Development Agreement. See Response to Comment 11-16, as well as Response to Comment 11-3 regarding the inclusion of Drainage Option A.

#### **Response to Comment 11-18**

Prior Comments. See also Response to Comment 11-3 regarding the inclusion of Drainage Option A. The project does not contribute to regional drainage impacts.

#### **Response to Comment 11-19**

Prior Comments. See Response to Comment 11-18 above. The comment does not address the environmental impacts of the current proposal or the RDEIR. See also Response to Comment 11-3 regarding the inclusion of Drainage Option A.

#### **Response to Comment 11-20**

Stormwater Percolation. The comment notes that the proposed southern detention basin is unlined and would allow stormwater percolation into the ground thus potentially affecting neighboring properties. All proposed detention basins are lined. See Response to Comment 11-3.

#### **Response to Comment 11-21**

Stormwater Percolation. Please see Response to Comment 11-20 above.

#### **Response to Comment 11-22**

Basin Maintenance. For both basin options, the maintenance will be performed by the City with funding provided by the project by the formation of a landscape maintenance district or other approved funding mechanism. For basin Option A, when Zone 7 converts the basin to a channel, the maintenance responsibilities may then be transferred to Zone 7.

### **Response to Comment 11-23**

Groundwater Quality. See Response to Comment 11-20 above.

### **Response to Comment 11-24**

Gravel Extraction. Comment suggests that project approval would result in the loss of gravel extraction opportunities for PGC and properties beyond. For all the reasons stated in the RDEIR and as explained in these responses, the project will have no significant impact on gravel extraction operations. Please see Responses to Comments 11-1 through 11-23 above.

### **Response to Comment 11-25**

Ability to Mine. Please see Response to Comment 11-24 above.

### **Response to Comment 11-26**

Easement. The comment notes that a letter prepared by Zone 7 in April 2001 asks the City to require the applicant to dedicate an easement on the southern and western project boundaries for the Arroyo Mocho bypass and suggests that the City should require the establishment of an assessment district. These requirements are discussed in the RDEIR Section 2.0, Project Description, and are the basis of the agreement concerning Special Drainage Area 7-1.

### **Response to Comment 11-27**

Employment Generation. The comment states that a large number of new employees will be generated by the project but the EIR fails to analyze the impacts of the housing and services that would be required. The RDEIR analyzes this issue in Section 6.2, Growth Inducing Impacts. The RDEIR dedicates seven pages of analysis to the subject of jobs/housing balance, job creation and growth inducing impacts.

The City of Livermore, in drafting its General Plan, has considered the balance between jobs and housing for the next 20 years. Although there is no mandate that all Livermore workers reside in Livermore, it is a general goal of most communities to establish a balance of land uses. Such a balance can result in a theoretical reduction in traffic trips (and thus have an environmental benefit), although there is never a guarantee that workers will choose to live in the community. The RDEIR appropriately discloses that new employees will be generated, and that the City is also planning residential growth and housing.

### **Response to Comment 11-28**

Use of Recycled Water. Please see Response to Comment 4-10. Compliance with the RWQCB's permit requirements will ensure that use of recycled water for irrigation will have less-than-significant impacts on drinking water due to salts.

### **Response to Comment 11-29**

West Jack London Boulevard. The comment suggests that future West Jack London Boulevard should be considered part of the application for the Oaks Business Park, and analyzed as such, based upon the location of drainage lines. The extension of Jack London Boulevard is a planned transportation facility, and not part of the project. The 2025 traffic analysis scenario includes Jack London Boulevard in the future cumulative analysis because that roadway is a part of the General Plan Circulation Elements for Livermore, Pleasanton, and Alameda County. Construction of the roadway is included in the City of Livermore Traffic Impact Fee program. Although some portion of project traffic uses Jack London Boulevard in 2025, a greater amount of non-project traffic uses it as well. The Oaks Business Park project does not trigger the requirement for the construction of Jack London Boulevard in 2025, nor would the project impacts increase significantly without the construction of Jack London Boulevard.

The roadway is included in the EIR analysis not because it is required by the project but because it is a planned roadway and likely to be present in 2025. Other infrastructure systems, such as storm drainage facilities, are therefore planned to align with future rights of way. Environmental impact analysis of the construction of this roadway, which is not a consequence of the Oaks Business Park project, would occur when the planned roadway is proposed for implementation.

### **Response to Comment 11-30**

Project Description. Both the Executive Summary (Section S) and Project Description have been modified within the RDEIR. The Project Description, page 2-9 through 2-11, lists the planned off-site improvements that are part of the project and analyzed within the RDEIR. The roadway cross-section in Figure 2-6A shows the improvements to Jack London Boulevard required along the project frontage only. Additional off-site improvements resulting from future, cumulative projects will be subject to project-specific environmental review by the lead agency. As identified on page 2-10 of the RDEIR, the storm drain lines are proposed to run adjacent to the PGC parcel, within the existing airport property.

The 41.2 acres referenced (revised from 42.5 acres based on additional research) is a drainage watershed area based upon the existing topography in the area. The area was referred to as "PGC-North" but this reference has been changed to Drainage Area B to avoid confusion. The additional 10.8 acres of the 52-acre PGC parcel drains west overland



to the Arroyo Mocho based upon aerial topographic maps obtained from the City of Livermore. There is no proposal to condemn property as part of this application, nor is condemnation a consequence of the proposal.

#### **Response to Comment 11-31**

Project Description. See response to Comments 11-29 and 11-30.

#### **Response to Comment 11-32**

Project Description/Off-Site Traffic Improvements. See Response to Comments 11-29 and 11-30. The comment suggests that none of the off site improvements identified as necessary for the project are included in the description of the project, but cites only the expansion of Isabel Avenue as an example. The Project Description, page 2-9 through 2-11, lists the planned off-site improvements that are part of the project and analyzed within the RDEIR. Isabel Avenue, as identified on page 2-9, will be widened along the project frontage consistent with currently approved plans for this roadway facility.

#### **Response to Comment 11-33**

Year 2025 Roadway Improvements. See Response to Comment 11-32 above. All off-site roadways and other off-site infrastructure required by the project are analyzed as part of the project in the RDEIR. Future off-site roadways and improvements are assumed and analyzed as part of the future, cumulative scenario. Any such project will be subject to appropriate project environmental review by the local agency when these project(s) are proposed for implementation.

#### **Response to Comment 11-34**

Project Objectives. The comment suggests that the project objectives are improperly narrowed. However, no other range of potential objectives is offered. The objectives listed were developed by the project sponsor and reviewed by City Staff, and reflect the intent of CEQA to define the underlying purpose of the project as proposed.

#### **Response to Comment 11-35**

Consistency with Open Space Policies. The comment states that the project violates policies of the City General Plan since open space will be eliminated. The Zoning and General Plan designations for the project site are Light Industrial and the change in land use at this location is consistent with these designations.

### **Response to Comment 11-36**

Impacts to Gravel Extraction Operations. The comment suggests that the EIR fails to address the impacts of the project on potential gravel extraction operations of PGC. This issue is addressed on Page 3.1-25 through 3.1-28 of the RDEIR, as well as 3.8-13 and 3.8-14 of the RDEIR, which concludes that the proposal will not impact existing operations because the land use type, light industrial, is not sensitive to adjacent heavy industrial uses such as mining. The widening of West Jack London Boulevard (except for the project frontage) is not being completed as a result of this project. Therefore, the project itself is not limiting or impacting the mineral resources. See Response to Comment 11-29.

### **Response to Comment 11-37**

Land Use Significance Criteria. The comment suggests that the standards of significance used in the land use section of the August 2002 DEIR violate CEQA because they do not include all of the standards specified in the CEQA Guidelines. Pages 3.1-15 and 3.1-16 of the RDEIR utilize all the standards as suggested in Appendix G of the 2002 CEQA Guidelines, except for determining conflict with an adopted habitat conservation plan. There is not an applicable HCP in place, so this issue is not applicable to the project. Appendix G is a sample environmental checklist form; not a definitive list of required thresholds. The standards used by the DEIR, as well as the current RDEIR, are actually more extensive than the suggestions of the Guidelines.

### **Response to Comment 11-38**

Air Quality Analysis. The comment suggests that the air quality analysis within the August 2002 DEIR is inadequate, as it "focuses only on odors". This assessment is incorrect. Section 3.6 of the DEIR and RDEIR, Air Quality, dedicated an entire section to air quality impacts from both construction and operation. The air quality analysis was conducted to meet the recommendations of the Bay Area Air Quality Management District's CEQA Guidelines.

### **Response to Comment 11-39**

Traffic Noise Impact Criteria. The comment suggests that the criteria used for traffic noise impact analysis violates CEQA. The noise section of the DEIR and RDEIR (Section 3.4) addressed absolute noise levels due to and upon the proposed project, as well as the incremental increase (or relative) change in noise levels which would result from the project, as required by CEQA. A 5 dB threshold is commonly considered to be significant because it represents a clearly noticeable increase in noise for similar sources, such as traffic. In addition to assessing noise impacts based on this relative change in noise levels, impacts were considered where absolute noise levels were predicted to exceed applicable noise level standards.

### **Response to Comment 11-40**

Traffic Noise Analysis. The comment states that the traffic noise analysis also violates CEQA because CEQA requires analysis of impacts based on current conditions and the study analyzes conditions based on year 2025 improvements. Traffic noise impact assessment prepared for this project addressed impacts associated with project-related traffic volume increases relative to both existing (baseline) and future (cumulative) conditions as required by CEQA. The RDEIR Section 3.4 (pages 3.4-15 and 3.4-16) contains this analysis.

### **Response to Comment 11-41**

Baseline Traffic Conditions. The entirety of Section 3.3, Traffic and Circulation, was updated and revised for the RDEIR, to include updated land use and model assumptions. The commentor's previous statements on the August 2002 DEIR are therefore difficult, if not impossible, to link to specific analysis discussions within the current RDEIR document. No additional traffic-related comments were provided on the RDEIR in the commentor's November 6, 2003 letter. Nonetheless, the City provides the following information to address the general issue of "existing conditions" raised by the comment:

The commenter suggests that the traffic analysis should be based on "existing" conditions, not those in the year 2025. The "existing" and "existing plus project" conditions were fully evaluated in the RDEIR. Please see the summary of the results in Table 3.3-2 and Figure 3.3-4 and surrounding text. This information clearly establishes the existing roadway network and intersection Level of Service operations, based upon traffic counts collected. Please see page 3.3-19 of the RDEIR, Condition 1, which provides the assumptions for Existing Conditions.

For an understanding of the role of the 2025 analysis in the RDEIR, see Responses to Comments 11-29 and 11-32.

### **Response to Comment 11-42**

Isabel Avenue Impacts. The commenter asserts that significant impacts to Isabel Avenue will occur in violation of CEQA, as up to 90 percent of the project would be built prior to providing additional lanes. This conclusion is incorrect. Please refer to Section 3.3 of the RDEIR, Traffic and Circulation, which discusses project access impacts. The calculation sheet that demonstrates that the project access road on Isabel Avenue will operate at a volume-to-capacity ratio of 0.85 (LOS D) is included in the Appendix to the traffic study. The sheet is located in the "existing plus project" listings, is dated 6/3/02, and is titled "Existing + 90% Project Conditions – PM Peak". The access road intersection at Isabel operates acceptably with 90% of the project complete.

### **Response to Comment 11-43**

TDM Program. The entirety of Section 3.3, Traffic and Circulation, was updated and revised for the RDEIR, to include updated land use and model assumptions. The commentor's previous statements on the August 2002 DEIR are therefore difficult, if not impossible, to link to specific analysis discussions within the current RDEIR document. No additional traffic-related comments were provided on the RDEIR in the commentor's November 6, 2003 letter. Nonetheless, the City provides the following information to address the general issue of the Transportation Demand Management program raised by the comment:

The comment suggests that the TDM program is suspect and insufficient for use as mitigation. The TDM program has been drafted and is included as an appendix to the RDEIR. The current plan contains more detail and specificity than indicated in the 2002 DEIR. A total of 22 specific requirements for the business park are detailed in the TDM plan. The TDM plan establishes specific positions within the City to monitor the trip reduction achievements and to determine compliance or non-compliance. A series of monetary penalties for non-compliance is also established, including the withholding of building permits for continuing non-compliance. For a more comprehensive description of the role of the Isabel Ramp/Stanley Boulevard intersection improvements as a part of the 2025 analysis in the DEIR, see Response to Comment 11-40 and earlier related responses.

### **Response to Comment 11-44**

Year 2025 Improvements. The comment states that the responsibility for implementing traffic improvements described in Mitigation Measure 3.3-5 of the 2002 DEIR is unspecified. This is not correct. As identified on page 3.3-94 of the RDEIR, the described improvements will be constructed with City of Livermore traffic impact fee funds, of which the developer is required to contribute its fair share. Mitigation Measure 3.3-5 identifies a long-term (2025), cumulative impact, and provides a feasible solution to mitigate the cumulative effect, consistent with CEQA. Any analysis of future cumulative traffic conditions, which is a standard analysis scenario for an EIR, must forecast and make assumptions regarding future conditions, including future improvements. See also Response to Comment 11-43 above.

### **Response to Comment 11-45**

Transit Mitigation. The comment suggests that transit mitigation is insufficient. Additional transit mitigation measures are not required because the transit system has capacity for additional ridership without adding equipment. Please see also Responses to Comments 3-5, 3-7, 8-1 and 8-2.

### **Response to Comment 11-46**

TDM Program. Please see Response to Comment 11-43 above.

### **Response to Comment 11-47**

Jack London Boulevard Traffic Analysis. The comment states that traffic impact analysis on Jack London Boulevard near the school is flawed or nonexistent. Traffic volumes are well within the capacity of Jack London Boulevard at the location of the Rancho Las Positas Elementary School, both now and in the future. See RDEIR page 3.3-99. The presence of a traffic signal and a crossing guard provides a very high level of safety for both school children and motorists.

### **Response to Comment 11-48**

Health Hazards Section/Off-Site Hazards. The comment suggests that the health hazards section of the EIR is inadequate under CEQA because it does not analyze offsite impacts such as concentration and infiltration of pollutants onto the neighboring properties. Please see Response to Comment 11-3 regarding changes to the proposed drainage system.

### **Response to Comment 11-49**

Water Quality. The comment states that the runoff from the southern watershed will contain urban pollutants that will be discharged to the Arroyo Mocho and carried downstream. See Response to Comment 11-3 regarding project design changes. All the developed parcels draining into the basin will have 80 percent of the water treated by biofiltration swales (see pages 3.7-32 and 3.7-33 of the RDEIR). These swales will be used to remove floatable materials, oil and grease and heavy metals. Where site conditions do not allow the use of biofiltration swales, mechanical means such as oil and grease interceptors may be permitted if allowed by the City of Livermore. However, such devices are not required to meet the requirements of the City and the RWQCB. As treated, there is no evidence that discharge would pose a health hazard.

### **Response to Comment 11-50**

Traffic Analysis Assumptions. See Response to Comment 11-41.

### **Response to Comment 11-51**

Extension of Jack London Boulevard. The comment suggests the traffic study is flawed because it assumes the extension of Jack London Boulevard all the way to El Charro Road. See Response to Comments 11-29 and 11-30.

**Response to Comment 11-52**

Traffic Section Standards of Significance. Please see Response to Comment 11-37.

**Response to Comment 11-53**

Traffic Impacts and Assumptions. See Responses to Comments 11-28, 11-31, 11-32 and 11-41.

**Response to Comment 11-54**

Traffic Mitigation. Please see Response to Comment 11-42.

**Response to Comment 11-55**

Traffic Mitigation Measures. The mitigation measures are found on pages 3.3-83 through 3.3-98 of the RDEIR. Each measure requires either construction of a physical improvement by the applicant or a fair share contribution. A Mitigation Monitoring and Reporting Program will be adopted by the City to monitor and report on mitigation measure implementation. The analysis identifying significant project impacts (and therefore the need for mitigation measures) is contained in the tables, text and figures of Section 3.3 of the RDEIR. See also Response to Comment 11-44.

**Response to Comment 11-56**

Isabel Avenue Widening. See Response to Comment 11-51. The entirety of Section 3.3, Traffic and Circulation, has been revised as part of the RDEIR.

**Response to Comment 11-57**

Year 2025 Traffic Conditions. See Response to Comments 11-29 through 11-33, 11-41 and 11-44.

**Response to Comment 11-58**

Traffic Conditions. See Responses to Comments 11-32, 11-33 and 11-41.

**Response to Comment 11-59**

Parking Requirements. The comment suggests that analysis of parking requirements and facilities is insufficient. As stated on page 3.3-94 of the RDEIR, all individual developments within Oaks Business Park will fully comply with the parking standards and requirements of the City of Livermore. No further analysis is possible at this time.

### **Response to Comment 11-60**

Transit Impact Analysis. Impacts of the proposed project on transit and public transportation are analyzed in the RDEIR on pages 3.3-97. See also Response to Comment 11-45.

### **Response to Comment 11-61**

TDM Plan. The comment states that Mitigation Measure 3.3-8 (of the 2002 DEIR), Transportation Demand Management, includes unspecific and speculative measures. The TDM program requires a minimum five percent reduction in peak hour traffic. This reduction will be achieved through a combination of commute alternatives, financial incentives, parking management, rideshare strategies and other program components as identified within the program (Appendix M, Technical Appendices to the RDEIR). As a result of a five percent reduction in total project traffic, the northbound right turning traffic at the subject intersection in the p.m. peak hour would be reduced by 20 vehicles, and a 0.85 ratio would be achieved. See also Response to Comment 11-43.

### **Response to Comment 11-62**

Year 2025 Traffic Noise Impacts. Comment suggests that the noise analysis fails to comply with CEQA because it is based on year 2025 roadway improvements. The traffic noise impact assessment prepared for this project addresses impacts associated with project-related traffic volume increases relative to both existing (baseline) and future (cumulative) conditions as required by CEQA. See also Response to Comments 11-39 and 11-40.

### **Response to Comment 11-63**

Use of Language. The comment notes an error in a table heading. The commenter is correct that the use of the word "Existing" in Table 3.4-3 is inconsistent with the discussion stating that "Baseline" conditions were used to describe the traffic noise Setting. This is a typographical error. Table 3.4-3 contains baseline data and computation results, not existing data and results. As a result, the word "Existing" is replaced with the word "Baseline" in this table, as shown in the Errata. Table 3.4-2 provides the results of "existing" noise levels, based upon field measurements taken in September 2001. There has been no significant change in the noise setting since that time.

### **Response to Comment 11-64**

Noise Impact Standards of Significance. See Response to Comment 11-37 for a general response regarding an agency's thresholds of significance. Assuming that the comment is referring to Appendix G of the Guidelines, a sample environmental checklist form, Section 3.4 of the RDEIR uses essentially the same thresholds, with the exception of "groundborne vibration". Because the project does not contain characteristics that would normally trigger

an evaluation of groundborne vibration or groundborne noise levels (such as the use of explosives or extensive subsurface excavation or pile driving near a residential area), this threshold is not applicable to the project.

Other standards addressing airport noise, noise sensitive land uses, consistency with the Noise Element of the General Plan, substantial increases in noise over existing conditions, and cumulative noise effects are all included within the RDEIR, on page 3.4-11. The Land Use Compatibility for Community Noise Environments data from the Noise Element of the General Plan (Table 3.4-4), which establishes acceptable noise levels for various land uses, provides the basis for the RDEIR analysis of noise impacts related to land use.

#### **Response to Comment 11-65**

Stanley Boulevard Noise. The traffic noise impact assessment was prepared using traffic data consistent with the Baseline and Cumulative analysis scenarios contained in Section 3.3, Traffic and Circulation. Noise levels are measured from the roadway centerline as predicted based on traffic volumes. Levels are not based on the number of lanes, or edge of roadway.

#### **Response to Comment 11-66**

Air Quality Analysis. The comment suggests that the air quality analysis is flawed because it is based on future roadway infrastructure rather than on current conditions. The air quality analysis (Section 3.6 of the RDEIR) was prepared using BAAQMD methodology. The analysis provides a reasonable worst-case condition because it is based on full buildout of the project and assumed cumulative development. See Response to Comment 11-53 and 11-41 regarding the adequacy of the traffic analysis and baseline conditions.

#### **Response to Comment 11-67**

Air Pollutant Emission Model. This comment on the 2002 DEIR is no longer relevant. The updated air quality analysis within the RDEIR utilized the CALINE-4 model, with emission factors derived from the California ARB's EMFAC72002 computer program based on year 2004, 2010 and 2025 vehicle mix.

#### **Response to Comment 11-68**

Air Pollutant Emission Model. The comment is no longer relevant. The RDEIR utilized the most current URBEMIS2002 regional emission modeling program.

#### **Response to Comment 11-69**

Regional Air Quality Emissions. The comment states that project regional emissions are significantly greater than BAAQMD thresholds of significance and that the TDM program



does not describe how the measures will reduce such impacts. The RDEIR identifies available and feasible mitigation programs for a project of this type as recommended by the Bay Area Air Quality Management District's CEQA Guidelines. The specificity of the measures is limited by the fact that the project tenants are not known, nor the nature of their businesses or work force. The range of effectiveness given in the RDEIR is based on the ranges of effectiveness assigned to the various strategies that could be employed at the project site provided in BAAQMD CEQA Guidelines. The range of effectiveness represents a best estimate or what reductions could be attained at a suburban location. It is clear that there are currently no available measures sufficient to reduce the impacts to a level that is not significant, so the impact was identified as significant and unavoidable.

#### **Response to Comment 11-70**

Statement of Overriding Considerations. The comment states that Statement of Overriding Considerations will be flawed because the air quality analysis is improperly based on the traffic analysis. See Responses to Comments 11-41, 11-53, 11-66, 11-67 and 11-68 regarding the adequacy of the traffic and air quality analysis.

#### **Response to Comment 11-71**

Biological Impacts/Mandatory Findings. The comment states that the EIR does not make a finding of significance for impacts to habitat or endangered, rare or threatened species. Section 15065, cited by the commenter, pertains to the Initial Study determination whether an EIR must be prepared for a project. An EIR has been prepared for this project. All biological impacts are evaluated in detail in Section 3.9 of the RDEIR and all impacts have been reduced to a less than significant level, through implementation of mitigation measures, except for the cumulative significant and unavoidable loss of habitat.

#### **Response to Comment 11-72**

Endangered Species/Habitat Taking. The comment suggests that the project will result in a "take" of endangered species and habitat. No taking will result with this project as mitigated, and the RDEIR does not conclude that the project would result in the loss of "numerous endangered and special species," as suggested. While the RDEIR recognizes that the cumulative loss of habitat would be significant, site surveys did not identify the presence of special status species at the time of the surveys. On a site-specific basis, the RDEIR requires pre-construction surveys to confirm the absence/presence of San Joaquin kit fox, California tiger salamander and Western burrowing owl. If these species are found, Mitigation Measures 3.9-1, 3.9-3 and 3.9-4 require specific measures (avoidance, relocation, or compensation consistent with the State and federal Endangered Species Acts) that will mitigate project impacts to a less than significant level.

### **Response to Comment 11-73**

Project Objectives/Alternatives. A range of reasonable alternatives to the project are evaluated in Section 4.0 of the RDEIR. They include two No Project scenarios, a reduced density alternative, and reduced development intensity alternative. As CEQA Guidelines Section 15126.6(b) provides, these alternatives meet most, but not necessarily all, of the basic project objectives. The project objectives found on page 2-3 of the RDEIR, include the project's underlying purposes (CEQA Guidelines Section 15124 (b)).

### **Response to Comment 11-74**

Discussion of Alternative Site Uses. Comment states that the EIR improperly excludes analysis of a wide range of other potential alternative uses of the site, such as residential uses. See Response to Comment 11-73. The project site is designated as Light Industrial in the Zoning Code and the General Plan. The planned uses are consistent with these designations. Due to the proximity of the project site to ongoing gravel mining operations, residential uses would likely entail more significant effects on the environment.

### **Response to Comment 11-75**

Drainage System Size. The comment states that the drainage system is undersized and the City should consider a reduced density alternative. See Responses to Comments 11-3, 11-8 and 11-13 regarding hydrology. A reduced density alternative was included as Alternative 2 in Section 4.0 of the RDEIR.

### **Response to Comment 11-76**

Traffic Analysis. Page 6-8 of the RDEIR discloses the significant unavoidable traffic effects of the project, as identified in Section 3.3, Traffic and Circulation. This is a comment on the previous (2002) traffic impact analysis. Please see Response to Comments 11-29 through 11-33, 11-41 and 11-44.

### **Response to Comment 11-77**

No Project Alternative. Pursuant to CEQA Guidelines Section 15126.6(e)(3), the no project alternative consists of continuation of an existing regulatory plan or policy, or the circumstance under which the project does not proceed (no development). Section 4.0 of the RDEIR for the Oaks Business Park analyzes both, with the City's General Plan and zoning code considered as the relevant "plan" under which land uses may develop in the future.

The alternatives analysis within Section 4.0 of the RDEIR provides information consistent with Section 15126.6(d) of the Guidelines, which states that an EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. Where an alternative may cause one or more significant effects in addition to those caused by the project, the RDEIR discloses these effects, but in less detail than the significant effects of the project as proposed, as prescribed by the Guidelines.

451 Tanager Road  
Livermore, CA 94551

October 14, 2003

Letter 12

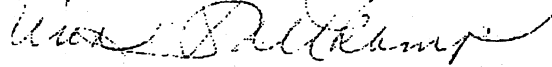
Paul Spence, Associate Planner  
Administration Building  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

Dear Mr. Spence:

As a 33-year resident of Livermore, I wish to state my strong objection to the proposed OAKS BUSINESS PARK.

Considering the serious and "unavoidable" negative impact affecting every aspect of our quality of life here in Livermore, I cannot understand how such a project could even be presented.

Sincerely,



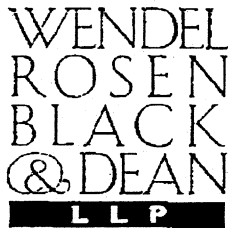
Nina Stallkamp

12-1

## RESPONSES TO LETTER 12 – NINA STALLKAMP

### Response to Comment 12-1

Significant Unavoidable Impacts. Comments in opposition to the project are noted for the record.



ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
dpreiss@wendel.com

**Letter 13**

October 20, 2003

**VIA UPS OVERNIGHT**

Paul Spence  
Associate Planner  
City of Livermore  
Administration Building  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

**RECEIVED**  
OCT 21 2003  
PLANNING DIVISION

**Re: Draft Revised Environmental Impact Report for Oaks Business Park ("Revised DEIR"); State Clearinghouse #2001032069; October 21, 2003 Planning Commission Meeting, Agenda Item #4.4**

Dear Mr. Spence:

CalMat Co., d/b/a Vulcan Materials Company, Western Division ("Vulcan"), is the owner and/or operator of over 1,400 acres of quarry lands and related facilities along El Charro Road between the cities of Pleasanton and Livermore. Vulcan's quarry lands include property located immediately to the west of the proposed Oaks Business Park project ("Project"). In testimony presented at the initial Planning Commission hearing held October 1, 2002, and in a letter from Vulcan dated October 14, 2002 (copy included in Appendix to Revised DEIR), Vulcan has already provided comments on the Draft Environmental Impact Report ("Original DEIR") originally released in August 2002 regarding the Project. The purpose of this letter is to present Vulcan's initial comments and concerns regarding the Revised DEIR and the redesigned Project. As discussed below, Vulcan continues to have concerns regarding certain aspects of the Revised DEIR and the Project.

As described in Vulcan's testimony before the Planning Commission on the Project and the Original DEIR in October of 2002, Vulcan is particularly concerned with the potential impacts of the Project on area drainage, specifically increased runoff into the Arroyo Mocho along Stanley Boulevard. The Project must be designed and function in a manner that will not compound an already serious flooding problem. In this regard, Vulcan joined in the comments submitted by the law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, on behalf of Rhodes & Jamieson, LLC, Pleasanton Gravel Company, Rancho del Charro, and Douglas Jamieson, including the oral and written comments made at the October 1 Planning Commission hearing, and the subsequent written comments on the Original DEIR submitted in a letter dated October 14, 2002 ("Jamieson Letter"). The Jamieson Letter reviewed the long-standing inadequacies of the Arroyo Mocho and the other existing drainage facilities in the vicinity of the Project, as well as the deficiencies of the drainage facilities for the Project contained in the original proposal, which consisted of two detention basins, one draining north (to the Arroyo Las Positas) and one draining south (to the Arroyo Mocho).

13-1

Earlier this year, Vulcan learned that the City and the applicant were working together with Zone 7 to redesign the drainage improvements to be constructed as part of the Project, based in part on the issues raised in the Jamieson Letter. Zone 7 and the applicant signed an agreement in June 2003 (Zone 7 Agreement A03-43-LIV) which requires the applicant to construct and dedicate this diversion channel to Zone 7, assuming the Project is approved by the City. A copy of this agreement is attached as Exhibit A to this letter. Under the proposed redesign, the detention basins analyzed in the Original DEIR are deleted and replaced with a diversion/detention channel along the western perimeter of the property, and all runoff from the Project is directed north, via the diversion channel, rather than having a portion of the Project runoff directed south to the Arroyo Mocho. This channel could easily be tied into the Arroyo Mocho bypass channel, long-planned by Zone 7 to alleviate flooding in the Arroyo Mocho. In a letter from Zone 7 dated April 23, 2003, which letter is included in the Revised DEIR, Zone 7 notes that this revised drainage layout is the preferred alternative.

Vulcan was therefore very disappointed to receive the Revised DEIR, which continues to include the originally proposed detention basins as a major element of one of the two "options" (Option B) for development of the Project. Although this drainage option has been slightly revised from that presented in the Original DEIR, it appears that many of the issues raised in the Jamieson Letter remain unresolved. Most importantly, Option B would continue to produce peak stormwater flows at least equal to current levels, and would not take any steps toward resolving the existing inadequacies and flooding problems of the Arroyo Mocho. As noted in the Jamieson Letter, the Arroyo Mocho currently has insufficient capacity to accommodate existing drainage flows, causing flooding problems such as occurred in 1998. The Project and other cumulative development in the area can only exacerbate this problem by increasing drainage flows into the Arroyo Mocho, unless the inadequate capacity is properly mitigated.

The Revised DEIR recognizes that cumulative development including the Project will result in significant impacts, but then fails to propose any measures to mitigate these impacts. In the Revised DEIR's discussion of cumulative impacts, the text describing Impact 3.7-5 notes that the Project would "contribute to cumulative drainage flows" in the area, and further notes that this is a potentially significant impact. However, the mitigation measures proposed for this impact relate only to water quality issues, and fail to provide any mitigation for issues related to inadequate drainage facilities.

Vulcan fails to understand why the applicant continues to propose the drainage improvements included within Option B. Given this option's inadequacies, Vulcan believes that it is essential that this option be eliminated in favor of the vastly superior proposal contained in Option A, which Zone 7 and the applicant have already agreed upon. Vulcan can think of no valid reason why Option B, with its inadequate drainage basins, remains in the proposal and the Revised DEIR. While Vulcan understands the applicant's desire to seek to preserve the potential opportunity to develop the additional 11 acres which would be possible under Option B, this should not be used to sacrifice this opportunity to provide a critical link in the solution to drainage problems that will be exacerbated by the Project. Accordingly, Option B must be eliminated from the Project and the Revised DEIR, and the Project must be properly conditioned to include the construction and dedication requirement of Option A pursuant to the above-referenced agreement between Zone 7 and the applicant.

Additionally, as Vulcan testified during the hearing on October 1, 2002, Vulcan is concerned regarding the potential land use conflicts between the Project and nearby quarry operations. The Revised DEIR's Land Use chapter recognizes that Vulcan is currently mining and reclaiming the quarry lands immediately to the west of the site under a mineral lease with Pleasanton Gravel Company. Pursuant to the Surface Mining and Reclamation Act of 1975 ("SMARA"), the State of California has designated this

13-1  
(cont.)

13-2

property, along with other lands in the vicinity, as containing mineral deposits of "regional significance," meaning that extraction of minerals from the quarry property is "judged to be of prime importance" to the region. The State's primary objective in granting this designation is to ensure that the mineral potential of the affected properties is recognized and considered prior to land use decisions or approvals which could preclude mining operations in the designated areas.

As part of the Land Use chapter's discussion of Impacts and Mitigation Measures, the Revised DEIR states that the impacts potentially created by conflicts between quarry operations and the land uses in the proposed development will be less than significant, since the City will require disclosure of the adjacent mining operations to all future users. However, the Revised DEIR fails to remedy the failure in the Original DEIR, in that the Revised DEIR neither explicitly requires such a disclosure as a mitigation measure nor specifies the form of the disclosure that will be required. Additionally, it is clear that a simple disclosure will not be adequate to prevent any physical conflicts between quarry operations and the Project.

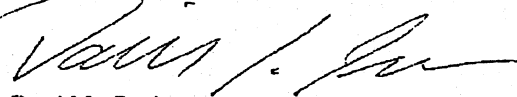
To insure that this potential impact is fully mitigated, and to ensure that the policies underlying SMARA are not violated by approval and development of the Project, Vulcan again requests that the Revised DEIR include two new mitigation measures following Impact 3.1-2, as set forth in more detail in Vulcan's October 11, 2002, letter. Please note that the detention basin and drainage channel included within drainage Option A would also provide some or all of the requested landscaping and sound buffering.

Thank you for your consideration of these comments. Vulcan is still reviewing this matter, and Vulcan reserves the right to submit additional comments and testimony on the Revised DEIR and the Project as this matter proceeds.

Please ensure that this letter is made part of the administrative record for this matter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN, LLP



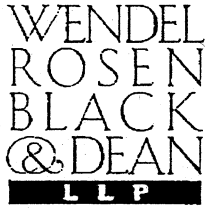
David L. Preiss

DLP:np  
Attachment

cc: Livermore Planning Commission  
Livermore City Council  
Zone 7  
Steven C. Cortner  
Douglas J. Reynolds  
Richard C. Jacobs, Esq.  
Michael P. Durkee, Esq.

13-2  
(cont.)





Attorneys at Law

1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
dpreiss@wendel.com

*Distributed 5 to  
Council - 5 to Paul  
Spence for PC-  
Ran*

October 20, 2003

**VIA UPS OVERNIGHT**

Ms. Alice Calvert  
City Clerk  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

**Re: Draft Revised Environmental Impact Report for Oaks Business Park; State  
Clearinghouse #2001032069; October 21, 2003 Planning Commission  
Meeting, Agenda Item #4.4**

Dear Ms. Calvert:

Enclosed are ten copies of a letter addressed to Paul Spence regarding the above matter. Prior to Tuesday evening's meeting of the Planning Commission, please distribute a copy of the letter to each member of the Commission, as well as to Mayor Kamena and each member of the City Council. We have separately provided Mr. Spence with the original of the letter.

Thank you for your assistance. Please call me at the number above if you have any questions regarding this letter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN, LLP

David L. Preiss

DLP:mp  
Enclosures

001481-0024-684072 1

AGREEMENT

This Agreement between Zone 7 of Alameda County Flood Control and Water Conservation District, (hereinafter referred to as DISTRICT), and Livermore Airway Associates, LLC (hereinafter referred to as DEVELOPER), hereby agreed as follows:

WITNESSETH

WHEREAS, DEVELOPER as the owner of approximately 177 acres of property located southeast of the intersection of West Jack London Boulevard and Isabel Avenue in the City of Livermore ("City"), County of Alameda, APN #904-0005-007-00 ("Developer Property"), desires to improve a portion of the Special Drainage Area 7-1 Project described in DISTRICT'S Resolution No. 6861; and

WHEREAS, DISTRICT finds that it is for the benefit of the said drainage area that said improvement should be performed; and

WHEREAS, it is the intention of the parties hereto to enter into an agreement to reimburse DEVELOPER for the costs of improvement and costs of right of way of said portion of Special Drainage Area 7-1 Project and to provide for reimbursement of costs, all in accordance with Paragraph 2, Section V and Paragraph 2, Section VI of Ordinance No. 0-2002-24 of DISTRICT.

WHEREAS, this Agreement and the activities described herein are contingent upon compliance with the California Environmental Quality Act, California Public Resources Code §§21000 et seq. and 14 California Code of Regulations 15000 et seq. ("CEQA").

NOW, THEREFORE, IT IS MUTUALLY AGREED THAT:

1. DEVELOPER shall improve and pay for the work as shown on the plans, marked Exhibit "A," which are attached hereto and made a part hereof and shall provide fee title right of way as described in Exhibit "B" and as shown in Exhibit "C" which are attached and made a part hereof. Right of way shall be free and clear of any and all encumbrances and conditions unless such encumbrances and conditions are specifically approved and accepted by DISTRICT. Furthermore, DEVELOPER shall, at his own expense, furnish DISTRICT with a policy of Title Insurance on the right of way from a Title Company and in an amount acceptable to DISTRICT.

2002-24, and shall be payable in accordance with the provisions of Paragraph 3, Section V of said Ordinance No. 0-2002-24. DISTRICT shall not be liable for failure to collect fees.

7. The maximum amount of reimbursement available to DEVELOPER for improvement of the aforesaid Special Drainage Area 7-1 facility shall be the sum of \$ 2,930,000, which maximum amount shall automatically be increased by the amount of any additional costs for any additional work or changes requested by the District and agreed to by DEVELOPER that is not currently shown on Exhibits A to C hereto. The maximum amount of reimbursement available to DEVELOPER for cost of acquisition of rights of way shall be the sum of \$1,870,000.

8. DEVELOPER shall be entitled to reimbursement only upon completion and acceptance of the work as called for herein and acceptance by DISTRICT of any rights of way required for said work, and reimbursement shall be made from the Special Drainage Area Facilities Fund 7-1, as specified in Paragraph 2(d), Section V of said Ordinance No. 0-2002-24. Acceptance of right of way shall be contingent upon the installation of adequate perimeter security fencing by the DEVELOPER or others for areas which are not going to be open to the public.

9. The actual amount of such reimbursement shall be determined by said General Manager and shall be based on the actual invoiced costs for construction and right of way acquisition, all as provided in Paragraph 3, Section V of said Ordinance No. 0-2002-24, but not to exceed the amounts specified in Paragraph 7 hereof. DISTRICT reserves the right to re-evaluate maximum cost for acquisition of right of way.

10. DEVELOPER shall give DISTRICT at least two (2) days advance notice before commencing any work described herein so that adequate provision for field inspections can be made.

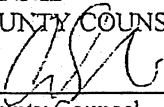
11. This Agreement is executed pursuant to provisions of Ordinance No. 0-2002-24, which by reference is incorporated herein.

12. DEVELOPER shall have the right to assign this contract in whole or in part to any person, firm or corporation, but such assignment shall not be binding on DISTRICT until DISTRICT has been notified in writing of any such assignment, said assignment being subject to approval by the Zone 7 Board of Directors. Any assignment of this contract must be effectuated prior to the granting of permits under these provisions.

13. In executing this Agreement, the parties recognize and acknowledge that no commitment can be made to carry out any "project" within the meaning of CEQA unless and until the environmental review required by CEQA has been completed. To the extent the activities contemplated by this Agreement, or any portion thereof, constitute a "project" within the meaning of CEQA, approval and implementation of such activities are expressly contingent upon completion of the environmental review and assessment required by CEQA. In the event that the DISTRICT, in its role as a responsible agency under the California Environmental Quality Act ("CEQA"), determines that additional CEQA review is necessary for the implementation of this Agreement, other than the environmental review that was approved for

APPROVED AS TO FORM:

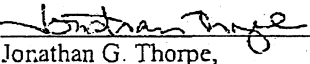
RICHARD E. WENNIE  
ASSISTANT COUNTY COUNSEL

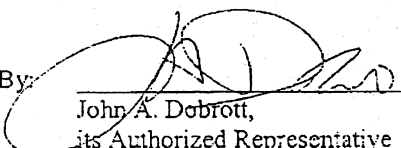
By:   
Assistant County Counsel

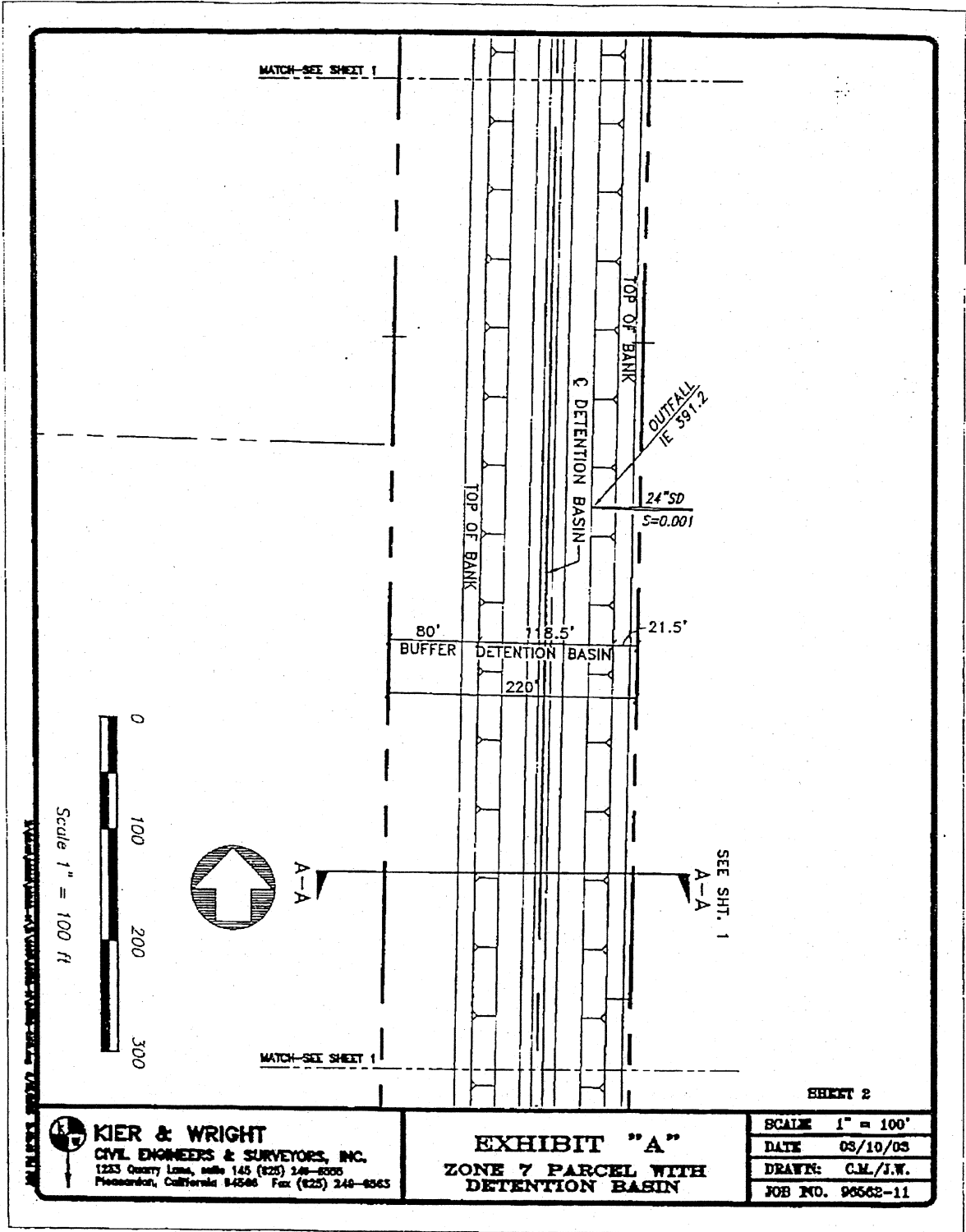
LIVERMORE AIRWAY ASSOCIATES, L.L.C.  
a Delaware limited liability company

By: Airway Acquisition I, L.L.C.,  
A Delaware limited liability company,  
its Administrative Member

By: MSGW Real Estate Fund III, L.L.C.,  
a Delaware limited liability company,  
its Sole Member

By:   
Jonathan G. Thorpe,  
its Authorized Representative

By:   
John A. Dobroff,  
its Authorized Representative

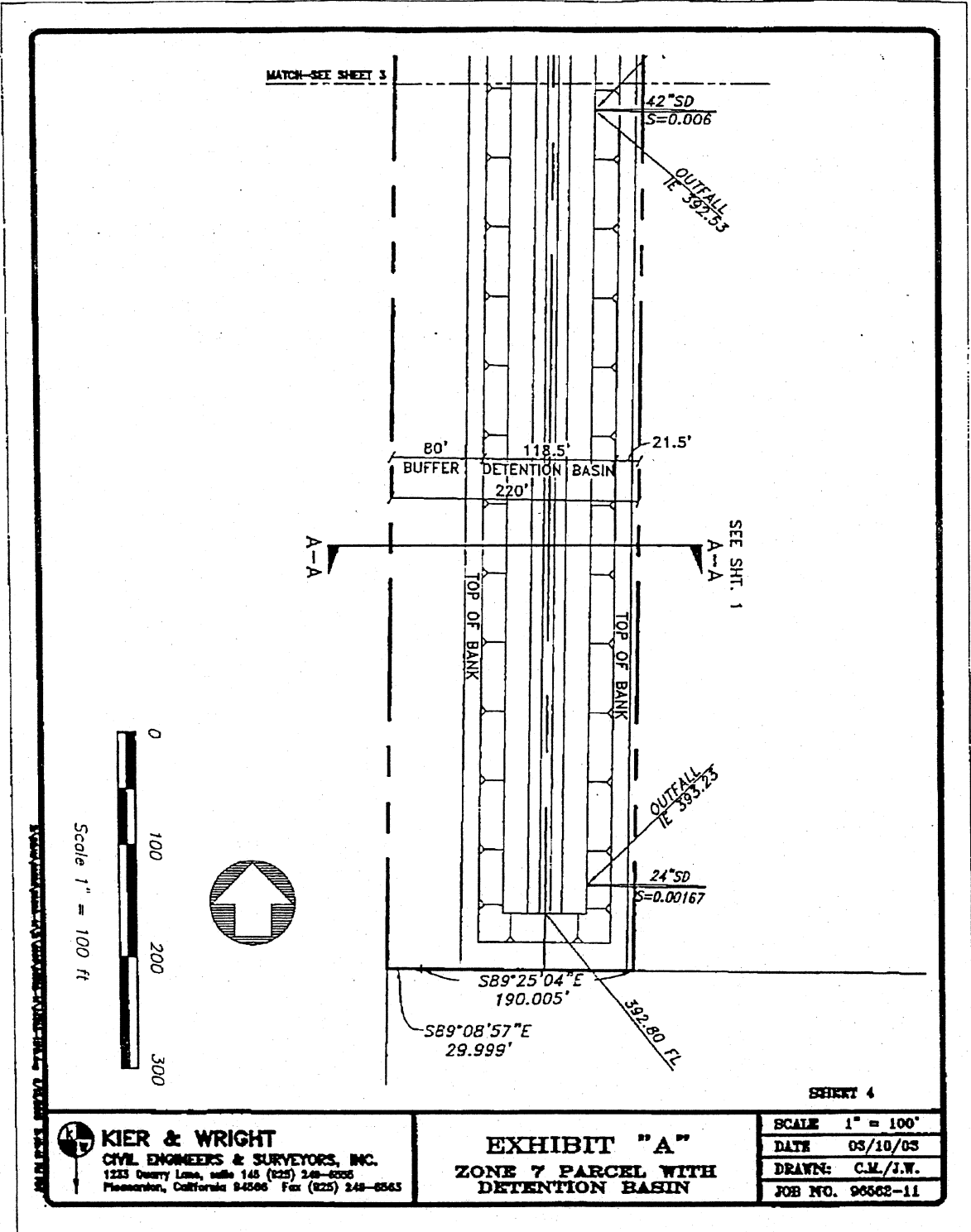



**KIER & WRIGHT**  
 CIVIL ENGINEERS & SURVEYORS, INC.  
 1223 Quarry Lane, Suite 145 (825) 240-8300  
 Pleasanton, California 94566 Fax (825) 240-8363

**EXHIBIT "A"**  
**ZONE 7 PARCEL WITH**  
**DETENTION BASIN**

SCALE	1" = 100'
DATE	05/10/05
DRAWN:	C.M./J.W.
JOB NO.	96562-11

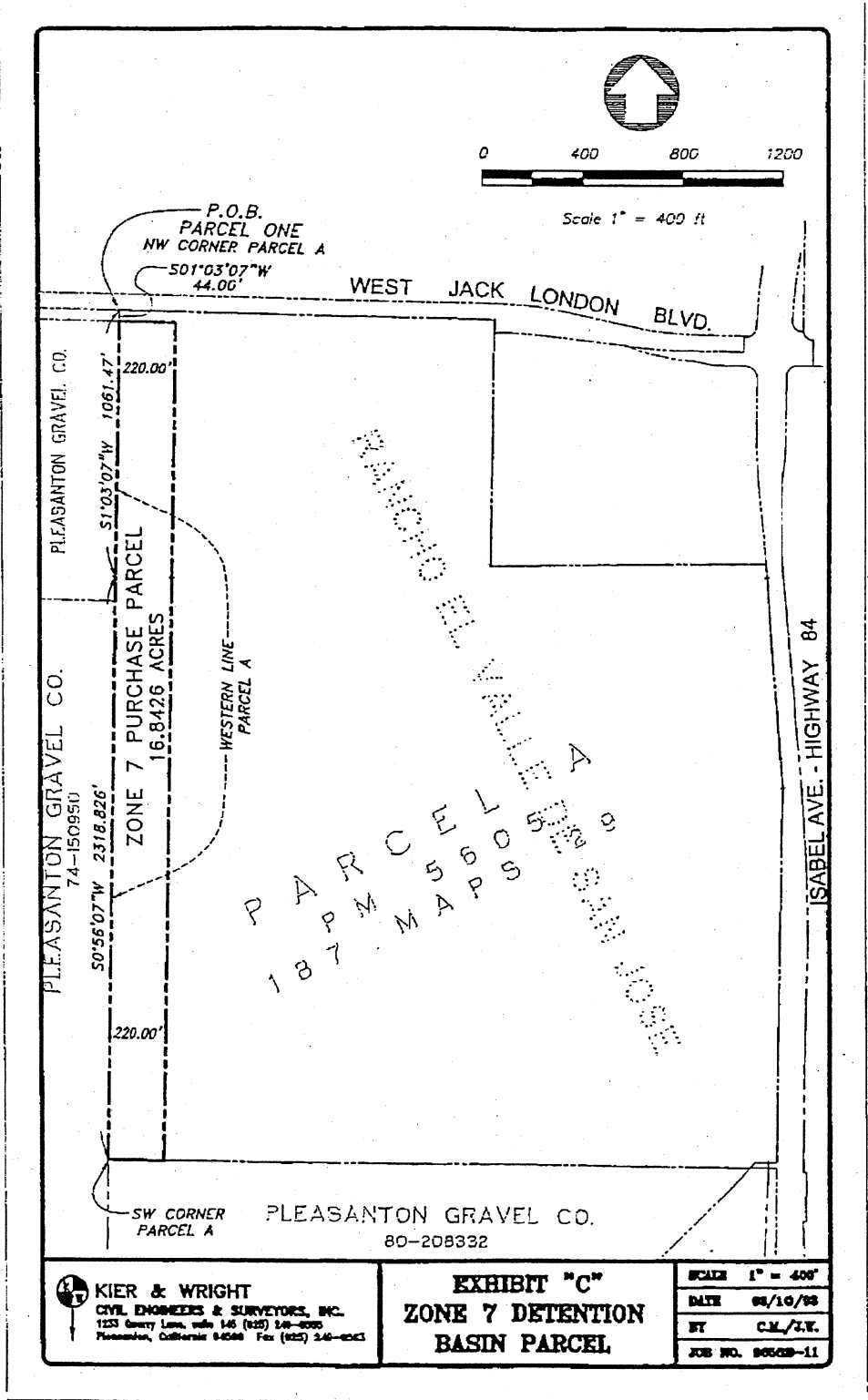
SHEET 2




**KIER & WRIGHT**  
 CIVIL ENGINEERS & SURVEYORS, INC.  
 1223 Quarry Lane, Suite 148 (1225) 248-6550  
 Pleasanton, California 94566 Fax (925) 248-6563

**EXHIBIT "A"**  
**ZONE 7 PARCEL WITH**  
**DETENTION BASIN**

SCALE	1" = 100'
DATE	03/10/03
DRAWN:	C.M./J.W.
JOB NO.	98662-11



## RESPONSES TO LETTER 13 – WENDEL ROSEN BLACK & DEAN

### Response to Comment 13-1

Drainage Options. The issues raised in this comment are similar to the issues raised in Letter 11. Please see responses to Letter 11 regarding project impacts to the Arroyo Mocho and the inclusion of Option B within the EIR. The agreement between the applicant and Zone 7 cited and attached to the comment letter concerns Drainage Option A as analyzed within the RDEIR.

In addition, the comment states that “Option B would continue to produce peak stormwater flows at least equal to current levels, and would not take any steps toward resolving the existing inadequacies and flooding problems of the Arroyo Mocho”. It should be noted that a public agency such as the City of Livermore cannot, without appropriate nexus, require a project proponent to correct deficiencies in an existing environmental condition such as the capacity of an adjacent waterway. The project is responsible for mitigating any significant project-specific or significant cumulative effect caused by the project. As demonstrated by the RDEIR and supporting hydrology study, the pre-project and post-project flows into the Arroyo Mocho from the project site are essentially the same under Drainage Option B.

### Response to Comment 13-2

Potential Land Use Conflicts. The comment suggests a potential land use conflict between the project and the adjacent quarry operations and requests the inclusion of two new mitigation measures. The interface between the project and the adjacent mining uses are disclosed and discussed on pages 3.1-26 and 3.1-27 of the RDEIR. As identified on those pages, industrial/business park and mining uses are considered compatible when measured against the environmental factors that cause incompatibility. Impact 3.1-2 of the EIR addresses and recognizes the adjacent land use and concludes that the proposed uses will not affect the adjacent quarry uses. Similarly, the proposed uses will not preclude the neighboring property owner from extracting mineral resources from their property. The 220 foot wide buffer created by Drainage Option A (the preferred drainage option) would further separate the land uses between these parcels.

The second issue addresses the disclosure to occupants of the business park. As the EIR did not identify a significant physical environmental effect that would create a land use conflict, a disclosure statement was not included as a mitigation measure. Nevertheless, the applicant is agreeable to providing a deed disclosure as a Condition of Approval. The language for this deed disclosure, which will be considered by the City Council, is as follows:



The developer shall include the following disclosure provision in any grant deed from the developer to any grantee of any property within the project site, and within any lease for any property within the project site:

"Grantee/Tenant hereunder acknowledges and agrees that the subject property is located in the vicinity of active quarries, quarry processing facilities and quarry operations ("Quarry Activities") and that such Quarry Activities may result in impacts to surrounding land uses including without limitation airborne particulate matter, noise, odor, light, vibration, visual aesthetics or heavy truck traffic on public and private roadways within and in the vicinity of the quarries. Grantee hereby covenants to include this same paragraph, in its entirety, (i) in any subsequent deed by Grantee of all or any portion of the subject property and (ii) in any lease for all or any portion of the subject property; each for so long as such quarries and the processing facilities in the vicinity are active."

**WENDEL  
ROSEN  
BLACK  
& DEAN**  
ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
dpreiss@wvndel.com

Letter 14

November 12, 2003

VIA FACSIMILE

Paul Spence  
Associate Planner  
City of Livermore  
Administration Building  
1052 South Livermore Avenue  
Livermore, CA 94550-4899

Re: **Draft Revised Environmental Impact Report for Oaks Business Park ("Revised DEIR"); State Clearinghouse #2001032069**

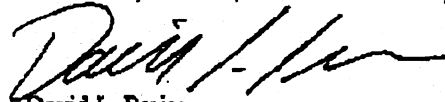
Dear Mr. Spence:

By our letter dated October 20, 2003, CalMat Co., d/b/a Vulcan Materials Company, Western Division ("Vulcan") submitted initial comments on the Revised DEIR prepared for the Oaks Business Park project. Vulcan also joins in the written comments on the Revised DEIR and project submitted on behalf of Rhodes & Jamieson, LLC, Pleasanton Gravel Company, Rancho del Charro, and Douglas Jamieson, by their attorney Richard Jacobs, in a letter dated November 6, 2003.

Vulcan reserves the right to submit additional comments and testimony on the Revised DEIR and the project as this matter proceeds. Please ensure that this letter is made part of the administrative record for this matter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN, LLP

  
David L. Preiss

DLP:mp  
Attachment

cc: Livermore Planning Commission  
Livermore City Council  
Zone 7  
Steven C. Cortner  
Douglas J. Reynolds  
Richard C. Jacobs, Esq.  
Michael P. Durkee, Esq.

14-1

## RESPONSES TO LETTER 14 – WENDEL ROSEN BLACK & DEAN (FOLLOW UP)

### Response to Comment 14-1

Drainage Comments. Please see responses to Letter 11 regarding site drainage options, capacity of the Arroyo Mocho, long term solutions to localized flooding, and cumulative drainage impacts.



71 Trevarno Road, Livermore, CA 94551-4951  
(925) 373-5700. Fax: (925) 447-2754. www.larpd.dst.ca.us

General Manager  
Timothy J Barry

**Letter 15**

November 17, 2003

**RECEIVED**

NOV 19 2003

PLANNING DIVISIO

Paul Spence, Associate Planner  
City of Livermore  
Planning Division  
1052 South Livermore Avenue  
Livermore, CA 94550

Subject: TTM #7300 – Revised Draft Environmental Impact Report (DEIR), Oaks Business Park, (State Clearinghouse # 2001032069), to subdivide 178 acres into 35 to 40 parcels, located at 625 West Jack London Boulevard, southwest of Isabel Avenue.

Dear Paul;

Thank you for sending us the notice of the Revised DEIR for review and comment.

We continue to note that increases in regional traffic impacts in the area from the project necessitate contributions to real and effective solutions. We do not believe that the proposed Transportation Demand Management (TDM) is sufficiently adequate as a mitigation measure for the identified impacts of the project. Specifically, we believe that providing an on-site coordinator "to provide information to employees and employers related to car pooling, bicycling to work, ride sharing and alternative transportation information" is useful and helpful, but does not go far enough to effectively mitigate for the permanent impacts that will result from the development.

We recommend that the TDM program be required to include the development of the missing link in the trail system that would connect Pleasanton/Dublin to Livermore. A majority of the project is located contiguous to and in the vicinity of the proposed project. Linking the areas that provide housing for the future workers in the project provides real transportation alternatives as is intended by CEQA mitigation requirements. Providing information on how to bicycle to work is important but is of little value if the employee cannot conveniently and safely get from home to work. Portions of this connection are reflected in the City's Bikeways and Trails Master Plan as Trail Project #T-14. We believe that the portion east of Kitty Hawk to El Charro are the portions that should be required as mitigation for this project.

Having the applicant contribute to the connection of the existing trail systems in Livermore and Pleasanton will provide real opportunities for reduction in regional traffic impacts. Thank you again for the opportunity to comment on the proposed Revised DEIR.

Board of Directors  
Maryalice Faltings

David Furst

Scott Kamena


Alice Quinn

Dale Turner

15-1

If you have any questions, please call me at (925) 373-5729.

Sincerely,

  
Kenneth Craig  
Superintendent of Planning and Parks  
Livermore Area Recreation and Park District

KHC/kme

Cc: Steve Fiala, EBRPD  
David Lunn Zone 7

R:\PLANNING AND PARKS\PLANNING\City of Livermore\Subdivisions\TPM - TTM - VTTM\TTM7300 BB Oaks Business  
Park ItrR DEIR 111703.doc

## RESPONSES TO LETTER 15 – LIVERMORE AREA RECREATION AND PARK DISTRICT

### Response to Comment 15-1

TDM Program. The comment requests that the project provide or contribute to the development of a regional trail system that would connect Pleasanton/Dublin to the City of Livermore (specifically the portion east of Kitty Hawk to El Charro). The comment also states the Park District's opinion that the proposed TDM program does not sufficiently reduce vehicle trips. In terms of project responsibility, the provision of a regional trail facility is not justified in this case by significant project impacts.

It should also be noted that existing trail segments along Stanley Boulevard and Isabel Avenue already connect the site to the City of Pleasanton using existing facilities. In addition, the City of Livermore has conditioned the project to provide trail improvements along the north and west project boundaries. These trail improvements will provide connecting segments to regional trail systems and existing bicycle routes, as well as future connections between the project site and the planned trail system along the Arroyo Mocho south of the site.



Gray Davis  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse



Tal Finney  
Interim Director

November 12, 2003

Letter 16

Paul Spence  
City of Livermore  
1052 S Livermore Ave.  
Livermore, CA 94550-4899

Subject: Oaks Business Park (Re-circulated EIR)  
SCH#: 2001032069

Dear Paul Spence:

The State Clearinghouse submitted the above named Draft 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 November 10, 2003, 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,

Terry Roberts  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

RECEIVED  
NOV 14 2003  
PLANNING DIVISION

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044  
(916)445-0613 FAX(916)323-3018 www.opr.ca.gov



**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2001032069  
**Project Title** Oaks Business Park (Re-circulated EIR)  
**Lead Agency** Livermore, City of

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**Type** EIR Draft EIR  
**Description** 178+/- acre project site will be re-zoned to Planned Development and Industrial (PD-1) and subdivided into approximately 38 lots for development of offices, research, warehousing, manufacturing and limited business supporting commercial uses. The project will provide between 2.5 and 2.9 million square feet of development and includes the construction of corresponding public infrastructure.

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**Lead Agency Contact**

**Name** Paul Spence  
**Agency** City of Livermore  
**Phone** 925-960-4450 **Fax**  
**email**  
**Address** 1052 S Livermore Ave.  
**City** Livermore **State** CA **Zip** 94550-4899

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**Project Location**

**County** Alameda  
**City** Livermore  
**Region**  
**Cross Streets** Jack London Boulevard and Isabel Avenue  
**Parcel No.** 904-0005-007-00  
**Township** **Range** **Section** **Base**

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**Proximity to:**

**Highways** 84  
**Airports** Livermore Municipal Airport  
**Railways** Union Pacific  
**Waterways** Arroyo Mocho  
**Schools** 8 Schools in Livermore Unified  
**Land Use** Light industrial (1-2). General Plan: Low Intensity industrial (LII).

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

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**Reviewing Agencies** Resources Agency; Department of Fish and Game; Region 3; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Air Resources Board, Major Industrial Projects; Regional Water Quality Control Board, Region 2; Department of Toxic Substances Control; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 4; Native American Heritage Commission; Public Utilities Commission; State Lands Commission

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**Date Received** 09/26/2003 **Start of Review** 09/26/2003 **End of Review** 11/10/2003

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Note: Blanks in data fields result from insufficient information provided by lead agency.



## RESPONSES TO LETTER 16 – STATE CLEARINGHOUSE

### Response to Comment 16-1

Agency Review. Compliance with State Clearinghouse review requirements is acknowledged.

ABSENT: NONE

4.4 Hearing to receive comments on the Environmental Impact Report for the Oaks Business Park.

- Location: Southwest of the junction of Jack London Boulevard and Isabel Avenue
- Applicant: The Gale Company
- On-site and off-site public improvements: Construction of public infrastructure, including streets, street frontage landscaping and installation of on-site and off-site public utilities
- Site Area: 178± acres
- Zoning: Light Industrial (I-2)
- General Plan: Low Intensity Industrial (LII)
- CEQA: An Environmental Impact Report has been prepared for this project. The project was found to create significant unavoidable impacts in the areas of: Traffic and Circulation, Visual Resources, Air Quality, and Biological Resources.
- Application Numbers: Vesting Tentative Tract Map 7300 (Subdivision 01-004), Planned Development Industrial 01-003, and Development Agreement 02-002
- Project Planner: Paul Spence

Chairperson West asked staff to summarize the letter that was just provided to the Commissioners.

AP Spence summarized the staff report. He stated the comment letter was from Wendell, Rosen, Black, and Dean representing the Vulcan Materials Company. They have indicated two concerns: 1) on-site drainage. They are concerned that there are two drainage options that remain, and they are recommending that the applicant proceed with the by-pass channel drainage option; and 2) the compatibility of uses between the project and the adjoining quarry operations. AP Spence introduced Consultant Tad Stearn from Pacific Municipal Consultants (PMC). Mr. Stearn prepared the EIR for this project.

Mr. Stearn provided a brief overview of the EIR for this project.

Chairperson West asked who are the on-site coordinators managing the TDM? AP Spence replied the Business Park Association and the individual businesses within the park would provide the on-site coordinator; they will provide the fee to pay the on-site coordinator. Chairperson West further asked if the City would approve the person they designate? AP Spence replied as currently proposed, the City does not approve that position, but the City would work with that person on the implementation of the program. The City (represented by Engineering Division) would be actively involved in overseeing the program.

CM Leider stated the comment letter talked about the impacts of the quarries on the business parks and vice versa. She asked what kind of impacts would the quarries have on the business park? Mr. Stearn replied that could be about the compatibility of the uses, having a development use versus a heavy industrial use and the co-existence between those uses. The EIR concluded that even though there would be a quarry operation next door, and if there will be light industrial use, business park use, and all the developed uses to choose from, it is a compatible use.

Chairperson West asked if the quarry operations would be responsible for all the dust and noise control under the normal business operations? Mr. Stearn replied if they were pre-existence use, they wouldn't be responsible for altering their operations as long as they were permitted. They have to comply with whatever is required from them in their County permit.

CM Leider stated it bothers her that the EIR mentioned that because this is a large parcel, and if a large parcel is developed, the impact on the air quality is essentially bad. However, if the parcel is divided parcel-by-parcel and not developed as one, smaller parcel (i.e. 5 acres) would not have an impact on the air quality. She doesn't understand how this theory works. She thought the reason why there will be light industrial in the City is so that people don't have to drive or commute which would improve the air quality, but the report says it is a disaster for air quality. AP Spence stated the Bay Area Air Quality Management District (BAAQMD) sets the threshold for certain pollutants per day. A number of small projects may not hit the threshold, but if they are put together, they do. This is the nature of the threshold set by the BAAQMD. As noted on the EIR, there are traffic impacts on a regional basis; there are car trips from all over the region that would be dispersed throughout the region. It does substantially exceed the threshold level; there is not much the project can do to meet the threshold, except to reduce its size.

Chairperson West asked if there would be a discussion about the issue of local trips versus people commuting out of the City? CM Leider added it doesn't make sense, as the parcel could eventually be filled-up in twenty-five years. By doing it project-by-project, the project itself would not exceed the air quality threshold. Mr. Stearn stated that may be true but CEQA doesn't allow that projects be segmented that way. The BAAQMD numbers are based on the traffic modeling. Traffic modeling was done for both the City's General Plan and the Tri-Valley model and are generally very conservative. It assumes people are coming in from distances. He hopes that many people who are going to be working here are coming from the community. This will provide an air quality benefit above from what the model shows.

CM Leider asked is it true that these projects will not all be built at the same time? Mr. Stearn replied the whole site would be developed in phases over time. CM Leider added each phase may or may not exceed the threshold. She commented that the air quality of the EIR is puzzling.

Chairperson West opened the public hearing.

Rick Camacho, 3847 Vineyard Avenue, Pleasanton, stated when the community in the west side of Livermore looked at the options for this site (even prior to Gale Company coming to this property), the community was looking at a business park idea. They had meetings where they drew out their ideas and designs to protect the Oak trees, etc. As far as where the project is going historically since 1999, a business park was brought up by 75 percent of the people. That is something they would like to see there.

No one else spoke and the public hearing was closed.

Chairperson West reminded the public that November 12, 2003, is the deadline for written comments and they should direct their comments to the Planning staff.

4.5 Hearing to consider a request to amend Planned Development-Commercial 00-194 to permit up to 106 multiple-family residential units for seniors and to include development standards for the proposed use.

- Location: North of Stanley Boulevard and east of Murrieta Boulevard
- Applicant: City of Livermore
- On-site and off-site public improvements: None
- Site Area: 2± acres
- Zoning: Planned Development-Commercial (PD-C) 00-194
- General Plan: Downtown Urban Design Plan-Subarea 9 (UDP-9)
- CEQA: A previous Negative Declaration under the provisions of the California Environmental Quality Act (CEQA) has been certified for the project.
- Application Number: General Zoning Code Text Amendment 03-336
- Project Planner: Scott Lee

AP Lee summarized the Staff Report. He also summarized the Design Review Committee (DRC) meeting of October 16, 2003, for this project. There was a consensus among the members; they were in agreement with Freedman, Tung, and Bottomley's (FTB) comments. There were also a few additional comments by individual members. One member thought a combination masonry sound wall with wrought iron top would be acceptable, while FTB is recommending a more open fencing to have the project engage the public space of the street. A second Committee member expressed displeasure with the color scheme. The colors are the same color scheme as the Phase I project. The Committee member felt that could be improved, especially the yellow. The Committee also expressed some concerns in the bulk and massing of the building. However, the bulk is determined by the density and the density was approved through the General Plan amendment. As part of the review, staff is requesting that Planning Commission provide comments on these design recommendations. Staff is recommending that the Commission recommend to the City Council approval of Zoning Code Text Amendment and also provide

P.C. Minutes  
Approved 10/18/03

11

October 21, 2003

**RESPONSE TO PUBLIC COMMENTS RECEIVED AT THE PLANNING COMMISSION  
PUBLIC HEARING OCTOBER 21, 2003**

**Rick Camacho** – Mr. Camacho was the only public speaker, and spoke in favor of the project. No staff response is necessary.



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## 3.0 ERRATA TO THE DRAFT EIR

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The following information provides minor text changes and clarifications resulting from public comment on the RDEIR. None of the following changes result in substantive changes to the conclusions of the EIR, or constitute significant new information. The information is organized according to each chapter of the RDEIR. Text edits are shown in ~~strikeout~~ and bold italics.

## S – EXECUTIVE SUMMARY

Table S-1, Page S-4. The land use impact is incorrectly identified, and corrected as follows:

~~Impact 3.1-3-~~ **Impact 3.1-1** The project is located adjacent to.....

Table S-1, Page S-4, third column, discussion under "Mitigation Measures". Reference to MM 3.3-8 is incorrect, and corrected as follows:

Traffic: Mitigation Measures MM 3.3-1a through MM 3.3-1c, MM 3.3-2 and MM 3.3-3; MM 3.3-4a through MM 3.3-4e; MM 3.3-5a; ~~MM 3.3-8;~~ and MM 3.3-9 **and MM 3.3-10** will reduce impacts to the residential neighborhood to the east to a less than significant impact.

### 1.0 INTRODUCTION

No text changes.

### 2.0 PROJECT DESCRIPTION

No text changes.

### 3.0 ENVIRONMENTAL SETTING, IMPACTS AND MITIGATION MEASURES

#### 3.1 Land Use

Page 3.1-3

The following text has been clarified to reflect East Bay Regional Park District's comment:

Future State Highway 84/Isabel Avenue borders the eastern edge of the project site. ***The Shadow Cliffs to Morgan Territory Regional Trail ("Isabel Avenue Trail" in the City of Livermore Bikeways and Trails Master Plan)*** A ~~recreation trail~~ and a 15-foot high earthen berm run parallel to, and east of, Isabel Avenue. Single-family residential neighborhoods, including Murrietta Meadows, lie further east and are separated from the berm and ***regional recreation trail*** by a strip of vacant land.

The following text has been clarified to reflect East Bay Regional Park District's request:

**EAST BAY REGIONAL PARK DISTRICT MASTER PLAN**

*The East Bay Regional Park District Master Plan (1997) defines the vision and mission of the district and sets priorities through 2007. It explains the District's multi-faceted responsibilities and provides policies and guidelines for achieving the highest standards of service in resource conservation, management, interpretation, public access and recreation. The Master Plan is designed to maintain a careful balance between the need to protect and conserve resources and the recreational use of parklands for all to enjoy now and in the future. It was prepared with the active participation of the District citizen-based Park Advisory Committee and with extensive review and comment from the community. The District's first Master Plan was approved in 1973. Since then, the Plan has been revised every six to seven years to reflect new circumstances to which the District must respond.*

**LIVERMORE AREA RECREATION AND PARK DISTRICT MASTER PLAN**

*The Livermore Area Recreation and Park District Master Plan establishes goals, policies and standards to guide the future of the District. The District encompasses 245 square miles, known as the Murray Township, stretching from the Contra Costa County border on the north to the Santa Clara County border to the south, and from the San Joaquin County line on the east to the City of Pleasanton and City of Dublin on the west. LARPD is responsible for developing and operating parks, recreation facilities and programs serving the Livermore area.*

**CITY OF LIVERMORE BIKEWAYS AND TRAILS MASTER PLAN**

*The Bikeways and Trails Master Plan provides a comprehensive and current set of policies, data and programs for pedestrian, equestrian and bicycle facility improvement and development within the City. The Plan sets goals, policies and action steps for the City, including an emphasis on network connectivity and design, planning and interagency coordination, support facilities, safety, education and promotion, maintenance and implementation.*

The following correction is made, second paragraph:

...This impact will be reduced to a less than significant level with implementation of mitigation measure ~~MM 3.3-8~~ **MM 3.3-10**.

Page 3.1-30

The following text has been clarified to reflect East Bay Regional Park District's request:

**EAST BAY REGIONAL PARK DISTRICT MASTER PLAN**

***The East Bay Regional Park District Master Plan (1997) defines the vision and mission of the district and sets priorities through 2007. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact or impede on any EBRPD lands, utilize park resources, or affect planned trails.***

**LIVERMORE AREA RECREATION AND PARK DISTRICT MASTER PLAN**

***The Livermore Area Recreation and Park District Master Plan establishes goals, policies and standards to guide the future of the District. LARPD is responsible for developing and operating parks, recreation facilities and programs serving the Livermore area. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact existing recreation facilities or impede planned trail systems.***

**CITY OF LIVERMORE BIKEWAYS AND TRAILS MASTER PLAN**

***The Bikeways and Trails Master Plan provides a comprehensive and current set of policies, data and programs for pedestrian, equestrian and bicycle facility improvement and development within the City. The Plan sets goals, policies and action steps for the City, including an emphasis on network connectivity and design, planning and interagency coordination, support facilities, safety, education and promotion, maintenance and implementation. The Oaks Business Park project will not conflict with this adopted plan, as the project will not impact existing or planned facilities. In fact, the project location and future employees may take advantage of existing and planned bikeways as an alternative to driving, consistent with the goals of the plan.***

**3.2 Health Hazards/Risk of Upset**

No text changes.

**3.3 Traffic, Circulation and Parking**

The following text has been clarified to reflect Alameda County CMA policy:

**Year 2005 With and Without Project**

Under Year 2005 (there is no 2010 CMA model) both with and without proposed project scenarios, all roadway segments LOS would remain unchanged except Stanley Boulevard east of Isabel Avenue would change from LOS B without project to LOS C with project. ~~All roadway segments would meet the ACCMA standard of LOS E during the p.m. peak hour, both with and without project.~~

**Year 2025 With and Without Project**

Under Year 2025, both with and without proposed project scenario, the LOS for all roadway segments would remain unchanged, except Isabel Avenue south of Jack London Boulevard. With the project, this segment would change from LOS B to LOS C in the northbound direction, and from LOS A to LOS B in the southbound direction. Isabel Avenue between Stanley and Concannon would also change from LOS A to LOS B in the southbound direction, with the project. Stanley Boulevard west of Isabel Avenue eastbound would operate at LOS F in the p.m. peak hour, with or without the project trips. This is an existing unacceptable condition to which the project would contribute. ~~The rest of the roadway segments would meet the ACCMA standard of LOS E during the p.m. peak hour, both with and without the project.~~

The notes on Table 3.3.14 have been edited to reflect Alameda County CMA's comment:

Notes: Assumes maximum service flow rate of 2,300 passenger cars per hour per lane for freeway mainlines, 1,200 for expressways and 1,000 for local streets. Peak hour volumes were based on the ACCMA Model Year 2005 and Year 2025 without project. ...

**3.4 NOISE**

The following clarification is made to the heading for Table 3.4-3:

**TABLE 3.4-3  
EXISTING *BASELINE* AVERAGE DAILY TRAFFIC VOLUMES (ADT), NOISE LEVELS AND  
DISTANCES TO CONTOURS  
FOR OAKS BUSINESS PARK – LIVERMORE, CALIFORNIA**

**3.5 VISUAL RESOURCES**

No text changes.

### 3.6 AIR QUALITY

No text changes.

### 3.7 HYDROLOGY AND WATER QUALITY

Page 3.7-25

The following text has been edited to reflect Zone 7's comment:

The study shows that the entire watershed **project site** will drain to the proposed detention basin for Option "A". This option eliminates all flows from the project from draining to the Arroyo Mocho.

Page 3.7-28

The following text has been edited to reflect Zone 7's comment:

The offsite improvements for the 24" storm drain and outfall extend through City of Livermore and Zone 7 property; **the design will conform to Zone 7's standard detail for an outfall, SF-605**. No private property is affected by these improvements.

Page 3.7-31 (and corresponding page S-16 of the Executive Summary)

The following text has been edited to reflect the Zone 7's comment:

**MM 3.7-2a** ...All storm water conveyance and discharge facilities that will be the responsibility of the City shall be designed and constructed in accordance with City Standard Specifications and Details. Under Revised Option "B" only, **the stormwater outfall to the Arroyo Mocho will be designed and constructed in accordance with Zone 7 standard detail SF-605, and** Zone 7 of the Alameda County Flood Control and Water Conservation District shall accept the stormwater outfall to the Arroyo Mocho. The applicant shall meet and implement all other applicable City, State and Federal requirements for non-point source runoff.

The following text has been edited to reflect the RWQCB's comment:

**MM 3.7-2c** A Clean Water Act Section 401 Water Quality Certification waiver issued by the RWQCB is required in connection with Army Corps of Engineers Nationwide permit authorization for the proposed outfall structure, in the event that Revised Option "B" is approved. RWQCB shall review storm water treatment prior to discharge into any regulated waters.

### 3.8 GEOLOGY, SOILS AND SEISMICITY

Page 3.8-11

The Mitigation Measure 3.8-2b is clarified as follows:

MM 3.8-2b Final grading plans shall be reviewed by ~~Kleinfelder~~ a **qualified geotechnical engineering consultant** for conformance to the design recommendations....

### 3.9 BIOLOGICAL RESOURCES

No text changes.

### 3.10 CULTURAL RESOURCES

No text changes.

### 3.11 PUBLIC SERVICES AND UTILITIES

No text changes.

### 4.0. ALTERNATIVES TO THE PROJECT

No text changes.

### 5.0. CUMULATIVE IMPACTS SUMMARY

No text changes.

### 6.0. OTHER SECTIONS REQUIRED BY CEQA

No text changes.

### 7.0. REPORT PREPARERS AND REFERENCES

No text changes.

---

# APPENDIX

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

*A Professional Corporation*

October 11, 2002

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**BY FEDERAL EXPRESS**

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
1052 S. Livermore Avenue  
Livermore, CA 94550-4899

Re: Draft Environmental Impact Report for the  
Oaks Business Park: SCH #2001032069

Dear Mr. Spence:

We write on behalf of Rhodes & Jamieson, LLC, Pleasanton Gravel Company, Rancho del Charro, and Douglas Jamieson, with regard to the draft environmental impact report ("draft" or "DEIR") for the proposed Oaks Business Park.

In our view, the draft is seriously deficient, fails to satisfy mandatory requirements of the California Environmental Quality Act ("CEQA"), and cannot legally be certified by the City of Livermore. Without significant changes in both the draft and the project, neither the draft nor the project can be legally approved under California law.

We submit the following comments on the draft, and request that the City respond to each of them in writing:

1. Because of our very significant concerns about flooding in the Arroyo Mocho and Arroyo Las Positas, we retained Mattern & Associates, consulting civil engineers, to analyze the drainage issues involving the project. A copy of David Mattern's resume is attached hereto as Exhibit A demonstrating his qualifications. A copy of one of Mr. Mattern's reports on drainage issues is attached hereto as Exhibit B.

2. The hydrology portion of the draft is significantly flawed for at least the following reasons:

A. As demonstrated by the flooding that occurred in 1998, the Arroyo Mocho will not provide sufficient carrying capacity for even existing drainage into it. We have attached a series of fifteen photographs taken of that 1998 flooding as Exhibit C showing the extensive damage. This flooding essentially shut down Stanley Boulevard for a lengthy period of time, affected railway operations on the rail line along Stanley, impacted private property, and affected mining operations throughout the area. If another flood shuts down mining operations at the Vulcan facility, damages would easily exceed \$25,000 per day.

B. The only possible long-term solution that will address flooding concerns and the Arroyo Mocho and this project is a relocation of the Arroyo Mocho along the southern and western boundaries of the project site. This project should not be approved without, at the very minimum, conditions that require such a relocation and dedication by the project proponent of the areas necessary for it, and the formation of an assessment district imposing charges on parcel owners in the project so that money will be available for long-term maintenance and operation of the relocated Arroyo Mocho by Zone 7. If these conditions are not required, both the City and Zone 7 will have lost forever the only possible long-term solution to the significant flooding issues.

C. The drainage plan for the project is wholly unsatisfactory and cannot be accepted by the City of Livermore for at least the following reasons:

1. A dry arroyo roughly bisects the property and is shown on Figures 3.7-1B and 3.9-1 of the draft. As demonstrated and documented in the draft, this arroyo is depressed for up to five feet or more below the surrounding ground level, does not receive any flow from outside the site, and has no outlet. As a result, rainfall and drainage from the site into the arroyo tends to remain there until it percolates into the ground, and thus does not run into either the Arroyo Mocho or the Arroyo las Positas. The dry arroyo therefore acts as a natural retention area. This entire area will be altered and paved over under the proposed project plans, and thus will no longer serve as such a natural retention area.

Using the topographic maps included in the DEIR, our retained hydrological firm has estimated that only 35.8 acres of the southern watershed (60% of the total southern watershed area of 59 acres) contributes runoff under existing conditions to the

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 3

Arroyo Mocho. However, the Storm Drainage Study on which the DEIR's drainage analysis relies improperly assumes that the *entire* southern watershed drains to the Arroyo Mocho under existing conditions.

In order to correctly reflect the effect of the dry arroyo area, the existing flows to the Arroyo Mocho as reported in the study and the DEIR must therefore be reduced from 6.34 cfs to 3.8 cfs for the 10-year flow, and from 9.41 to 5.7 cfs for the 100-year flow.

The DEIR attempts to provide a drainage system that results in a "no increase" project flow to the Arroyo Mocho, and it therefore reports at page 3.7-16 that the flows from the project will be reduced to 6.34 cfs for the 10-year flow and 9.41 cfs for the 100-year flow. As noted, this is not sufficient. Because of the failure of the Study and the DEIR to correctly reflect the effect of the dry arroyo area, particularly the loss of the retention capacity of that area that will occur under project conditions, the areas of the proposed detention ponds must be significantly *increased*, in order to address the actual flows that will occur when the project is built. The current proposed ponds are undersized by at least 40%, because in fact they will not reduce flows into the Arroyo Mocho to 3.8 cfs for the 10-year flow and 5.7 cfs for the 100-year flow. The project as currently designed will thus actually result in increased storm flows to the Arroyo Mocho beyond pre-project conditions, and thus dramatically increase flooding and flooding damage in the Arroyo and surrounding areas.

2. Both the Study and the DEIR assume a certain carrying capacity for the Arroyo Mocho. However, the DEIR does not disclose the assumptions that were used in calculating that carrying capacity, and it does not reveal when that capacity was determined. The failure to publicly disclose those assumptions so that they can be evaluated by interested parties is a major defect in the DEIR because it prevents informed public participation and comment, as well as informed decision making.

This is an important issue, because in fact there has been increased siltation over time in the Arroyo Mocho, and increased plant growth—both of which reduce carrying capacity. We have confirmed with Zone 7 that the "planned development flows for Arroyo Mocho obtained from Zone 7" and the 100-year FEMA design flow to which the draft refers at page 3.7-9 and on which the drainage analyses rely are based on a 1966 Zone 7 analysis that does not take into account increased the significant siltation and increased plant growth that have occurred since then. The assumptions used for the drainage analyses are thus significantly flawed.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 4

Most importantly, we have also confirmed with Zone 7 that it believes that neither the United States Fish & Wildlife Service nor the California Department of Fish and Game would approve any necessary permits to eliminate the siltation and plant growth that has occurred over time and to restore the Arroyo Mocho to the flows that were calculated in 1966.

As a result, the hydrology study and the analyses in the draft significantly overestimate the actual carrying capacity of the Arroyo Mocho and are flawed for this additional reason.

3. Further, the Storm Drainage Study on which the draft is based evaluates a concept with a detention pond at the southwest corner of the proposed site, and assumes a free flowing outlet.

However, the 100-year water surface in the Arroyo Mocho at Jamieson Bridge is estimated in the Study at 400 feet—higher than the peak water surface in the detention pond of 399.4 feet. The detention pond outlet would therefore be non-functional during high flows in the Arroyo Mocho. This would result in significant drainage and damage to the Pleasanton Gravel Company property immediately south of the site and to related Vulcan gravel extraction operations, during high water flows in the Arroyo Mocho, as well as to other areas.

4. The draft does not include the same detention pond for the southern watershed area that was analyzed in the background Study on which the draft is based. Instead, the draft identifies a revised location for the southern detention pond along the middle portion of the southern property line, rather than the one included in the Study that was located in the southwest corner of the site. The draft also indicates that discharge from the pond would be to the southeast corner of the site, rather than to the southwest, as the project's engineers had proposed in their Study.

The western portion of the southern watershed cannot drain into the detention pond at the location identified in the DEIR, and the pond itself cannot discharge to the east, because the existing ground along the southern side of the property drops in elevation about 17 feet from the east to the west. Water doesn't naturally flow uphill, and there is no pumping proposed in the draft

This is yet another reason why the draft is manifestly inadequate.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 5

5. The proposed detention ponds are intended to be sized to reduce the 100-year flows to existing levels. However, the storm drains for the project reported in the draft would be sized to carry only a 10-year flow. There is no indication how the remainder of any 100-year flow would be conveyed to the detention ponds.

This is a major issue, because if the 100-year flows are not properly conveyed to the detention ponds and escape beyond the project site, they will cause damage to Pleasanton Gravel Company's property, to Vulcan gravel mining operations, to other properties, or to downstream areas along Arroyo Mocho or Arroyo las Positas.

6. The proposed detention pond for the southern watershed would be unlined, which would allow stormwater to percolate into the highly porous ground at that location. The higher rate of percolation at that location, as compared with existing conditions, would cause damage to other properties, including mining operations on Pleasanton Gravel Company's adjacent land. This will violate the applicant's legal obligations as a landowner to neighboring property owners, since it will change existing flows and concentrate them instead at a single location where they will significantly affect Pleasanton Gravel Company. The City's approval of such a plan that will inevitably damage Pleasanton Gravel Company's rights will also subject the City to liability for that damage.

7. There are many other very significant issues concerning this proposed project, and numerous deficiencies in the DEIR. Given the past flooding in the area, however, the significant flaws in the proposed drainage system have to be a significant concern for all those in the area and the City of Livermore.

8. Finally, litigation over this issue is almost certain if not addressed in a way that involves the long-term Arroyo Mocho issues and avoids the massive impacts on neighbors and the public that new flooding would involve. Any such litigation would impose significant liability on not only the applicant, but the City, for repeatedly ignoring the long-term risks of continuing to discharge to the Arroyo Mocho under current circumstances.

3. Attached as Exhibit D is a copy of the 1990 Development Agreement between the City of Livermore and the former owner of the property for an earlier proposed development on the project site. The requirements of that Agreement are inconsistent in several very important aspects with what is now being proposed for the

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 6

Oaks Business Park project, and they demonstrate that what the draft now proposes would ignore what the City has recognized as long-term problems with and policies respecting the Arroyo Mocho.

First, at page 11 the Agreement required the prior developer to develop a storm drainage plan that included an evaluation of "the existing conditions of the downstream receiving facilities." By contrast, there is no evaluation in the current draft of the "existing conditions" of the Arroyo Mocho, and as discussed above the draft simply relies on the outdated 1966 calculation of the then-carrying capacity of the Arroyo. The City obviously was concerned in 1990 with that issue, and the Arroyo Mocho is even less able to carry flows now.

Second, at page 12 the Agreement explicitly required the prior developer to modify and improve the Arroyo Mocho:

"The Arroyo Mocho Channel shall be modified and improved as necessary down to El Charro Road to handle the additional flows created by this development without causing flooding over and above the condition that currently exists."

As discussed above, the drainage analysis in the draft is flawed, and the proposed project will in fact create additional flows to the Arroyo beyond current conditions. A similar condition, or one requiring dedication of land for a relocated Arroyo Mocho, is therefore appropriate for this project.

Third, at page 13 the Agreement also obligated the developer to "dedicate all necessary right-of-way for Arroyo Las Positas and Arroyo Mocho Channel improvements that may be required west of property." Again, a similar condition requiring dedication of land for a relocated Arroyo Mocho along the southern and western boundaries of the project site is therefore appropriate. The City similarly specified that it would not "unreasonably deny permission for development of facilities across City property," thus providing for a relocated Arroyo Mocho that would continue to the Arroyo Las Positas. The City should be doing so, and should be taking a long-term view and offering a long-term solution to flooding in this area.

4. The proposed action is also inconsistent with prior City actions regarding the Arroyo Mocho for yet another reason. Attached as Exhibit E is the final EIR on the City's "Regional (Major Projects) Component of the Traffic Impact Fee Program." In a

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 7

response to a comment submitted by Pleasanton Gravel Company, the City reported that "depending on the nature of project-specific effects associated with widening of Isabel Parkway and the cumulative effects of all new development within the Arroyo Mocho watershed, a cumulative, or 'global' solution may be needed for this area." That observation remains true today, and the City should therefore require the developer to participate in that global solution as detailed in these comments.

Exhibit E also includes a letter written in 1992 by counsel for Pleasanton Gravel documenting a discussion between Pleasanton Gravel and the City and the reasons for dismissing a lawsuit that Pleasanton Gravel had filed against the City. As the letter documents, even in 1992 the City committed that it "would press Zone 7 to commence a program which would address the improvement of the Arroyo Mocho through the property" of Pleasanton Gravel. Even then, Pleasanton Gravel noted that the City's failure to address the inability of the Arroyo Mocho to handle even then-existing flows would subject the City to liability "in the millions to their property and operations . . . ." Notwithstanding the City's commitment, that has never occurred, and now the draft proposes to pour even more water into the Arroyo Mocho from the project site without addressing its improvement.

The only apparent long-term solution to flooding of the Arroyo Mocho and the additional concerns that this project raises is relocation of the Arroyo Mocho, with long-term operation and maintenance by Zone 7 funded by the assessment district discussed above.

5. The proposed detention basin at the southern edge of the property is unlined, and page 3.7-14 states that it would allow stormwater to percolate into the ground at this location. Page 3.7-20 further states that the "southern basin will allow natural infiltration of storm water . . . ." The higher rate of percolation at this location, as compared with existing conditions, would have an adverse impact on nearby property owners including Pleasanton Gravel Company, the immediately adjacent owner. This impact is not reflected in the draft, even though a standard of significance requires analysis of any significant alternation of the direction or volume of surface flows. Please provide that analysis as part of the draft, and recirculate the draft as required by CEQA for further public review and comment.

6. Any such percolation will also limit and damage Pleasanton Gravel Company's ability to use the adjacent property for gravel extraction. Any such percolation may thus subject both the property owner and the City to liability. The

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 8

impact on potential gravel operations is also an impact that must be, but is not, analyzed in the EIR.

7. The draft does not include any requirement for continued operation or maintenance of the detention ponds. Without any such requirement, the ponds will over time silt up and lose effectiveness.

8. As noted, the proposed detention basin at the southern edge of the property is unlined. This necessarily means that any urban pollutants remaining in flow from the site will be concentrated in that basin and will percolate over time to adjacent properties, including that of Pleasanton Gravel. This contamination may subject both the property owner, owners of the sites in the proposed business park, and the City, to liability.

9. For all of the reasons stated in these comments, approval of the project will likely result in the loss of gravel extraction opportunities, not only on the adjacent Pleasanton Gravel Company site, but further away because of flooding issues. Page 3.8-9 recognizes that a "loss of availability of a known mineral resources that would be available to the region and the residents of the state," but this impact is not recognized in the draft. Please revise the draft accordingly and recirculate it for public review and comment.

10. The draft includes a letter dated April 5, 2001 from Zone 7 that reports that the south boundary of the site is adjacent to a future Chain-of-Lakes facility. Although this is correct, the increased flooding from the project, as well as the increased infiltration that the southern detention pond will cause, will likely eliminate the ability of Pleasanton Gravel Company to mine the site. Unless mining is completed, the Pleasanton Gravel Company site will not and cannot be used as District 7 envisions. As a result, Zone 7 will not have that site "for management of its water supply for additional local water storage, groundwater replenishment, potential storage for recycled water, and flood control diversion." The draft therefore must evaluate the potential loss of these facilities as a result of the proposed project and its impacts.

11. The letter dated April 5, 2001 from Zone 7 also asks the City to require the project applicant to dedicate an easement on the project site along with southern and western edges for a relocated Arroyo Mocho. The City should do this, in the event that it



Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 9

decides to approve the project, and should also require the establishment of an assessment district under which owners of parcels at the site would provide funds to Zone 7 for the maintenance and operation of the relocated Arroyo.

12. The draft recognizes that at buildout the project would attract between 5,000 and 10,000 new employees to the area. However, it fails to analyze the impacts of the housing and services that these new employees would require. 10,000 new employees will require a significant amount of new housing,. The single paragraph at page 6-3 touching on this issue doesn't provide an adequate analysis and simply reports conclusions without facts and necessary evidentiary support. In addition, the conclusion that housing demand "may be absorbed" in Livermore is insufficient because it is simply speculation rather than analysis, and the Ruby Hills development is likely to be high-end housing and beyond the means of employees who would work at the site. Please provide an appropriate analysis, and analyze the impacts of providing the necessary housing for this very large number of new jobs.

13. Page 3.11-21 specifies that 85% of the water delivered to the site will be reclaimed wastewater that will be used for landscape irrigation purposes. The draft also notes that the site is over the main groundwater basin used by Zone 7 for potable water, but the draft never discusses the impacts of using reclaimed wastewater on the site under such circumstances. The draft includes the letter from Zone 7, which notes that there will be at least salt impacts associated with such use, as well as others. The draft is inadequate without this evaluation of the potential impacts to the area's drinking water supply. This issue is especially important since the project area includes substantial gravel deposits and the subsurface is especially porous and permeable.

14. CEQA requires that a draft define the entirety of the proposed project, and then analyze that entire project. The draft does not do so because a proposed extension of Jack London Boulevard is part of the project. The draft fails to identify this portion of the project, and it fails to analyze the environmental impacts of that part.

That an extension of Jack London Boulevard is part of the project is apparent from several aspects of the draft. First, Figure 3.7-1c shows drainage pipelines necessary to serve the project being placed along a future alignment of Jack London. Second, page 2-34 explicitly specifies that the "proposed storm drain will run approximately 3,300-feet within the *future right of way of West Jack London Boulevard along the border of the northern parcel of the Pleasanton Gravel Company . . .*" (Emphasis added.) That page further specifies that the storm drain system will then make a 90-degree turn to the north,

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 10

and then run along an adjacent access road for approximately 700 feet. Third, Figure 3.1-3 explicitly shows the alignment of the "future west Jack London Blvd." Fourth, page 3.3-2 reports that the "Jack London Boulevard/Stoneridge Drive extension will constitute a major east-west arterial connecting the cities of Livermore and Pleasanton and will provide relief and support to I-580," and will "have four to six lanes." In addition, the traffic analysis at page 3.3-21 explicitly states that in 2025 17% of the project's traffic will travel to and from the site from the west "via Jack London Boulevard." Likewise, the traffic analysis is expressly based on the assumption that in 2025 "the Jack London connection with El Charro Road in Pleasanton" will be included "in the roadway network." See page 3.3-20. Other portions also indicate such a future expansion. The draft therefore must be completely revised to include this extension in the project description, the impacts of that new roadway must be analyzed, and the draft must be recirculated as required by CEQA for public review and comment.

15. The draft fails to identify the entirety of the project for another reason. Page S-1 specifies that the project includes a number of off-site improvements, including a widening of Jack London Boulevard. This widening is demonstrated in Figure 2-6A as being very significant. Figure 3.7-1C shows the drainage pipelines necessary to serve the project being placed along an alignment of Jack London, and in this widening. It also shows property owned by Pleasanton Gravel company as being "42.5" acres. In fact, however, the property is 52 acres. This information thus indicates that the City intends to condemn at least 10 acres of private property for the project, but that fact is not disclosed in either the project description or the draft. Ten acres of this property is valued by the owner to be at least \$300,000 per acre, and taking 10 acres probably is tantamount to taking all 52 acres with a value of over \$17 million. The additional cost of this necessary property for the project thus may be as little as \$3,000,000, and as much as \$17,000,000. These facts are not disclosed, and they must be taken into account as part of the City's process of considering the entire proposed project.

16. For the reasons specified above, the draft is for all legal purposes an announcement of intent to condemn that, if certified by the City, will subject the City to financial liability for the property to be taken.

17. The draft, at page S-1, also specifies that "[a] public right-of-way dedication will be established for the expansion of W. Jack London Boulevard . . ." See also pp. 2-1 and 2-9. However, the expansion and extension of Jack London that this dedication envisions is also not analyzed in the draft, and the environmental impacts of any such extension/expansion as part of the project are not described.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 11

18. None of the "off site improvements" identified as necessary for the project are included in the description of the project at page 2-9 and at page S-1. The draft therefore fails to use a stable and precise project description, as required by CEQA. The failure of the draft to fully identify the "off site improvements" as part of the project, and to analyze their environmental implications, necessarily means that the draft violates CEQA. Just as one example, the EIR assumes that Isabel Avenue will be expanded to at least six lanes in order to serve the project, but the environmental impacts of this expansion (including even more drainage into the Arroyo Mocho) are completely ignored. The draft must be revised to specifically define these off-site improvements and analyze their environmental implications. Please do so, and recirculate the draft for further public review and comment as required by CEQA.

As noted at other places in these comments, the draft also assumes that a very large number of highway and roadway improvements will be made by the year 2025 and that these unbuilt improvements will therefore be available to serve the project. CEQA case law specifies, however, that if such assumptions are made the assumed improvements themselves then become part of the project and the environmental implications of the construction and use of those improvements themselves must be analyzed as part of the EIR. The draft does not do so, and it is therefore inadequate. If these assumptions are to be made, the improvements must therefore be included as part of the project's description and then analyzed in the text of the draft. Please do so, and recirculate the draft as required by CEQA.

19. The project objectives described at pages 2-2 and 2-3 are improperly narrowed in such way that they illegally preclude consideration of a full range of feasible alternatives to the project.

20. The proposed project violates the policies in the City's general plan (C.2(4)(f) and (g)), listed on page 3.1-11, since the project will eliminate open space grassland and the City has not encouraged the property owner to enter the agricultural preserve program established under the Land Conservation Act. These policies are not limited only to prime agricultural land, and they thus apply to the project property. Approval of the project is therefore inconsistent with the City's general plan and would violate the requirements of the Planning and Zoning Law.

21. The draft completely fails to address the impacts of the project on potential gravel extraction operations on Pleasanton Gravel Company property to the west of the site along what is identified as the future extension of Jack London

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 12

Boulevard, or to the south of the site. Both of these areas contain high grade gravel deposits, as is evidenced in part by the other gravel extraction operations in the immediate area. The draft recognizes that this area "yields sand and gravel resources of a very high quality (p. 3.1-25)," and that operations have been designed by the State Mining and Geology Board as important mineral resources. The taking of part of the Pleasanton Gravel Company property for the extension and widening of Jack London Boulevard will preclude gravel extraction on that property, and the draft fails to discuss either this fact, the loss of those important gravel materials, or the inconsistency with the Alameda County Surface Mining and Reclamation Ordinance and the state Surface Mining and Reclamation Act.

22. The standards of significance used in Chapter 3.1 of the draft violate CEQA, because they do not include all of the standards specified in the CEQA Guidelines. Please include the correct standards of significance in Chapter 3.1 and revise the analysis accordingly.

23. The air quality analysis for construction impacts is inadequate, since it fails to fully evaluate air pollution from construction. Instead, it focuses only on odors. See p. 3.1-17. This is an inadequate evaluation.

24. The standard of significance (5 dB) for calculating whether an increase in traffic noise is significant violates CEQA. The CEQA Guidelines instead focus on absolute increases, whether the increase is "substantial," and whether the noise is in excess of standards in applicable plans. The analysis of traffic noise is flawed because it does not analyze these issues.

25. The analysis of traffic noise violates CEQA for yet another reason. Page 3.1-18 assumes that certain roadway improvements will have been built by the year 2025, and on the basis of those assumed improvements concludes that noise levels will not be significant. CEQA, however, requires an analysis of impacts based on *current* conditions: this is a rule that is embodied not only in the Guidelines, but has been repeated time and time again in CEQA cases. The draft's assumptions of future improvements thus violates CEQA and results in a significant flawed understatement of noise impacts. This is important, since the understatement also necessarily means that the City will not address the noise impacts, required feasible noise mitigation measures, or actual noise impacts in a statement of overriding considerations. This flaw in the draft

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 13

is critical, for the various additional reasons discussed below why the traffic analysis is further invalid. Please reanalyze traffic noise impacts, and recirculate the draft for public comment.

26. The operational impacts analysis of the traffic that would be generated by the project violates CEQA for exactly the same reasons identified immediately above. The analysis of LOS levels and traffic congestion must be based on current conditions—not on assumptions of what the traffic system may or may not be in 2025. As one court recently noted, the requirement that “existing conditions” be used as the baseline for analysis, set out in Section 15125(a) of the Guidelines, “reflect[s] and clarif[ies] a central concept of CEQA, widely accepted by the courts, that the significance of a project’s impacts cannot be measured unless the EIR first establishes the actual physical conditions.” *Save Our Peninsula Committee v. Monterey County*, 87 Cal. App. 4th 99, 125 (2001).

We are quite amazed that this draft EIR has adopted this flawed methodology. The City knows that the methodology is flawed, because of prior CEQA litigation brought by some of these commentators against it involving precisely the same issue. CalMat Co. et al. v. City of Livermore et al., Alameda County Superior Court No. V-016022-3. In that case, the City’s EIR for an auto auction project on El Charro Road was invalidated by Judge Hernandez of the Alameda County Superior Court for using that very same improper methodology. We have attached as Exhibit F a copy of Judge Hernandez’ judgment in that action.

Moreover, the Petitioners in that case also sought and were awarded \$252,388.73 in attorney’s fees and costs against the City of Livermore and the project applicant for that successful litigation in the trial court. A copy of the Court’s order making that award is attached hereto as Exhibit G. That award was then affirmed by the Court of Appeal, and the Superior Court thereafter awarded additional fees in the amount of \$131,098.50 to the Petitioners against the City and the project applicant for the time spent on appeal. In total, \$383,487.23 in attorney’s fees and costs, plus interest, were awarded because of the City’s reliance on that improper methodology. Some of our further comments below also address this issue.

As a result, certification of the EIR with this serious methodological flaw in it would demonstrate the City’s willful refusal to comply with CEQA.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 14

27. The draft concludes that traffic impacts on Isabel Avenue will result in unacceptable levels of service, until Isabel is widened to four lanes in this vicinity. See p. 3.1-18. The draft then suggests that these impacts will be reduced to less than significant levels with implementation of Mitigation Measures 3.3-2 and 3.3-2.

However, Mitigation Measure 3.3-3 allows the project developer to develop a full 90% of the project before additional lanes are built. This hardly reduces the impacts on Isabel to less than significant, and the draft does not include any explanation of any sort how this band-aid approach can actually address and eliminate the significant impacts. Under this measure, the developer could develop 90% of the project without providing any significant mitigation for the impacts of that development on Isabel Avenue. This violates CEQA.

28. The draft's analysis of impacts on the Murietta/Jack London, Isabel Ramp/Stanley Boulevard, Isabel Avenue/Stanley Ramp, and Jack London Boulevard/Hageman Drive intersection analysis reported at page 3.1-19 is flawed and violates CEQA in many ways. For example, Mitigation Measure 3.3-4b relies on a transportation demand management program that is filled with uncertainty, and there is no demonstration of any kind that this program can actually reduce traffic impacts. The conclusion with regard to the Isabel Ramp/Stanley Boulevard intersection relies upon City construction of "the full Isabel Avenue/Stanley Boulevard interchange under 2025 conditions," but this improperly relies on future projects of highway improvements, rather than analyzing impacts by comparison to existing conditions. Here, as elsewhere, the draft simply assumes that certain improvements will somehow eventually be made, but that type of wishful thinking doesn't substitute for the necessary analysis under CEQA. Exactly the same thing can be said about Mitigation Measure 3.3-4c, and this analysis is thus flawed for the same reason.

29. Mitigation Measure 3.3-5 violates CEQA for the same reasons. The draft improperly bases its conclusions upon the assumptions that, by 2025, some unspecified party or agency will construct a third westbound turn lane on the off-ramp approach, that "[u]nder Year 2025, this intersection and ramps would be configured," that the "southbound left turn lane would be removed and a southbound free-right turn lane onto westbound I-580 would be built," and that with "the new configuration, this intersection is expected to operate acceptably." This analysis, and the conclusion that impacts in Isabel Avenue and the I-580 Intersection and Ramps would be less than significant violates CEQA because it is based on assumptions as to future conditions, and assumes certain improvements will be built by someone, somehow, at sometime, and

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 15

with an unspecified source of funds. This very significant methodological flaw invalidates the analysis and conclusions as to the eight study intersections identified at page 3.1-19 of the draft. As noted earlier, the Alameda County Superior Court invalidated an earlier City of Livermore EIR and awarded more than \$383,487.23 in attorney's fees and costs against the City and the project applicant for relying on precisely that improper methodology.

30. The draft admits that the project "would generate additional demand for service from the regional transit authority resulting in a potentially significant impact." See p. 3.1-19. It then concludes that Mitigation Measure 3.3-7 will reduce this impact to a less than significant level.

However, that mitigation measure only requires the project proponent to provide two curbside bus stops. Providing a place for a bus to stop doesn't in any way address the additional demand for service: it simply provides a place for that additional demand to overload the existing services. This measure is manifestly inadequate under CEQA, and the analysis of this impact therefore also violates CEQA.

31. The same thing may be said about the regional traffic impacts analysis at pages 3.1-19 and 3.1-20, and Mitigation Measure 3.3-8. There is no showing or evidence of any kind that such an ill-defined and unenforceable TDM program can ever result in any reduction of the impacts.

32. The analysis of traffic impacts on Jack London Boulevard near the school is flawed, because there is in fact no analysis, but simply a reported conclusion. CEQA requires analysis—not conclusions. In addition, additional traffic near a school during peak hours obviously raises concerns about traffic accidents and potential injuries to school children, but the draft never discusses those issues.

33. The Section of the draft addressing health hazards is manifestly inadequate under CEQA, because it analyzes only risks on the site, and not risks that may be caused offsite by project operations. In fact, the draft, at page 2-34, specifies that the southern detention basin—to be located immediately adjacent to the southern Pleasanton Gravel Company property—will not be lined, and will "filter out particulates, heavy metals and other urban pollutants through a process of natural infiltration without the use of sand filters." This will inevitably concentrate runoff from the site at that location, and thus result in a concentration and "natural infiltration" of pollutants onto the neighboring property. The consequences of this have not been analyzed in the draft, and it is

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 16

inadequate for that reason. Any such system will also subject not only the project applicant and operator, but owners of lots in the project and the City, to liability for knowingly and intentionally contaminating the neighboring property.

34. This southern detention basin is also intended to detain runoff from the southern watershed on the site, before discharge to the Arroyo Mocho. All of that runoff will contain, to some extent, urban pollutants which will then be discharged to the Arroyo Mocho and then carried downstream. The draft fails to discuss the health hazard impacts of this discharge.

35. Page 3.3-1 specifies that Isabel Avenue—although it is now only two lanes—is expected “to be a four to six lane facility, developed to expressway standards.” The traffic and circulation analysis is then built upon this assumption. For all of the reasons previously discussed, this type of analysis violates CEQA, because it is not based on current circumstances but instead on assumptions as to future improvements. This assumption is doubly flawed, because it also violates the “recently adopted” policy of the City of Livermore that Isabel be no more than four lanes. Every part of the analysis that assumes or is based upon any claim that Isabel will be developed to six lanes is invalid under CEQA for these reasons. The fact that the City hasn’t even developed its Project Study Report to define any details of Isabel, and the fact that the City hasn’t even completed the necessary environmental documentation for any improvements on Isabel (see p. 3.3-1) further demonstrates the inadequacy and invalidity of the draft’s analyses.

As previously noted, if an EIR assumes the construction of certain improvements and assumes that those improvements will be available to serve the project, then the improvements themselves necessarily become part of the project, must be fully described in the EIR, and the environmental implications of the improvements must also be analyzed. The draft does not do so, especially with regard to the proposed improvement of Isabel. Please do so and recirculate the draft for public review and comment as required by CEQA.

36. The traffic analyses are even further flawed, because they assume the extension of Jack London Boulevard all the way to El Charro Road. See p. 3.3-2. Even though the draft reports that there is no “official plan” for any such extension by either Pleasanton or Livermore, the draft has nonetheless assumed the extension as part of the traffic analysis. This is documented above, and by the wholly unsupported claims that this extension “will provide relief and support to I-580,” “will constitute a major east-west arterial connecting the cities of Livermore and Pleasanton,” and is expected to have



Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 17

four to six lanes. For example, the traffic analysis for year 2025 conditions explicitly assumes this extension. The project trip distribution likewise explicitly assumes "17 percent" of travel to and from the site, coming from the west via Jack London Boulevard. All of this is based on assumptions—not existing conditions—and these analyses are invalid under CEQA. All of this has resulted in dramatic understatements of traffic impacts on existing streets and I-580.

37. The standards of significance reported at page 3.3-17 violate CEQA, because they substantially depart from the standards specified in the CEQA Guidelines. Please reanalyze traffic impacts using the standards specified by the Guidelines.

38. The traffic and circulation analyses are significantly flawed and significantly understate the draft's reporting of adverse traffic impacts, because the calculations are not based on existing conditions but make numerous improper assumptions as to improvements in the traffic system that may be made in the future. For all of the reasons previously stated, these assumptions violate CEQA and invalidate the traffic analyses.

For example, the traffic and circulation analyses are based upon at least the following improper assumptions:

- a. Jack London Boulevard will be extended to El Charro Road and will include four to six lanes, and will carry at least 17% of the travel from the west to the project. This will reduce impacts on I-580;
- b. Isabel will become a six lane expressway;
- c. By 2025, a new Isabel interchange will be built;
- d. The existing Portola Avenue westbound on ramp and eastbound offramp will be demolished at I-580;
- e. Other new intersections will be built, including Isabel Avenue at Portola, Isabel Avenue at Interstate 580 westbound ramps, and Isabel Avenue at Interstate 580 eastbound ramps;
- f. The various new transportation improvements listed in Mitigation Measure 3.3-5 will be built;

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 18

- g. The improvements described in the City's General Plan noted at page 2.23 will be completed by 2005-2005;
- h. The full Isabel Avenue/Stanley Boulevard interchange will be built by 2025;
- i. New HOV lanes on I-580 between Santa Rita Road in Pleasanton and Vasco Road in Livermore will be constructed;
- j. New auxiliary lanes on I-580 between Pleasanton and Isabel Avenue will also be built; and
- k. Other projected improvements listed in Table 3.3-4 will be built and in place to serve the project's traffic

Please delete these improper assumptions, conduct a new traffic and circulation analysis, and recirculate the draft. Without a new analysis, the draft quite clearly violates CEQA. Alternatively, as already noted, these new improvements must be described as part and parcel of the project itself, and the EIR must analyze the environmental implications of their construction and use.

39. CEQA requires that the draft not only identify feasible mitigation measures, but explain and have substantial evidentiary support for a conclusion that the mitigation measure will in fact reduce a substantial impact to less than significant. There is no discussion whatsoever how Mitigation Measure 3.3-3 will in fact reduce traffic impacts to less than significant, since 90% of the project could be built and fully operational before the require widening of Isabel Avenue has been completed. Please provide the necessary explanation.

40. Please also provide the required explanation for each of the other traffic mitigation measures. There is no assurance from the face of these measures that they will in fact reduce traffic impacts to less than significant, and there does not appear to be any evidence of any sort to support such conclusions.

41. Page 3.3-84 of the draft notes that the City of Livermore "has recently adopted a policy limiting Isabel Avenue to four lanes south of Stanley Boulevard, but that nonetheless "the traffic model assigns traffic volumes requiring six lanes."

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 19

In light of the City's action, it is improper for the draft to simply assume, as it does, that Isabel will be widened to six lanes. That assumption, evident throughout the traffic analysis, invalidates the draft, since the analysis is based on an assumption that is contrary to City policy. Please revise the traffic analysis to be consistent with this City policy, and recirculate the revised analysis for public analysis and comment.

42. As already discussed, the draft improperly bases the traffic analyses on unbuilt traffic infrastructure improvements that the preparers believe will be in place by 2025. This is highly improper under CEQA.

In addition, with regard to Isabel Avenue and the I-580 westbound intersection and ramps, the draft states that the impacts will still be significant and unavoidable and will require a Statement of Overriding Considerations. Any such Statement, because it would be based on the improper and invalid traffic analyses, would also then necessarily be flawed, since it would not include the CEQA-required recognition of actual impacts based on current conditions, and thus would not involve a true balancing of project impacts versus project benefits. Any such statement based on the current draft would therefore violate CEQA.

43. Page 3.3-85 of the draft states that it does not include any analysis of parking impacts, and that such an analysis will simply be deferred to future time. This violates CEQA, because CEQA requires an analysis of all impacts at this time, prior to project approval. Deferring that analysis is improper. Please provide an analysis of any required parking facilities and parking/traffic related impacts, and recirculate the draft for public review and comment.

44. Page 3.3-89 specifies that development of the project would generate additional demand for service from the regional transit authority, but that the impacts are "expected" to be less than significant.

CEQA requires that any analyses be fact-based, and a draft that simply reports conclusions is invalid. This analysis is not fact-based, and is only conclusionary. Please provide the necessary facts so that the public can analyze the impacts of the project on regional transit demand. For example, what is the current demand? What new demand will be created? Is the District currently underfunded? Can it meet demand without new subsidies from the developer? Without an analysis of these and other related questions, the draft is deficient.

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 20

45. Mitigation Measure 3.3-8 includes a number of extremely unspecific and highly speculative measures to address regional traffic impacts. Please provide a fact-based analysis of each of these measures and how the preparers concluded that these measures would in fact reduce these impacts to a less-than-significant level.

46. The noise analysis fails to comply with CEQA, because it is also based not on current conditions but upon roadway improvements that are assumed to have been constructed by the year 2025 and that would therefore be available for project traffic. Please revise the analysis and recirculate the draft without those improper assumptions.

47. Page 3.4-5 specifies that baseline conditions were used to assess pre-project levels "since it represents existing plus currently approved project conditions." Tale 3.4-3, however, specifies "existing noise levels" were used. Please explain this discrepancy. Any "currently approved project conditions" must be evaluated in the cumulative impacts section of the draft.

48. The standards of significance for evaluating noise listed at page 3.4-11 do not include all of the standards specified in the CEQA Guidelines. Please use those required standards, revise the noise analysis, recirculate the draft. Without an evaluation of noise under the mandated standards, the draft is inadequate under CEQA.

49. The draft predicts traffic noise levels on Stanley Boulevard, based on the assumption that Stanley will be expanded to six lanes. However, as the draft relates, any such expansion would be contrary to recently adopted City policy. Please revise the noise analysis to reflect a four lane Stanley Boulevard, and recirculate the draft.

51. The air quality analysis in the draft is significantly flawed, because it is based on the assumptions noted above concerning future roadway infrastructure improvements in the area. Undoubtedly, the air quality analysis would show significantly more air pollution impacts if the project were evaluated without those improper assumption. Please revise the analysis, using a baseline of current conditions as required by CEQA, and recirculate the draft.

53. The draft specifies that air pollution emission factors were generated based on the California Air Resources Board EMFAC7-G computer program. However, this program has now been superseded by the new EMFAC 2001 program, and it is common knowledge that the older program significantly understated air pollution from

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 21

vehicle traffic by as much as 150%. Please use the most recent program approved by the CARB, revise the analysis, and recirculate the draft. Without that revised analysis, the draft is inadequate under CEQA. This very issue was recently considered by the Court of Appeal in Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners, 91 Cal. App. 4th 1344 (2001), and the court emphasized the obligation of all public agencies to use the most up-to-date computer modeling programs in this important public health area.

54 Exactly the same thing may be said about the draft's use of the URBEMIS 7G program to estimate emission that result from various land use development programs. This program has now been superseded by the new URBEMIS 2001 program. Please use the most recent program approved by the CARB, revise the analysis, and recirculate the draft. Without that revised analysis, the draft is inadequate under CEQA. This very issue was recently considered by the Court of Appeal in Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners, 91 Cal. App. 4th 1344 (2001), and the court emphasized the obligation of all public agencies to use the most up-to-date computer modeling programs in this important public health area.

55. Table 3.6-4 includes the projected project regional emissions of reactivities organic gases, nitrogen oxides, and PM<sub>10</sub>. Each of these projected emissions is significantly greater than the BAAQMD threshold of significance. Indeed, the projected emissions of reactive organic gases are more than 300% greater, the emissions of nitrogen oxides are almost 550% greater, and the emissions of PM<sub>10</sub> are more than 200% greater.

To address these very significant air pollution impacts, the draft suggests a transportation demand program that reduces peak hour project traffic volumes by a minimum of five percent, and that this program "could reduce trips by as much as 10-15 percent." However, there is no factual explanation how this could possibly occur, and CEQA requires such an explanation,

Moreover, this mitigation measure doesn't require anything. All it does is suggest certain things that should be included. This too violates CEQA.

56. The Statement of Overriding Considerations suggested in the draft in response to the significant regional emissions will be flawed, since the air quality analysis is improperly based on anticipated transportation infrastructure improvements and since the Statement therefore will not reflect actual impacts based on existing conditions and

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 22

not a valid balancing of environmental and economic factors. Please revise the entire air quality analysis to eliminate this significant methodological flaw, and recirculate the air quality analysis.

57. Section 15065 of the CEQA Guidelines requires that the City make a mandatory finding of significance if the project could substantially reduce the habitat of a fish or wildlife species, or restrict the range of an endangered, rare or threatened species. The draft does not make any such findings, even though it recognizes that development of the project site "would result in the removal of potential San Joaquin kit fox habitat," as well as other protected species. The draft must make mandatory findings of significance in each of these case. Because those findings will reveal greater impacts of the project than are now disclosed by the draft, a new draft must be recirculated for public review and comment.

58. The draft concedes that this proposed development, along with others, would result in the cumulative loss of species habitat, including numerous endangered and special species. This loss requires compliance by the City and the applicant with the "take" provisions of the state and federal Endangered Species Acts. In addition, authorization by the City of the project may therefore subject the City to liability under those laws for authorizing such a "take" by approving the project. Please recognize this in the draft.

59. At page 4-2, the draft states that the City is required to consider an alternative only "if it can meet the basic objectives of the project as proposed." The basic objectives then listed are so narrowly defined as to preclude development of the site with anything other than precisely what the applicant wishes.

This narrow definition violates CEQA. Moreover, CEQA requires an identification and evaluation of alternatives, even if may defeat some of the objectives of the project proponent. The draft therefore misstates CEQA.

60. The draft improperly excludes analysis of a wide range of other potential alternative uses of the site. Residential uses, for example, are not considered. Airport related uses are not considered. Gravel extraction is not considered, even though the site is located immediately adjacent to other properties with high gravel concentrations, and even though the draft concedes that the area has highly important gravel concentrations. The draft apparently does not consider any of these, because the project objectives have been so narrowly and so improperly defined. Since the alternatives analysis under CEQA

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 23

is intended to provide ways of reducing or eliminating environmental impacts, the draft has improperly excluded from consideration various ways that this could be accomplished by other alternatives.

61. In light of the fact that the proposed drainage system for the site is significantly undersized and will not reduce project flows to pre-development levels, the City should carefully consider Reduced Density Alternatives 3 and 4, since the draft specifies that this Alternative would reduce drainage from the project site.

62. At page 6-5, the draft speculates that "the intersection of Isabel Avenue and Vallecitos Road would change its alignment" and would have an "intersecting eastbound approach." This again simply speculates as to what may or may not occur to transportation infrastructure in the area. This is improper under CEQA, because it is not based on existing conditions. Please revise the analyses in the draft to comply with CEQA.

63. The draft does not include a properly defined "No Project" alternative as required by CEQA. Under CEQA, the draft must include a "No Project" alternative and an analysis of that alternative. This alternative must "discuss the existing conditions . . . as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." CEQA Guidelines Section 15126.6(e).

The draft improperly relies upon Section 15126.6(e)(e)(A) of the Guidelines, but that subsection is inapplicable here. Instead, the language quoted immediately above applies. The draft has ignored that language, and in particular has assumed that the site could inevitably be built out under existing zoning, but it ignores the question whether any such buildout would be "consistent with available infrastructure and community services." Any analysis of the "No Project" alternative is inadequate under CEQA without a full analysis of whether any such buildout would be possible under that limitation.

In fact, the entire "No Project" discussion is inadequate because it also is based entirely on a string of conclusionary statements, without any detailed factual analysis. Just as one example, page 4-6 claims that traffic, circulation and parking issues "could be exacerbated due to an increase in development intensity and density" and that "[s]ignificant unavoidable impacts would be increased as well." However, there is no factual analysis of any support to support these conclusions. CEQA requires factual

Paul Spence  
Associate Planner, Planning Division  
City of Livermore  
October 11, 2002  
Page 24

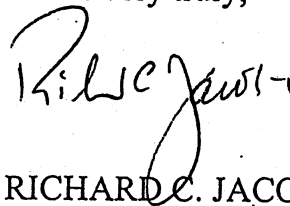
analyses—not simply conclusions. It is also impossible to credit any conclusion that “parking issues” would be greater, since parking issues aren’t even addressed with regard to the proposed project.

Please provide the required “No Project” analysis, and recirculate the draft for further public review and comment as required by CEQA.

These commentors also request that the undersigned be provided with any further notices relating to this project, especially any notice of a hearing to certify the EIR and consider project approval. In addition, the commentors request that they receive, through the undersigned, a copy of any proposed final EIR, with responses to comments and any changes in the text, at least ten days prior to any hearing to certify the EIR or consider project approval.

Thank you for your consideration of these very important issues.

Yours very truly,



RICHARD C. JACOBS

RCJ/bmo

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EXHIBIT A



**Mattern & Associates**  
3967 South Peardale Drive, Lafayette, CA 94549

**Consulting Civil Engineers**  
FAX: (925) 283-6312 Tel: (925) 283-6315

### SUMMARY OF SERVICES PROVIDED

Mattern & Associates is a civil engineering group that specializes in water resources investigations and construction projects, especially hydrology and hydraulics analysis and planning.

David Mattern, principal engineer, offers thirty years of experience in water resources engineering, including expertise in hydraulic and hydrologic analysis, drainage studies and master plans, erosion and sedimentation analysis, environmental review, water supply planning and master plans, groundwater modeling, computer modeling and analysis, and expert witness services.

The following is a summary of specific areas of expertise:

**DRAINAGE** Complete services in the investigation, planning, and analysis of storm drainage facilities.

#### Hydrologic Analysis

Peak stormwater flow determination in watersheds and drainage systems, utilizing computer technology and software. Expert in use of the following methods:

Computer simulation of storm hydrographs utilizing rainfall-runoff models that utilize watershed hydrologic characteristics and historic rainfall amounts or statistically derived design rainfall patterns. Expert in use of computer rainfall-runoff simulation models, such as Corps of Engineers HEC-1, EPA Stormwater Management Model (SWMM), SCS TR-55, MITCAT.

Flood frequency analysis using series of recorded annual peak flows in a computer statistical analysis procedure.

Peak flow estimates using regional correlation relationships related to the specific hydrologic parameters of the watershed being studied.

#### Hydraulic Analysis

Evaluation of water surface profiles in streams or storm drains under various storm conditions. Stream cross-sections obtained by surveying or from available plans are incorporated into computer simulation models along with hydraulic parameters to simulate hydraulic conditions.



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**Mattern & Associates**

Expert in the use of computer models such as Corps of Engineers HEC-2 and HEC-RAS for open channel flow, and StormCad for storm drain pipe flow. Hydraulic results are presented using easy to visualize computer graphics.

**Stormwater Facility Master Planning**

Determination of storm peak flows throughout the planning area using hydrologic investigation techniques. Estimation of existing facility hydraulic capacity using computer analysis and/or simplified hydraulic charts. Determination of facility replacements required to provide satisfactory performance. Estimation of construction costs and staged capital improvement program. Preparation of Master Plan report and exhibits.

We have developed and used database techniques for transferring data from AutoCAD drawings, analyzing hydrology and hydraulics, preparing cost estimates, and preparing customized report tables.

**Stormwater detention analysis**

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Determination of storm hydrographs using hydrologic analysis methods described above. Estimation of detention area storage volume - elevation characteristics, simulation of storm hydrograph routing through detention area, determination of best outlet hydraulics to provide optimum operation of detention facility.

**Bridge Location Hydraulic Studies**

Determination of peak storm flows at site using hydrologic evaluation methods. Estimation of water surface profiles at bridge site using hydraulic evaluation methods. Determination of hydraulic capacity of existing bridge, and estimate changes to hydraulic performance with various alternatives of replacement bridges.

**Hydraulic Analysis of Urban Storm Drainage Systems**

Simplified analysis of hydraulic conditions in storm drain systems is performed with customized computer techniques using tabular spreadsheet systems. Pre-formatted summary tables can be printed, and locations where the storm drain system will not meet preset criteria are automatically flagged. Rapid evaluation of various storm drain sizes and configurations is possible to determine the lowest cost facility that will meet the necessary requirements. Other specialized software is also used for analysis.

**Hydraulic Analysis of Tidal Flows**

Investigation of sites subject to tidal flows and fluctuations. Simulation using computer methods of flows into and out of sites constrained by facilities such as



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**Mattern & Associates**

culverts, gates, and channels. Estimation of net tidal flushing action over various tidal cycles. Determination of required facility sizes for correct operation of facilities.

**Erosion and Sedimentation Analysis**

Hydrologic and/or hydraulic evaluation of sites is performed as described above. Investigation of characteristics of sediments at site using sampling and laboratory analysis techniques, and simulation of the erosion and sedimentation characteristics of the site using computer simulation techniques. Expert in the use of the Corps of Engineers computer program HEC-6 for erosion and sedimentation analysis.

**ENVIRONMENTAL REVIEW**

Environmental review of the water resources aspects of projects, including determination of peak storm runoff rates under existing and future conditions, drainage deficiencies, water quality problems, and required mitigation measures.

Hydraulic investigation of areas subject to tidal flows.

**Water Quality Evaluations**

Evaluation of water quality conditions at drainage sites, and the determination of drainage facilities that will mitigate the quality problems.

**WATER SUPPLY INVESTIGATIONS** Services are provided in a variety of capacities relating to the evaluation and planning of water supply facilities.

**Water Supply Master Planning**

Evaluation of existing water demands from available metering records. Projection of future water demands based on trends in unit water demands and projected population growth. Evaluation of existing and future water system deficiencies using computer water distribution analysis.

Expert in the analysis of water distribution systems using computer programs and customized software. Expert in the development of software for distribution system analysis. Determination of alternative facility plans, testing with computer simulation to determine optimum configuration. Estimation of facility construction and maintenance cost, and formulation of staged capital expenditures. Preparation of Master Plan report and exhibits.





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**Mattern & Associates**

**EXPERT WITNESS SERVICES**

Experienced in the investigation, analysis, deposition, and trial testimony for cases involving water resources issues, including flooding, storm runoff, and related issues. Testimony at many depositions, and a number of trials at the municipal, state, and Federal court levels.

Investigation of historic flooding patterns, determination of frequency of past storms, computation of capacity of storm drainage facilities, preparation of graphics for easy to understand presentations.

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**David E. Mattern****3967 South Peardale Drive, Lafayette, CA 94549****Mattern & Associates****FAX: (925) 283-6312 Tel: (925) 283-6315****QUALIFICATIONS SUMMARY**

Thirty years of experience in hydraulic and hydrologic analysis, drainage studies, drainage master plans, design of drainage facilities, erosion and sedimentation analysis, environmental review, water supply planning, preparation of water supply master plans, groundwater modeling, expert witness testimony, and the development and application of computer models for engineering problems. Includes four years working overseas.

**EDUCATION**            B.S. Civil Engineering, University of Michigan, 1969  
                             M.S. Civil Engineering, Stanford University, 1970

**REGISTRATION**       Professional Engineer: California (RCE C39332)

**MEMBER**                American Society of Civil Engineers;  
                             American Geophysical Union

**PROFESSIONAL HISTORY**

Principal engineer and owner, providing consulting services in the area of hydrologic and hydraulic analysis, drainage studies, construction plans, environmental review of drainage and water quality, water supply investigations, computer modeling, and expert witness analysis and testimony.

Past experience includes many projects in Northern California and western U.S. covering the following:

Preparation of watershed runoff and erosion management plans, including drainage master plans, hydrologic, hydraulic, and erosion / sedimentation analysis. Determination and analysis of alternative plans, construction costs, and preparation of construction plans and specifications.

Environmental review of project sites, including analysis of drainage and water quality aspects. Determination of existing drainage patterns and existing facilities; estimation of changes to drainage with projected conditions; determination of drainage facilities required and mitigation measures.

Location hydraulic studies for highway bridge replacement projects, including hydrologic evaluation, flood frequency analysis, and water surface profile determination using HEC-2 or HEC-RAS.

Expert witness analysis and testimony for litigation involving drainage, flooding, erosion and sedimentation. Preparation of easy to understand graphical exhibits. Testimony in depositions, municipal, state, and Federal courts.



**David E. Mattern****Page 2**

Evaluation of drainage conditions and requirements for land development, including evaluation of detention facilities and sizing and design of storm drainage facilities.

Water supply evaluations, master plans, and computer evaluation and sizing of water distribution facilities.

Groundwater evaluation and modeling, data analysis and mapping, information database development.

Expert in the use of hydraulic and hydrologic computer programs such as HEC-1, HEC-2, HEC-6, SWMM, water distribution models, and customized software in Fortran, Dbase, or spreadsheets.

#### **RECENT PROJECT EXPERIENCE**

Representative experience includes the following recent projects:

Belvedere Lagoon, Reed Creek watershed diversion, City of Belvedere. Evaluation of flooding conditions, including hydrologic analysis of flows into the lagoon, and hydraulic simulation of inflows, outflows, and storage in the lagoon during 50-year and 100-year storms. Selection and hydraulic analysis of diversion culvert to reduce flooding potential.

Livermore, Stanley / Murrieta drainage improvements. Hydraulic analysis of existing storm drains, review and correction of storm drain master plan, and selection of drainage alternatives.

Redwood City, 305 Walnut Street Drainage. Review of watershed and existing drainage system, simulation of storm runoff, pump station flows, and storage during 10-, 30-, and 100-year storms, and selection of flood protection measures.

Burlingame, Grove and California Drainage Facilities. Review of rainfall data and hydrologic evaluation methods, investigation of existing flooding problems, estimation of watershed flows, selection of improvement alternatives, and hydraulic evaluation of alternatives.

Orinda, Survey and Inventory of Creeks. Review of ten miles of major creeks in the City of Orinda for potential flood hazards. Included videotaping of creek area and mapping of hazards.

City of El Cerrito, storm drain hydrology and hydraulics. Development of storm drain replacement alternatives, determination of hydrologic flows, evaluation of hydraulics for existing and proposed storm drains.

Storm drain evaluation and construction design, Portola Valley. Analysis of existing drainage system, evaluation of cost and feasibility of various alternatives, preparation of construction plans and specifications for selected improvement alternative of 800 ft of 36-inch drain.

Tassajara Valley flood evaluation, Contra Costa County. Evaluation of the effects of a proposed 4,500 acre development on existing flooding conditions. Included modeling with HEC-1 and HEC-2, and the development and evaluation of proposed mitigation measures.



David E. Mattern

Page 3

**RECENT PROJECT EXPERIENCE (continued)**

City of El Cerrito, Storm Drain Master Plan. Mapping of storm drain system in AutoCad, development of storm drain database system using dBase, estimation of peak flows in storm drains, determination of deficient storm drain segments, development of priority system for selection of the areas most in need of improvement, estimating replacement facilities and costs for highest priority areas.

Hydrologic and hydraulic evaluations of runoff conditions for site near Orinda Country Club, Orinda, for Contra Costa County.

Hydrologic and hydraulic evaluation of proposed storm drains, Glenside Dr road improvements, Lafayette.

Preparation of drainage and erosion masterplan for Crestwood Ranch. Watershed analysis of runoff, flooding, erosion and sedimentation using HEC-1 and HEC-6.

Location hydraulic study and flood frequency analysis, Middle Yuba River, Yuba and Nevada Counties.

Stream flood hydraulic analysis, Butano Creek, San Mateo County. HEC-2 water surface computation.

Location hydrologic and hydraulic studies at three bridge replacement sites for San Benito County.

Watershed evaluation and storm detention analysis, Russell Ranch, Folsom, Sacramento County.

Storm runoff analysis, subdivision in Castro Valley, Alameda County.

Detention analysis and storm drain hydraulic review, Rio Vista, Solano County.

Evaluation of drainage aspects for environmental review of Preston Ranch, Moraga / Lafayette.

Detention analysis, Canada Hills, Antioch, Contra Costa County.

Preparation of master plan for Novato Creek, Warner Creek, and Arroyo Avichi, Marin County.

Drainage analysis, Bickerstaff Avenue, Lafayette.

Detention analysis, Dallas Ranch, Antioch, Contra Costa County.

Expert witness, flooding on Uvas Creek, Gilroy, Santa Clara County.

Planning and analysis of tidal wetlands drainage facilities, U.S. Navy Mare Island.









Review of Oaks Business Park Draft EIR Drainage  
October 1, 2002

We have been asked to review the drainage aspects of this project as described in the Draft EIR. The following is a summary of our comments.

1. The dry arroyo is a depressed area on the existing site up to five feet below the surrounding ground level. It currently slopes from east to west, but has no outlet, and does not receive any flow from outside the site. Rainfall falling on or near this existing feature would tend to be retained on the site until it percolates into the ground, and would not produce storm runoff into either the Arroyo Mocho or the Arroyo las Positas, therefore acting as a natural retention area. With the existing depth of the dry arroyo, it has sufficient storage to contain the runoff from major storms. Using the topographic maps included in the DEIR, we estimate that only 35.8 acres of the southern watershed (60% of the total southern watershed area of 59 acres) would contribute runoff under existing conditions to the Arroyo Mocho (see attached map). The Storm Drainage Study assumes that the entire southern watershed drains to the Arroyo Mocho under existing conditions. In order to correctly reflect the effect of the dry arroyo area, the existing flows to the Arroyo Mocho shown in the study should be reduced from 6.34 cfs to 3.8 cfs for the 10-year flow and from 9.41 to 5.7 cfs for the 100-year flow. The proposed drainage concept will need to be revised in order to reduce the proposed condition flows to these smaller existing peak flow values. The attached figure shows the estimated hydrographs for the 100-year storm.
2. Under existing conditions, the runoff peak from the project area would occur before the peak in the main Arroyo Mocho. Therefore, the effective peak flow from the project site occurring at the time of the peak on Arroyo Mocho would be less than the 5.7 cfs described above. The hydrograph shows that the peak flow from the detention pond occurs later than the peak under existing conditions, and may tend to occur at the same time as the Arroyo Mocho peak. The detention pond concept should be analyzed and changed so that under proposed conditions the peak flow in Arroyo Mocho downstream of the project is no greater than the flow under existing conditions.
3. The hydraulic analysis of the detention pond for the southern watershed assumes a free flowing outlet. However, the outlet capacity would probably be reduced or stopped by the water surface in Arroyo Mocho during high flows. The attached figure shows a schematic cross section of the earlier concept of a detention pond at the southwest corner of the proposed site, and

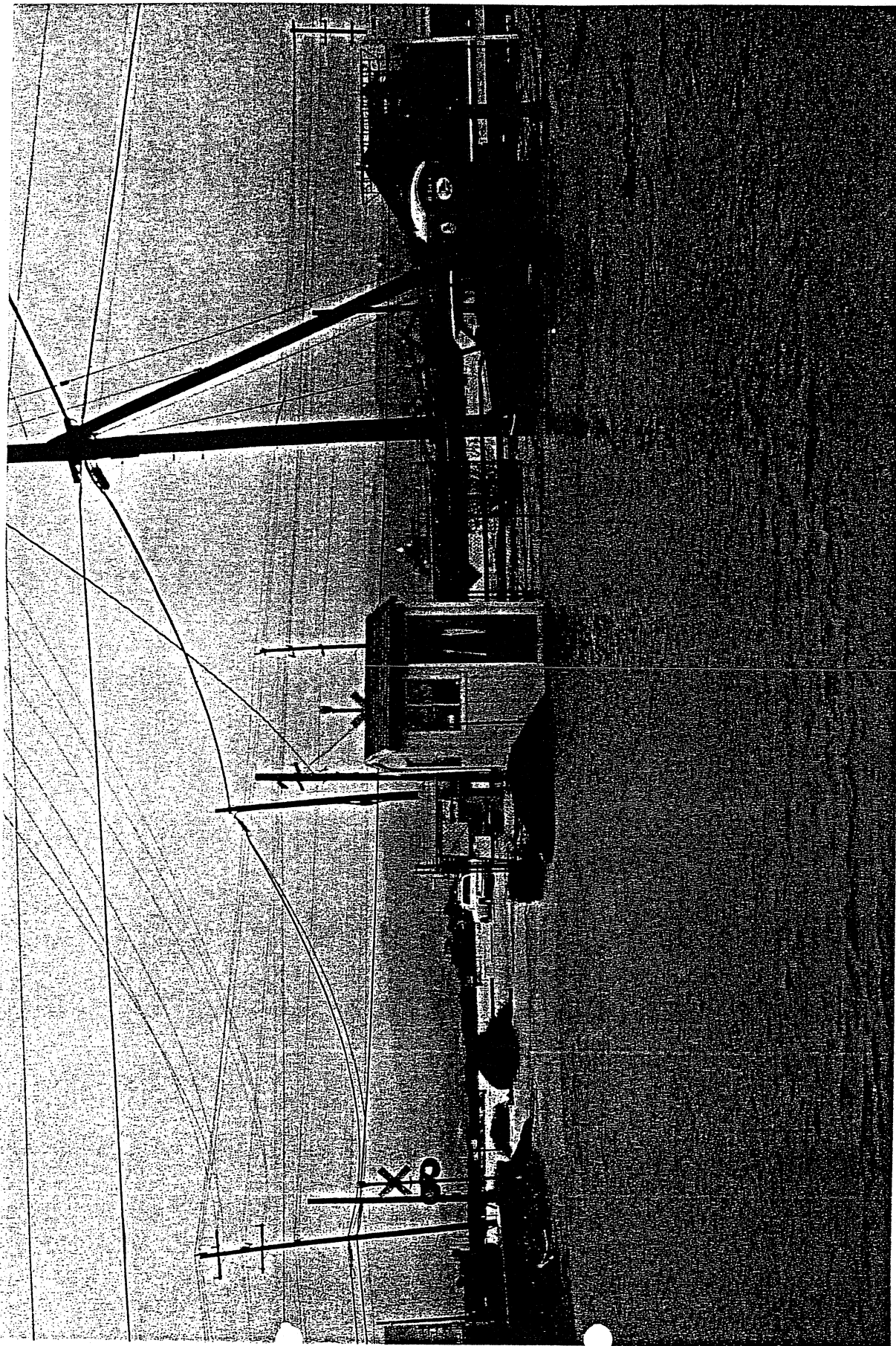
the Arroyo Mocho channel. In this case, the 15-year water surface in Arroyo Mocho was estimated in the study to be 397 feet, which is above the top of the storm drain pipe at the detention pond, and would reduce the outflow from the pond. The 100-year water surface in Arroyo Mocho is 400 feet, which is above the maximum water surface in the detention pond, and would prevent any outflow from the pond.

For the revised detention pond location, the study has not estimated the water surface elevation in Arroyo Mocho. With the detention pond at a higher elevation, it is not clear how the water from the west side of the project would drain into the detention pond, and it is not clear how the detention pond will discharge to Arroyo Mocho during high flows, since it is discharging at an upstream location.

4. The proposed detention ponds are intended to be sized to reduce the 100-year flows to existing levels, but the storm drains would be sized to carry only the 10-year flows. It is not clear how the remainder of the 100-year flows will be conveyed to the detention ponds. If the 100-year flows are not properly conveyed to the detention ponds, and escape beyond the proposed project site, they could cause damage to adjacent properties or to downstream areas along Arroyo Mocho or Arroyo las Positas.
5. The proposed detention basin in the southern watershed would be unlined, which would allow stormwater to percolate into the ground at this location. The higher rate of percolation at this location as compared with existing conditions may have an adverse effect on nearby property owners, especially at locations that are directly adjacent to the detention site.

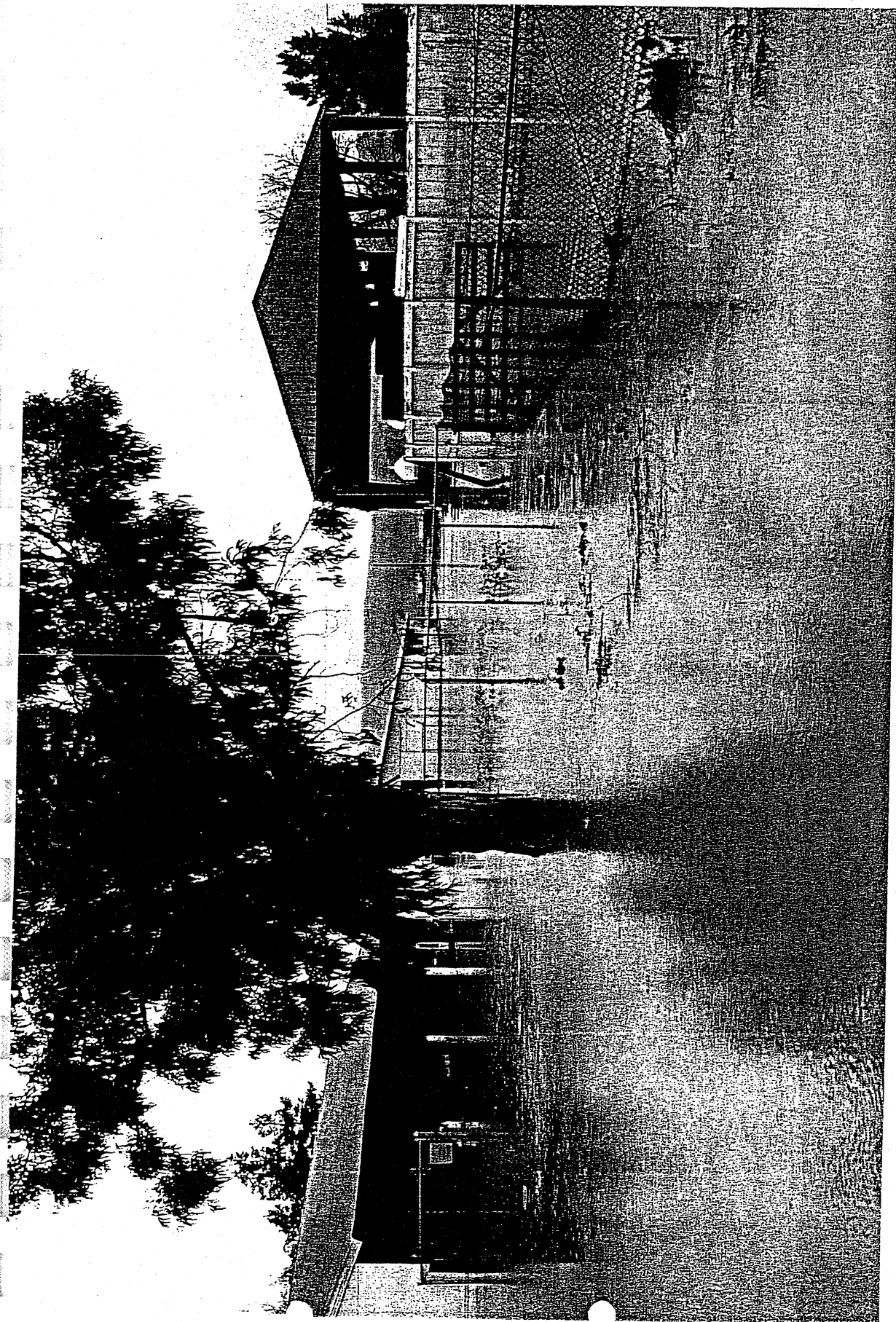
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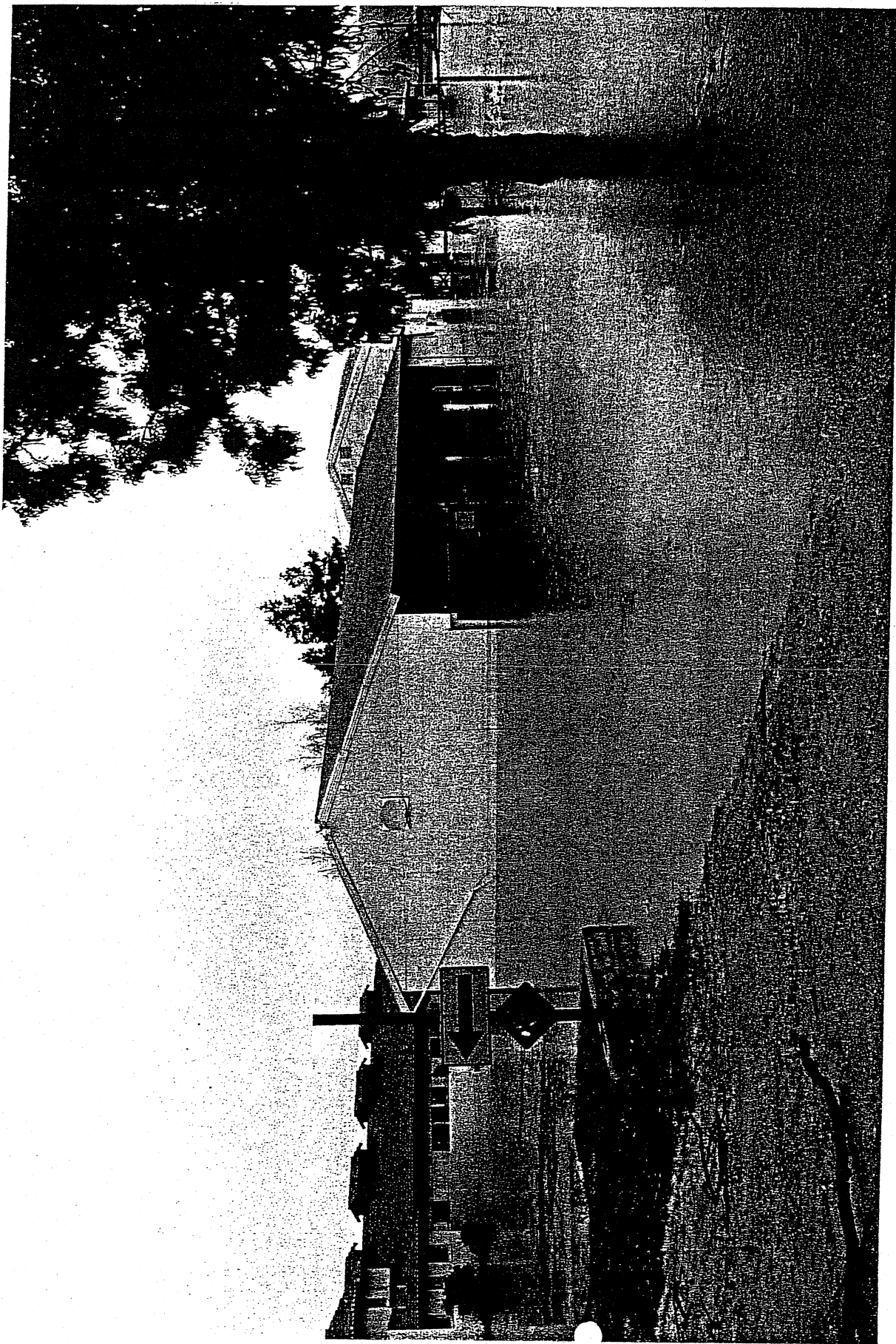




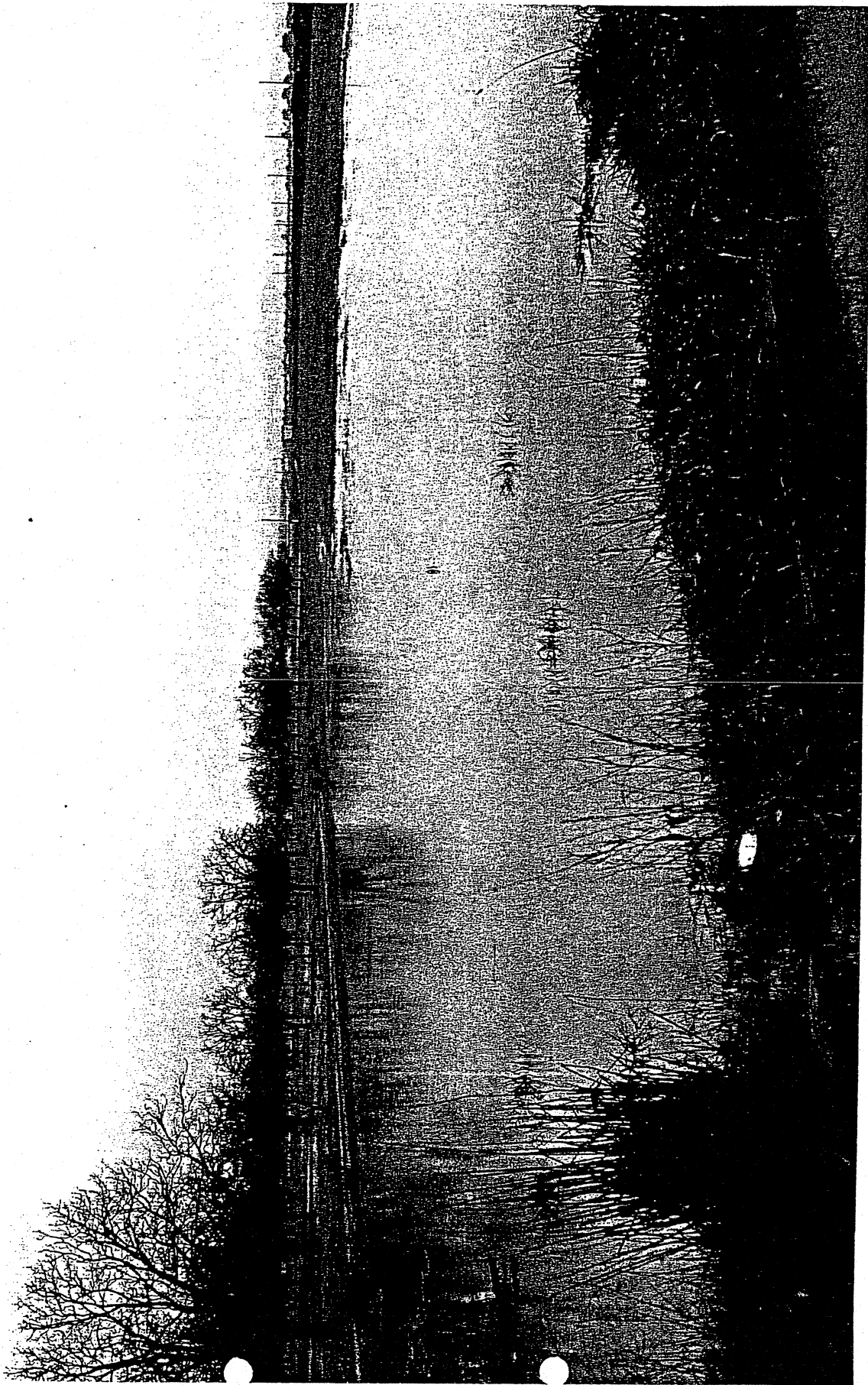




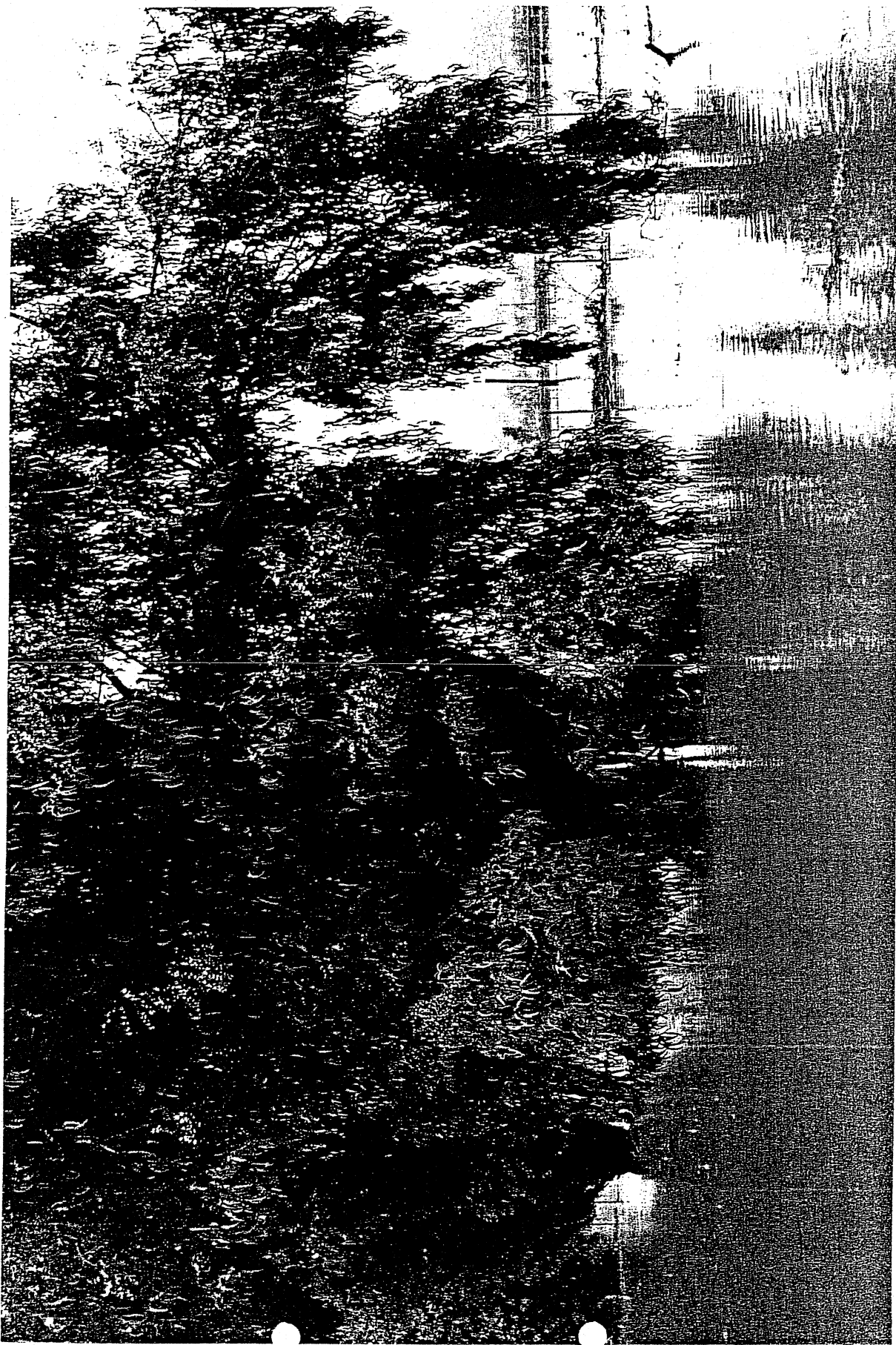






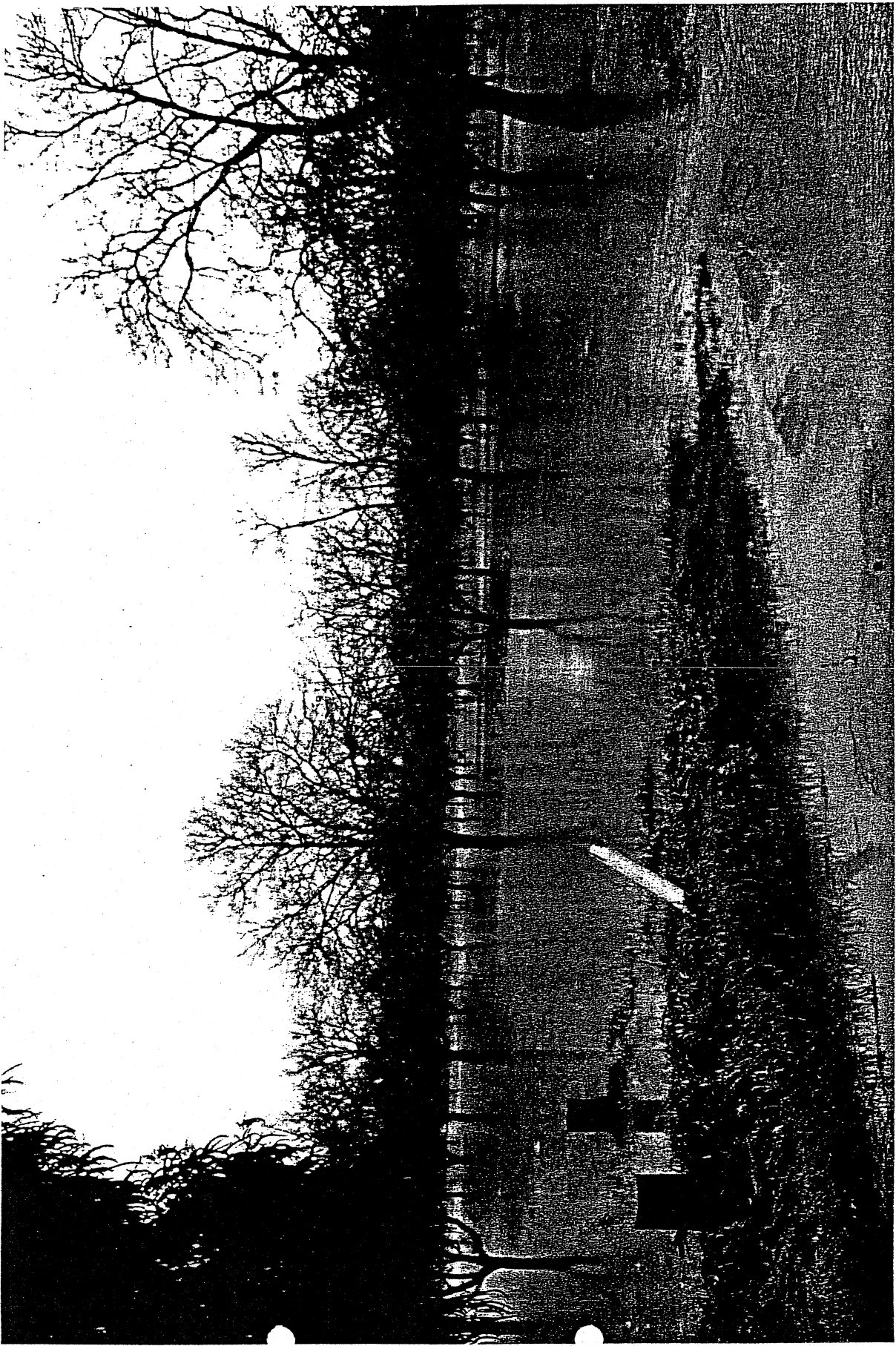








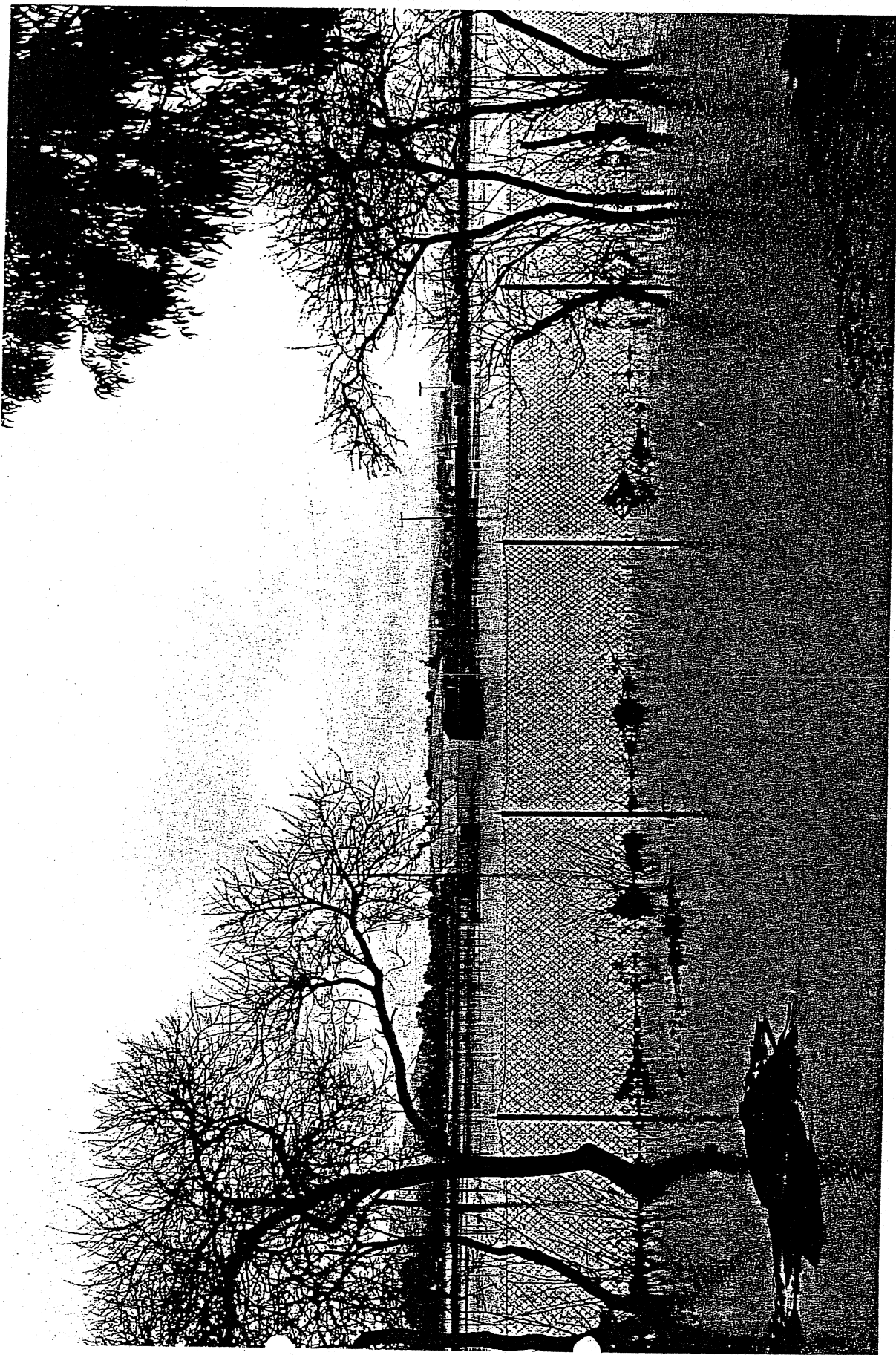




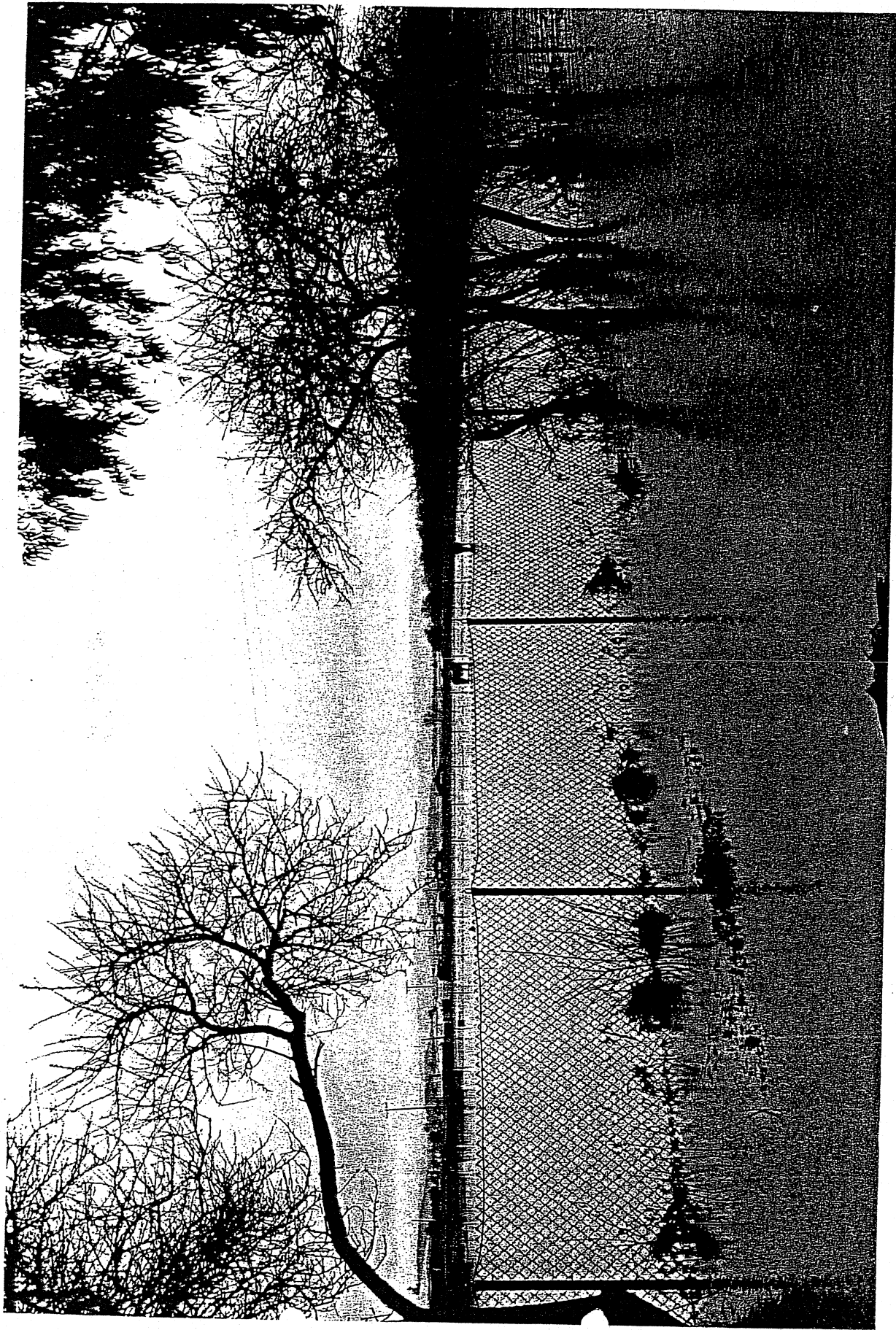






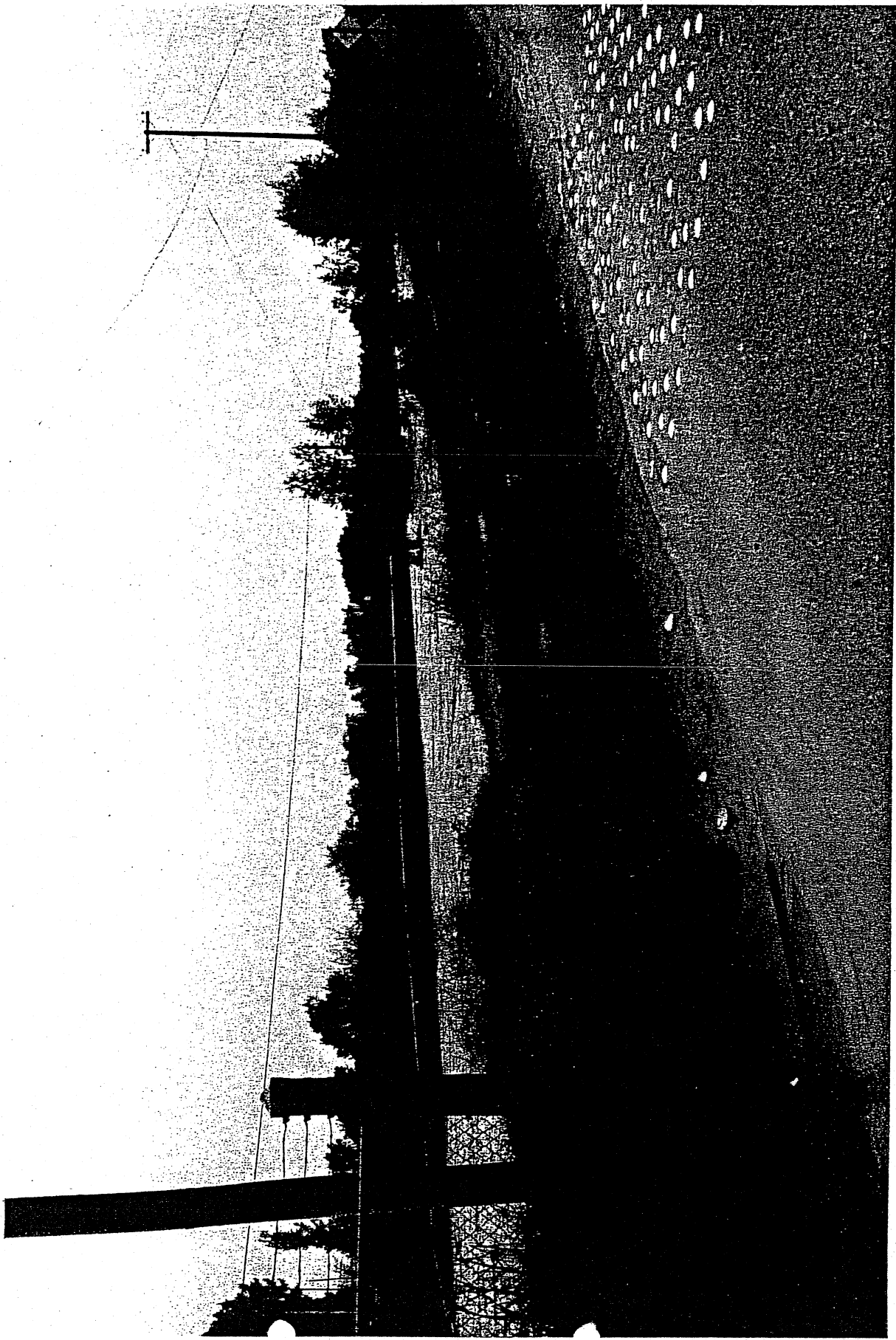


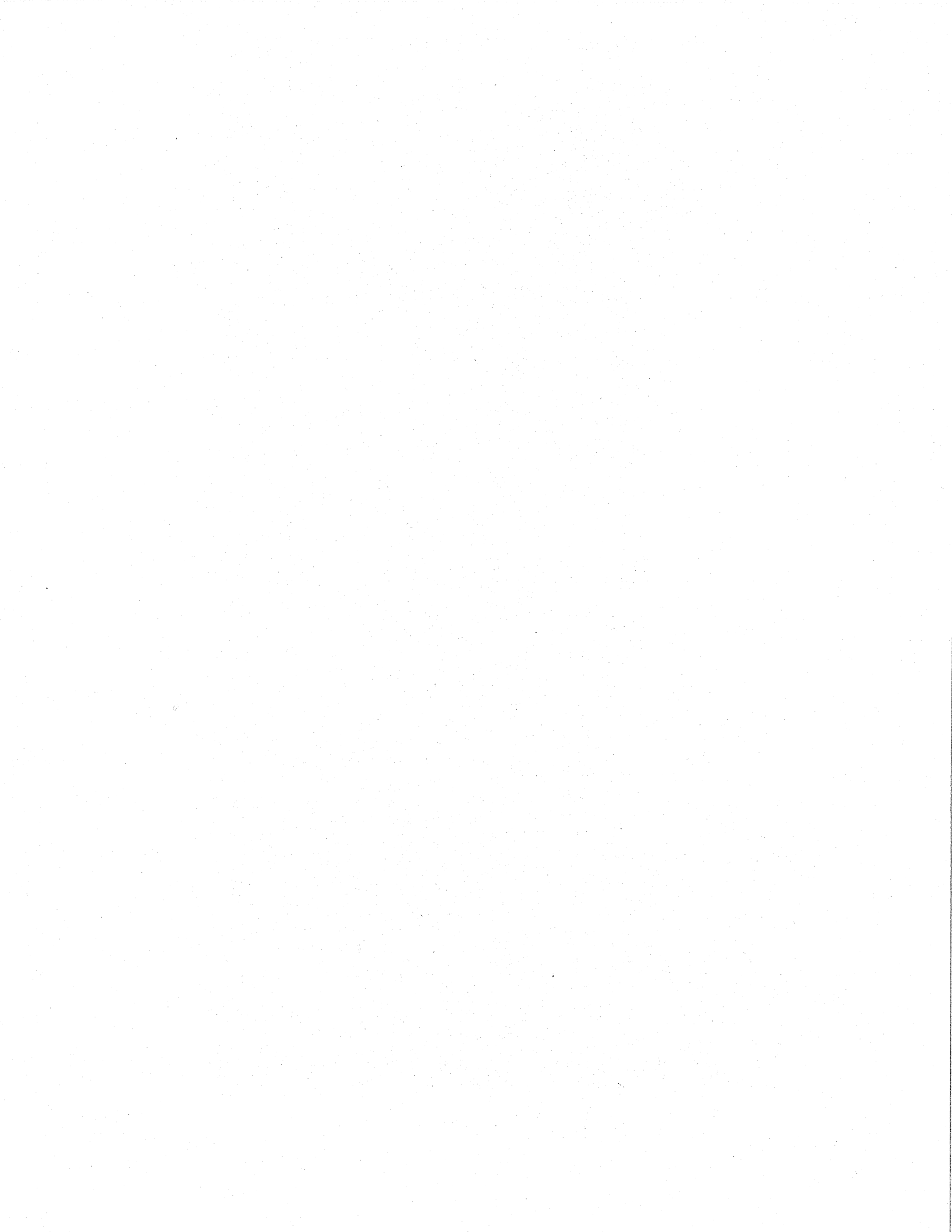


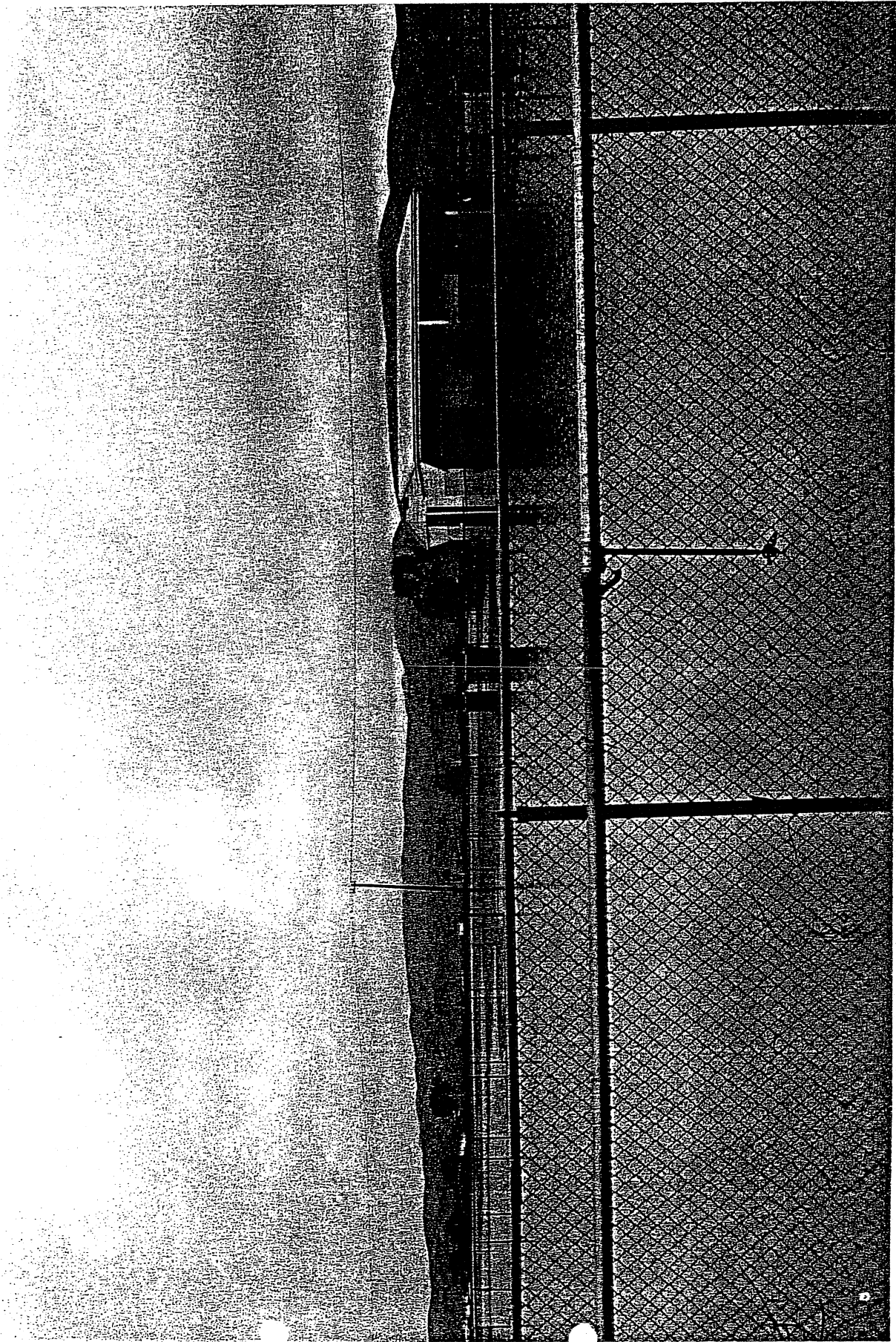




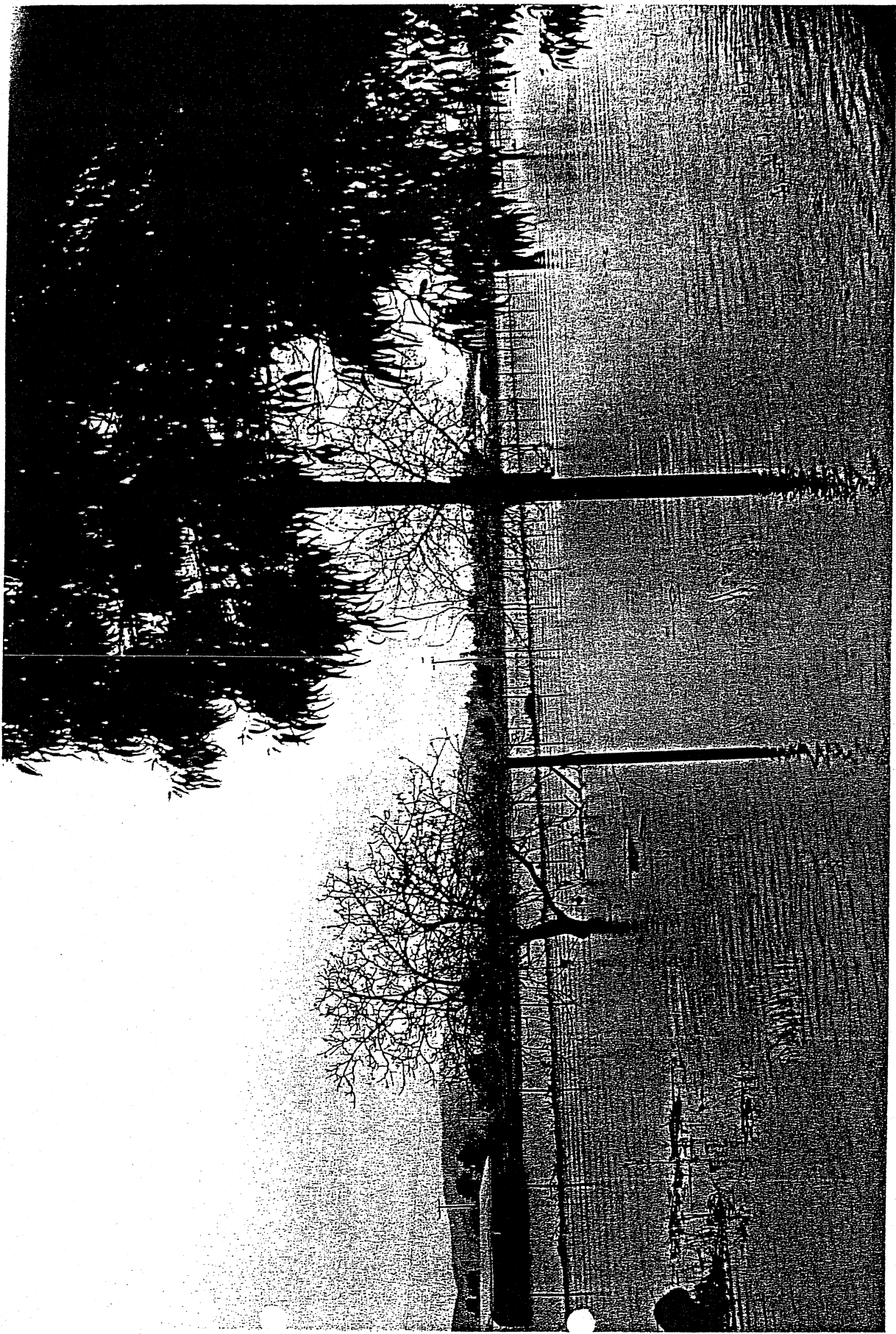




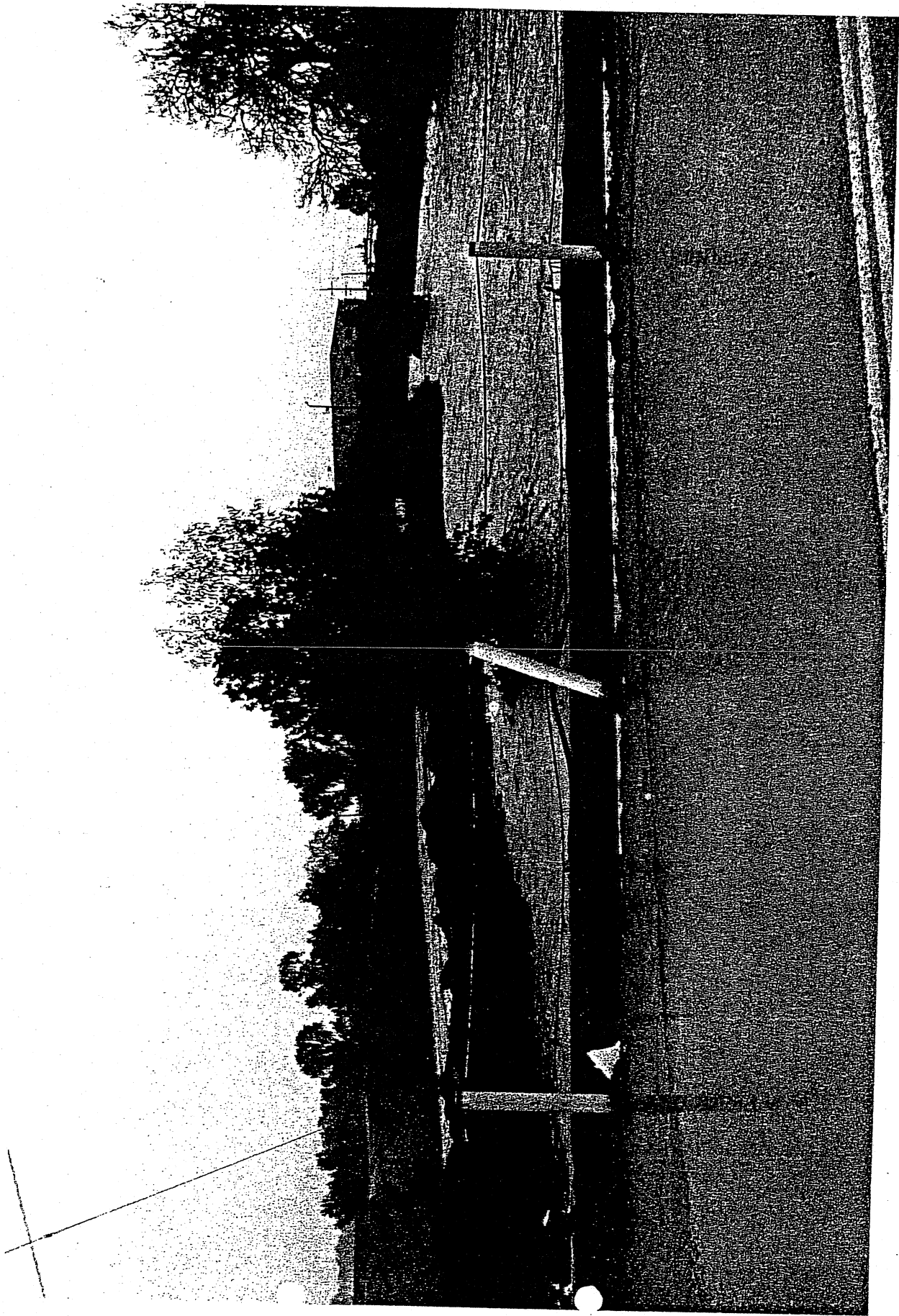


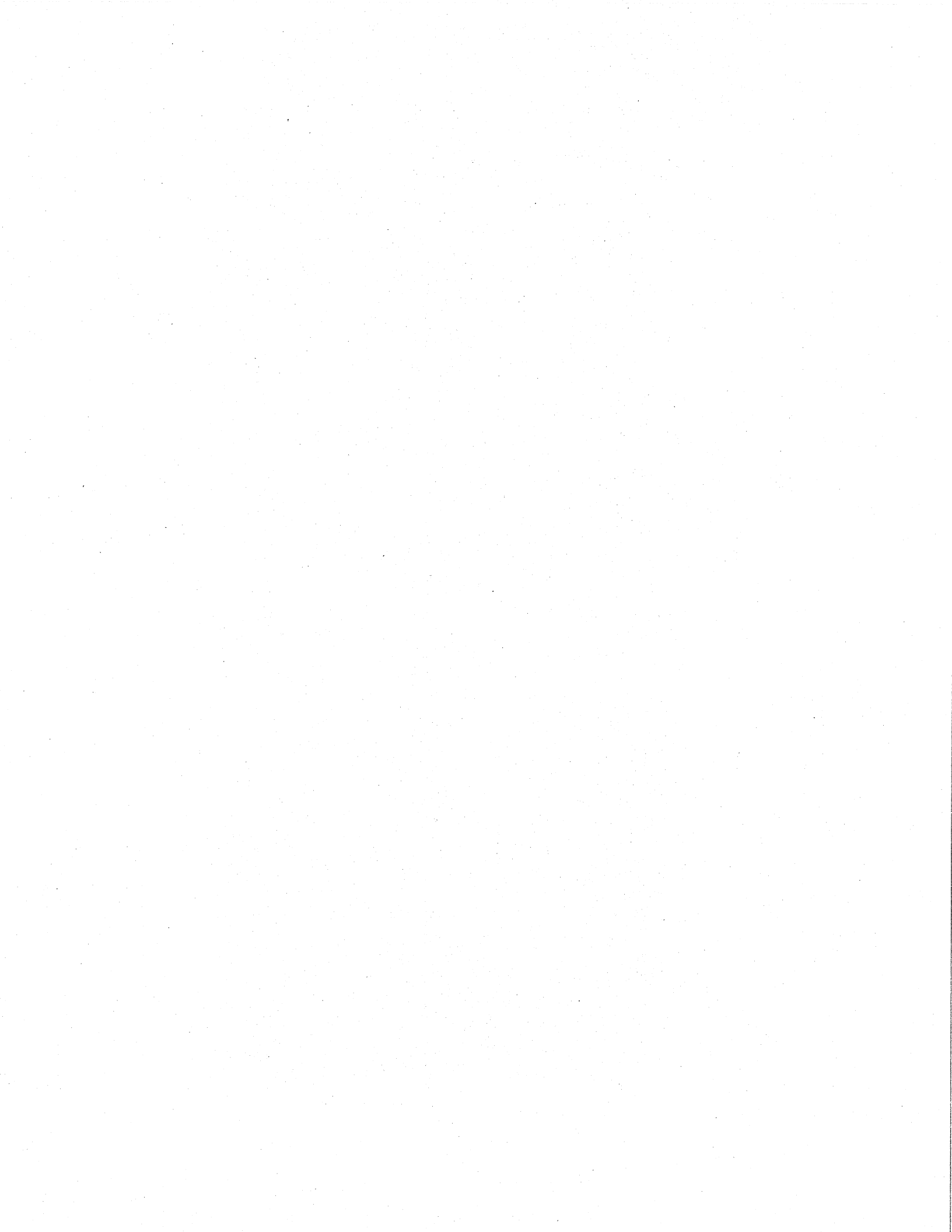






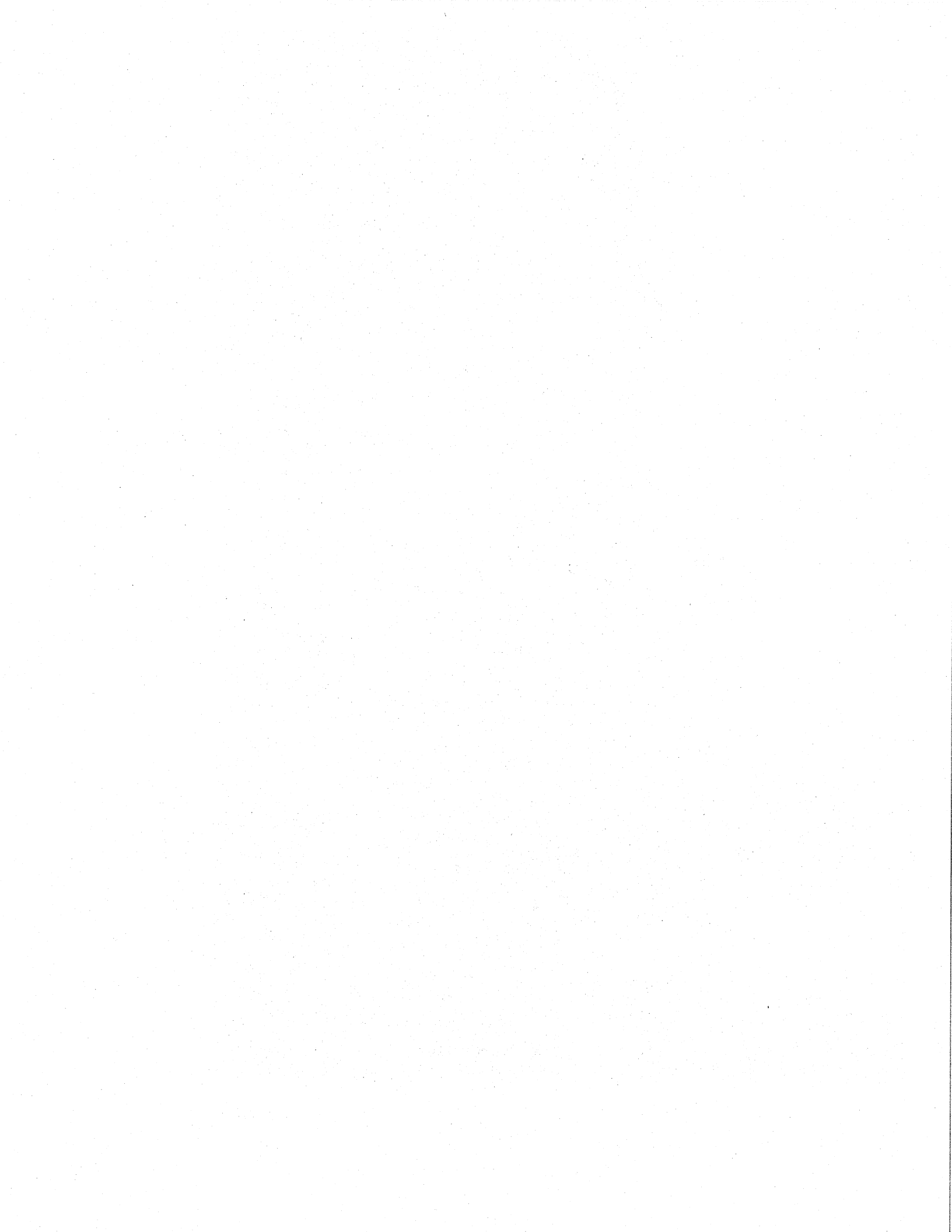
















**EXHIBIT D**



April 12, 1990

RECEIVED APR 16 1990

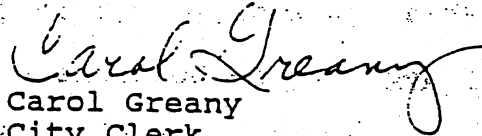
Mr. Gary Wimmer  
Orchard Properties  
2290 N. First Street  
San Jose, CA 95131

RE: Development Agreement/Tract 5420

Dear Mr. Wimmer:

The Development Agreement for Tract 5420 (formerly 3752) was recorded by the Alameda County Recorder's Office on March 5, 1990, under Series No. 90-060159. I am enclosing a conformed copy of the agreement for your records.

Sincerely,

  
Carol Greany  
City Clerk

CG/ao

Enclosure

cc: Engineering Division

Return to:  
City Clerk  
City Hall  
1052 So. Livermore Ave.  
Livermore, CA 94550

TRUE COPY of Document Recorded  
on 3-5-90 as No. 90-6601547  
Has not been compared with original.  
ALAMEDA COUNTY RECORDER

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY  
OF LIVERMORE AND ORCHARD PROPERTIES RELATIVE  
TO THE DEVELOPMENT KNOWN AS  
TRACT 5420 (formerly 3752)

THIS DEVELOPMENT AGREEMENT is entered into this \_\_\_\_\_  
day of \_\_\_\_\_, 1989, by and between ORCHARD LIVERMORE  
ASSOCIATES ("Orchard") and the CITY OF LIVERMORE, a  
municipal corporation ("City") pursuant to the authority of  
Sections 65864 through 65869.5 of the Government Code.

RECITALS:

A. In order to strengthen the public planning  
process, encourage private participation in comprehensive  
planning and reduce the economic costs of development, the  
Legislature of the State of California enacted Section 65864  
et seq. of the Government Code ("Development Agreement  
Legislation") that authorizes the City of Livermore, and an  
applicant for a development project, to enter into a  
development agreement, establishing certain development  
rights in the property that is the subject of the  
development project application. Pursuant to the  
Development Agreement Legislation, the City Council of City  
("City Council") at its June 10, 1985 meeting, adopted "A

HNE:sf:9/26/89 - Orchard/Livermore (Airway)



Resolution Establishing Procedures For Development Agreements" pursuant to Resolution No. 113-85 ("Development Agreement Resolution").

B. Orchard is the developer in fee of approximately 178 gross acres of real property (more or less), located within City and described in Exhibit 1, attached hereto and incorporated herein by reference thereto (the "Property"). The Property has been the subject of a tentative subdivision map for Tract 5420 (the "Tentative Map"), approved by the City Council, subject to various conditions adopted by City and entitled "Conditions of Approval for Tentative Parcel Map 5420, approved December 12, 1988 (the "Conditions of Approval"), a copy of the Tentative Map and Conditions of Approval being attached hereto as Exhibit 2 and incorporated herein by reference. Orchard desires to subdivide the Property for light manufacturing, warehouse, distribution, R&D and related commercial development. Such development will require substantial front-end investment in public facilities and off-site transportation and road improvements, in order to make the development feasible. City desires to obtain from Orchard commitments for (i) construction of off-site transportation improvements, (ii) construction of those improvements required for subdivision and development of the Property and (iii) current payment of amounts attributable to

HNE:sf:9/26/89 - Orchard/Livermore (Airway)

the Property for the City's transportation impact fee. Orchard desires to obtain assurances from City that its commitments will provide it with the right to proceed with development and that its requirements for transportation improvements will be considered fully satisfied.

C. The Property encompasses certain lands that may be required by City or other agencies for use as a right of way for State Route 84 ("Route 84"). City owns certain lands lying to the east of the Property that were originally acquired as potential right-of-way for Route 84. City and Orchard desire to establish the conditions under which the portion of the Property now considered more desirable for Route 84 may be reserved for that use as well as other terms and conditions that will apply if, as and when the decision is made to establish the Route 84 right-of-way within the boundaries of the Property.

D. City acknowledges that Orchard's agreement to make the commitments provided for in this Agreement, and as a condition to approval of the Tentative Map, allows City to obtain funds for certain off-site and transportation improvements and commitments of future right-of-way; and that such commitment of financial support constitutes a material factor in City's willingness to approve and execute the Development Agreement. City is willing to provide Orchard

with the undertakings contained in this Development Agreement, subject to the terms hereof and the Conditions of Approval, because City has determined that development of the Property within such framework will provide public benefits, including, without limitation, increased tax revenues, installation of certain on and off-site transportation improvements, resolution of transportation corridor issues, employment opportunities in industrial/commercial development and act as a financial catalyst for construction of transportation improvements necessary to mitigate cumulative impacts from development that is expected to occur in the future.

E. For the reasons recited herein, City and Orchard have determined that a Development Agreement is appropriate to these circumstances. This Agreement will in turn eliminate uncertainty in planning for and securing orderly development of the Property, installation of necessary improvements, provide for public services appropriate to each stage of development of the Project, and otherwise achieve the goals and purposes for which the Development Agreement Legislation (Governmental Code §65865 et seq.) was enacted.

F. The City Council has reviewed and approves this Development Agreement. It finds that this Development Agreement is consistent with City's General Plan and all

HNE:sf:9/26/89 - Orchard/Livermore (Airway)

applicable City ordinances, rules and regulations, and its implementation is in the best interest of City and the health, safety and welfare of its residents.

NOW, THEREFORE, City and Orchard agree as follows:

**Article 1. Property and Term**

**1.1. Property Subject to this Development Agreement.**

All of the Property shall be subject to this Development Agreement. The provisions of this Development Agreement shall constitute covenants that shall run with the Property and the benefits and burdens hereof shall bind and inure to all the successors in interest of the parties hereto.

1.2. Term. The Term shall commence upon the effective date of the ordinance approving this Development Agreement and shall continue with respect to each lot or parcel within the Property until ninety (90) days after the issuance of a building permit for construction of improvements upon such lot or parcel; provided, however, that in no event shall the Term exceed ten (10) years from the date of filing the final subdivision map with respect to the Property unless the Term is extended by duly adopted amendment hereof, by operation of the provisions of paragraph 2.2(c), or earlier terminated as herein provided.

Article 2. Development of the Property.

2.1 Vested Elements. The permitted use of the Property, provisions for reservation or dedication of land for public purposes, provisions for public improvements and other terms and conditions of development applicable to the Property as set forth in:

(a) Part III-D.2(3) Industrial Land Use Policies, 2d Part IV-B.3 Industrial Development Land Use Proposals of The Livermore Community General Plan for Low Intensity Industrial as currently applicable to the Property (attached as Exhibit 3);

(b) Chapter 14A.00, Section 14A.10 through Section 14A.40 and Section 14A.70 [I-2 light industrial] of the Livermore Municipal Code as currently applicable to the Property (attached as Exhibit 4); and

(c) The Conditions of Approval;

are declared "vested" subject to the provisions of this Agreement, and are referred to herein as the "Vested Elements." No part of the Vested Elements may be revised or changed during the Term; provided, however, that Orchard's right to receive sanitary sewer service for the Property shall be subject to curtailment as provided in Section 2.2(c); and provided further, that City shall have the right to amend current site coverage requirements and/or other conditions of

use pertaining to the lots and buildings by duly adopted amendment of City Zoning Code or other land use regulations, so long as (i) such regulations are applicable on a City-wide basis to all properties of comparable use, and (ii) the amendments do not effectively prevent or substantially impair the intensity of the use of the lots or parcels created within the Property for the permitted uses established in the Vested Elements.

2.2. Development Timing.

(a) This Agreement imposes no requirement that Orchard must initiate or complete development of any phase of the Property within any period of time except as otherwise provided in Sections 3.1.2(a) and as expressly otherwise stated in the Vested Elements, or as provided in the Subdivision Map Act; provided, however, that the foregoing shall not serve to diminish Orchard's obligation to construct or cause construction of street and utility improvements pursuant to the Conditions of Approval and as herein provided.

(b) Except as provided in subsection 2.2(c) below, no future modification of City's Code or ordinances, or any ordinance or regulation that purports to limit the rate of development over time shall apply to the Property; provided, however, that:

(1) nothing herein shall prevent or preclude City from adopting the types of amendments expressly permitted pursuant to Section 2.1 above or the regulations expressly authorized under Section 2.3 below; and

(2) nothing herein shall be construed to relieve Orchard from any time conditions in any Vested Element or to excuse the timely completion of any act that is required to be completed within a time period set by any applicable code or permit provision incorporated herein as part of the Vested Elements, except as the same may be tolled under applicable statute or by reason of pending litigation.

(c) Nothing contained in subsection 2.2(b) above shall prevent City from imposing a growth control measure applicable to the Property, and all other properties in the City, as a result of actual physical and/or legal limitations upon the capacity of City to treat and dispose of sanitary sewage, so long as such growth control measure is imposed upon all of the following terms, covenants and decisions.

(1) As to the portion of the Property to be devoted to industrial and/or commercial uses, no such growth control measure applicable to the Property shall

be imposed until such time as the City Council, by resolution, reasonably projects that there will be no sewer capacity available for industrial and/or commercial uses at some point in time within a reasonably predictable planning period;

(2) The decision to impose the growth control measure shall be by resolution of the City Council; and

(3) Each day that the growth control measure is in effect shall add an additional day to the Term hereof; provided, however, that in no event shall the Term be extended for a period exceeding a total of five (5) years.

### 2.3. Rules, Regulations and Official Policies.

(a) Development of the Property shall be subject to all standards in the Community General Plan, the zoning codes, and other rules, regulations, ordinances and official policies applicable to such development on the effective date of this Agreement except as otherwise provided herein. To the extent that any changes in the General Plan, the zoning codes or other rules, ordinances, regulations or policies conflict with the Vested Elements, the Vested Elements shall control. Any provisions of future general plans, zoning codes or other rules, ordinances, regulations



or policies, adopted on a city-wide basis, that do not conflict with or impair Orchard's rights under the Vested Elements, shall be construed and applied in a manner that avoids any such conflict.

(b) Orchard shall have the right from time to time to reconfigure the parcels comprising the Property as shown on the Tentative Map, as may be necessary in order to develop a particular phase of the Property or to lease, mortgage or sell a portion of the Property in connection with development of it. Orchard shall initiate such reconfiguration through an application for a parcel map waiver under the Vested Elements or an application for a parcel or subdivision map as City shall determine is required under its interpretation of applicable law. All such reconfigurations, lot line adjustments, reparcelization or resubdivision shall conform to and be in compliance with the applicable provisions of the Vested Elements and the Subdivision Map Act. City shall accept any such application, provided that it is accompanied by an appropriate statement in writing, verified by Orchard that such reparcelization is undertaken pursuant to this Section 2.3(b); provided, however, that City shall not be required to accept, process and approve applications for reconfiguration, lot line adjustment, reparcelization or resubdivision that will result in an increase in the intensity

of the use of the total Property in terms of an increased amount of building square footage that may be constructed thereon. Each such application shall be processed in accordance with the Vested Elements and, if such application is consistent with, and otherwise conforms to, the standards, terms and conditions applicable under this Agreement, then City shall approve such application. The parties acknowledge that lot or parcel-line adjustments that do not result in an increased intensity of use are an appropriate means to accommodate the needs of potential occupants and shall be approved without the imposition of additional conditions, because the Vested Elements provide for all necessary on and off-site improvements to service the Property in accordance with the requirements of law, as contemplated by Government Code § 66428.

(c) All applications for City approvals, permits and entitlements shall be subject to the application fees, processing fees, and regulatory fees, within the control of City that are in force and effect as of the date of such application; provided, however, that to the extent that any such application, processing and regulatory fees exceed those in effect on the date this Development Agreement is executed by City, the excess shall be applicable on a City-wide, nondiscriminatory basis; and provided, further, however, that

in no event shall transportation impact mitigation fees or any fee, levy, assessment or charge imposed for such purpose or in lieu thereof, or for acquisition and/or construction of transportation improvements (including, but without limitation, fees or charges imposed pursuant to any transportation impact fee ordinance), exceed amounts required to be paid (or work required to be performed) hereunder.

(d) Codes, ordinances and regulations relating to construction standards or permits shall apply as of the time of grant of each applicable construction permit except to the extent that the terms or conditions thereof are in conflict with a Vested Element; provided, however, that nothing herein contained shall prevent adoption and application to improvements upon the Property of laws, ordinances, rules or regulations pertaining to or imposing life-safety and/or building integrity requirements.

### Article 3. Obligations of the Parties.

#### 3.1. Orchard.

3.1.1. Development of the Property. Development of the Property shall conform with all of the terms, covenants and requirements of this Development Agreement, including, without limitation, the Vested Elements.

3.1.2. Transportation Impact Mitigation.

(a) Street Improvements.

(1) Subject to the Conditions Of Approval, Orchard shall construct and/or fund construction of the street improvements entitled "Off-Site Improvements (Subject to Traffic Impact Fee credit)" (paragraphs A, B, C and E on pages 7, 8 and 9 of the Conditions Of Approval and described in Exhibit 5 as (i) Las Positas Boulevard Improvement, (ii) Kittyhawk Road (North) Improvement, (iii) Kittyhawk Road (South) Improvement, and (iv) Kittyhawk Road Traffic Signals At Airway and Las Positas).

(2) Orchard shall not receive credit toward its TIF obligation for funds expended by it for construction of Airway Boulevard from the Airway radius to the intersection of Kittyhawk Road pursuant to the scope of work attached hereto as Exhibit 6 and incorporated herein by reference thereto. The foregoing improvements are not stated as Conditions Of Approval of the tentative map and have an estimated improvement value of in excess of Five Hundred Thousand Dollars (\$500,000).

(3) Assurance concerning performance of such work shall be required as a condition to filing the Final Subdivision Map for Tract 5420, such assurance to be in the form of a subdivision improvement agreement requiring construction of such improvements entered into in accordance with procedures established pursuant to City's Subdivision Ordinance (with bond or other surety provided as therein required) unless the City Council expressly approves an alternative method for providing such street installation with Orchard's consent. All standards for construction of the surface streets, terms of contract for provision thereof and other terms and conditions applicable to the work of construction shall be those in effect as part of the Conditions of Approval in the Vested Elements, imposing City's standards as interpreted and applied by the City Engineer.

(b) Transportation Impact Fee.

The transportation impact fee ("TIF") payable with respect to the Property shall be computed, become vested as to amount and shall be paid as follows:

(1) Applicable Fee Amount.

(i) Portions of the Property devoted to uses permitted under the I-2 and I-3 designation shall be subject to the TIF at a rate equal to the

amount determined by the City Council on a city-wide basis pursuant to the study currently in progress on the date hereof, (the currently applicable TIF being One and 96/100 Dollars (\$1.96) per square foot of building area for I-2 uses and One and 79/100 Dollars \$1.79( for I-3 uses). A building that would qualify as an I-3 building based upon coverage and parking criteria will be charged the fee applicable to I-3 use even if the building is located in an I-2 zone under the applicable provisions of the TIF Ordinance;

(ii) Portions of the Property duly general planned and zoned for residential uses (if any such planning or zoning is ever made applicable thereto) shall be subject to the TIF or any equivalent transportation impact mitigation fee made applicable to residential uses at a rate per unit (or type of unit) equal to the rate then applicable on a city-wide basis (or if there is no such rate, at the first rate thereafter so fixed), the current rate being One Thousand Six Hundred Thirty-Two Dollars (\$1,632.00) per dwelling unit;

(iii) The foregoing rates shall be determined for each lot or building, based upon the use proposed for that lot or building at the time the building permit is issued under applicable procedure (if any) established in the TIF Ordinance;

(iv) By prepaying the amount of the TIF fees made applicable to retail, commercial or office use after the date hereof, Orchard shall have the right to fix the entitlement to such use without payment of any additional fee therefore for a term of three (3) years from the date of such payment as follows:

(aa) The amount so prepaid may be prepaid to secure an entitlement to a stated amount of square footage of use without assigning the use to a particular lot or parcel until a building permit is issued with respect to the lot or parcel where the use is to be located;

(bb) Such payment shall cap the fee (fix the amount that can be charged for transportation impact mitigation) for a term of three (3) years meaning that unless a

building permit for a building that will utilize the entitlement has been issued within the three (3) year period, the limitation on further increases in the fee for commercial, retail and office use shall no longer apply; and

(cc) Any amount so prepaid shall be credited as a prepayment of amounts subsequently falling due. If Orchard determines that it will not need such prepayment in connection with commercial, retail, or office uses within the Property, it may apply such credit to its obligations for transportation impact fee mitigation arising hereunder at which point the limitation with respect to increases in the commercial, retail and office fee payable hereunder for such term shall be dissolved.

(v) From time to time as applicable TIF rates become fixed pursuant to the provisions hereof, City and Orchard shall execute supplements hereto stating such rates and attach the same to the original hereof maintained in City's records.



(2) Payment Of Transportation Impact Fee.

The TIF Ordinance requires payment of the TIF upon issuance of building permits with respect to buildings and improvements subject thereto. In lieu thereof, and as a material consideration for City's entry into this Agreement, Orchard shall pay an amount to be credited upon its TIF obligation upon filing of the final subdivision map for Tract 5420, a date substantially in advance of the day when the TIF would otherwise be payable pursuant to applicable ordinance. The amount to be so paid in advance and the conditions of payment shall be as follows:

(i) The amount to be paid upon filing of the final subdivision map shall be Four Million One Hundred Eighty Three Thousand Five Hundred Two Dollars (\$4,183,502) computed at the current rate of One and 96/100 Dollars (\$1.96) per square foot of building area, multiplied by a land coverage factor of thirty-five percent (35%), multiplied by the net square footage within the Property) reduced by applicable credits and reimbursements provided for in the Conditions of Approval.

(ii) Upon termination of the reservation provided for in Section 3.2 with respect to Parcels 1 and 2 and if, at said date, (aa) Orchard is not unconditionally obligated to convey the parcels to City, and (bb) the parcels have not been designated for residential use on City's applicable general plan and zoning ordinances, then Orchard shall pay to City Seven Hundred Seventeen Thousand One Hundred Seventy One Dollars (\$717,171) (computed in the manner set forth above) to be paid and applied against its TIF obligation. To the extent that conditions (aa) and/or (bb) apply to a portion of the total area within Parcel 1 and 2 but not to all of that area, the amount to be paid upon expiration of the reservation shall be prorated so that the portion attributable to the area not subject to the conditions shall be paid upon termination of the reservation.

(iii) Orchard and City have allocated the portion of the TIF to be prepaid pursuant to Section 3.1.2(b)(2) (i) and (b)(2) (ii) above to the Property by assuming a thirty-five percent (35%) FAR applicable to net buildable acres

(excluding streets). Subject to the limits stated in Section 3.1.2(b)(1) above, any additional TIF payable with respect to any building from time to time developed on the Property over and above the amount calculated with respect to the lot or portion of the Property upon which such development is to occur shall be paid when the building permit for such building is issued; provided, however, that nothing herein contained as to the time and method of making TIF payments shall be deemed to revise the limits on TIF payments established in Section 3.1.2(b)(1) above. If the proposed building would result in an improvement that is sufficiently below thirty-five percent (35%) FAR that the credit attributable to the lot by reason of prepayment is greater than the TIF obligation with respect thereto, then the difference (the excess credit) shall be attributed to portions of the Property for which no building permit has been issued and applied against the next TIF obligation of Orchard falling due with respect to such development hereunder.

(c) Maximum Fee. Amounts computed and paid pursuant to this Section 3.1.2(b) shall constitute full payment and discharge of all obligation arising for transportation impact mitigation under the TIF Ordinance or otherwise, and no amendment of the TIF Ordinance or adoption of any other Ordinance changing the character of the levy or increasing the amount thereof shall serve to impose upon Orchard and/or the Property or any part thereof or interest therein any liability for any additional amounts for transportation mitigation or any fee, levy or charge in addition thereto or in lieu thereof.

(d) Funding Mechanism. At the request of City, Orchard shall join in such proceedings as City may determine to initiate to establish or create an assessment district or other funding mechanism (including, but without limitation, a city-wide Mello Roos District) to assist City in imposing upon other property owners their respective "fair share" of the costs of constructing freeway improvements or other surface street improvements; provided, however, that the obligation of the Property for any amounts to be raised by such assessments for construction costs shall not exceed the amounts payable pursuant to Section 3.1.2(b); and to the extent that any such obligation or assessment shall attach to

the Property or any part thereof, or interest therein, amounts required to be paid hereunder shall constitute a full and complete discharge of such obligation.

(e) Fees Or Charges Other Than For Transportation Mitigation. Nothing herein contained shall be deemed to prevent or preclude imposition upon any lot or parcel of any fee or charge for any City service or to mitigate environmental impacts, other than transportation or traffic impacts, subsequently to be adopted by City under any applicable law, or enacted by City in its discretion so long as any such fee or charge is made applicable to all comparable property in the City on a non-discriminatory basis; provided, however, that no such fee or charge may be levied or assessed against any lot, parcel or portion of the Property unless such fee or charge could validly be imposed against the lot or parcel without regard to the provisions hereof.

3.1.3. Reclaimed Water Use.

As part of the improvements required to be constructed in connection with the subdivision, Orchard shall install a parallel water system to provide for use of reclaimed water if it is made available by the City for landscaping and irrigation purposes. The installation of the system shall conform to City standards and specifications for distribution of water of this type.

3.1.4. Avigation Easement. Orchard shall provide to City such avigation easement as City may reasonably require over portions of the Property that may be affected by aircraft flight so long as the terms of the easement are not more onerous than those required with respect to property similarly situated and so long as the terms do not purport to authorize violation of state mandated noise standards.

3.2. Reservation For Route 84 Right-Of-Way

(a) Acquisition By Agreement. Orchard and City shall diligently seek to consummate an agreement for acquisition substantially in the form of the Agreement attached as Exhibit 7 to transfer Parcel 1 and Parcel 2 (as described in Exhibit 7) to City either by purchase or in exchange for other property owned by City.

(b) Reservation. If the acquisition cannot be consummated, (or pending consummation of it), Orchard shall make no use of Parcels 1 and 2 until such time as City has concluded arrangements for acquisition of the right-of-way through exchange or purchase under threat of condemnation; provided, however, that the restriction upon use of the Property and the reservation contained herein shall expire unless the same has been consummated and completed within ten (10) years from the date hereof. City shall diligently

seek to secure final agreement with the California Department of Transportation concerning the location of the right-of-way and obtain funding from so-called "Measure B" funds to acquire and construct the same.

(c) Failure To Acquire Right-Of-Way For State Route 84. If City does not acquire the right-of-way for Route 84 within the term of the reservation provided for in Section 3.2(b), then the restrictions upon use of Parcel 1 and Parcel 2 shall terminate, whereupon Parcel 1 and Parcel 2 shall be subject to the same restrictions and entitled to the same rights as are provided under the Vested Elements for the balance of the Property.

(d) No Commitment To Dedicate. Nothing herein contained shall be deemed to impose upon Orchard a commitment to, or obligation for, dedication of Parcel 1 or Parcel 2 or a waiver of any right with respect thereto; provided, however, that Orchard shall be obligated to dedicate a portion of the area of Parcel 1 and Parcel 2 equal to the square footage for Route 84 that Orchard would be required to dedicate under the Conditions of Approval adopted upon approval of the tentative subdivision map for Tract 5420. Except to the extent of Orchard's dedication requirement described in the preceding sentence, City acknowledges that nothing herein contained shall be deemed

to preclude Orchard from, constitute a waiver of or otherwise limit Orchard's right to claim compensation for any taking of or damage to all or portions of Parcel 1 or Parcel 2 by exercise of a right of eminent domain or other action of City; provided, however, that the reservation provided for pursuant to Section 3.2(b) shall not give rise to or form the basis for any such claim. The foregoing acknowledgment shall not constitute an admission on the part of City other than an acknowledgment that Orchard has not waived its rights whatever they may be.

3.3. City.

3.3.1. Assessment Proceedings. Orchard may desire to initiate assessment proceedings to finance payment of the acquisition and construction costs required on its part to be paid pursuant to Section 3.1.2(a); and/or fees to be paid pursuant to Section 3.1.2(b) hereof; and/or for off-site improvements to be constructed pursuant to the Conditions of Approval or any portion of any of said amounts. If Orchard so determines, City shall diligently process such application so long as the application complies with law and is otherwise regular in form. In such proceeding, Orchard shall be entitled to add the value of the land in internal streets to the assessment proceedings subject to appropriate lien to value ratios. City acknowledges that Orchard shall have the



right to undertake improvement and assessment proceedings utilizing the Municipal Improvement Act of 1913 with assessments paid through the proceeds of the sale of bonds issued pursuant to the Improvement Bond Act of 1915, or any other assessment mechanisms authorized under the law of the State of California where the property subject to assessment provides primary security for payment of the assessments.

3.3.2. City's Good Faith In Processing. City shall accept, process and review, in good faith, all applications required under all applicable laws, ordinances, rules and regulations for use of the Property, in accordance with the terms of this Development Agreement and as required to determine the compliance of such application with applicable legal requirements. The scope of City's review of remaining or supplementary applications for development approvals shall be confined to the issue of conformance to the terms of this Development Agreement and the Vested Elements.

Article 4. Default, Remedies, Termination.

4.1. General Provisions.

(a) Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, failure or delay by either party to perform any term or provision of this Development Agreement constitutes a default hereunder.

Upon default under this Development Agreement or any of its terms or conditions, the party alleging such default or breach shall give the breaching party not less than thirty (30) days notice in writing, measured from the date of certified mailing, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. During any such thirty (30) day period of curing, the party charged shall not be considered in default for purposes of termination or institution of legal proceeding; provided, however, that except for work required to cure default, no work shall proceed hereunder during any default cure period and the provisions hereof shall be suspended during any such cure period, subject to full reinstatement upon completion of such cure.

(b) After proper notice and expiration of said thirty (30) day cure period without cure or if such cure cannot be accomplished within such thirty (30) day period, without commencement of cure within such period and diligent effort to effect cure thereafter, the other party to this Agreement, at its option, may institute legal proceedings to enforce this Agreement or give notice of termination of this

Development Agreement whereupon this Development Agreement shall terminate. Such notice of termination shall be by certified mail, return receipt requested.

(c) Failure or delay in giving notice of default pursuant to this Section 4.1 shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Development Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

4.2. Reversion To Acreage As A Remedy. Upon material default hereunder by Orchard and failure to cure within the period provided for herein, City shall have the right to seek reversion to acreage of all portions of the Property not located within the boundaries of lots or parcels improved with buildings or with building permits issued for construction of buildings.

4.3. Annual Review. During the term of this Agreement, the City shall, each year at the first regular City Council meeting in the month of June, review

the extent of good faith compliance by Orchard under this Development Agreement. At such meeting, Orchard shall be required to demonstrate, at Orchard's expense, its good faith compliance. If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Orchard has not complied in good faith with the terms and conditions of this Development Agreement, City may terminate or modify the Development Agreement, subject to Orchard's rights of cure as provided in Section 4.1(b) hereof.

4.4. Applicable Law/Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Development Agreement or to enforce any provision of this Development Agreement, or to obtain a declaration of rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees (including reasonable in-house counsel fees of City at private rates prevailing in Alameda County), court costs and such other costs as may be fixed by the Court.

Article 5. Permitted Delays; Effect of Subsequent Laws.

5.1. Permitted Delays. Performance by either party of its obligations hereunder (other than for payment of money) shall be excused during any period of delay caused by acts of God, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, the failure, delay or inability of the other party to act, the failure, delay or inability of City after request by Orchard to hold hearings necessary to take the actions contemplated in Article 3.3.1; provided, however, that each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

5.2. Effect Of Subsequent Laws. If any agency other than City adopts any law, regulation or imposes any condition ("Law"), after the date of this Agreement, that prevents or precludes compliance with one or more provisions of this Agreement, and the provisions hereof are not entitled to the status of vested right as against such Law, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such Law,

the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Orchard shall have the right to contest such Law and seek a declaration that it does not affect or diminish the provisions hereof. If any such challenge is successful, the Agreement shall remain unmodified and in full force and effect.

Article 6. Cooperation of City; Eminent Domain Powers.

6.1. Cooperation of City.

(a) City shall cooperate with Orchard in implementing all of the conditions of the Vested Elements, including but not limited to, the potential exercise of its eminent domain powers to acquire needed right-of-way for improvements required pursuant to the Conditions Of Approval; provided that City, in its independent exercise of judgment following all applicable procedure, has made the requisite findings properly supported by evidence that the use of such power is necessary; and provided further, that City has obtained from Orchard such agreement as City may reasonably require, indemnifying it and holding it harmless of and from any acquisition and other costs arising out of or associated with the exercise of its powers of eminent domain in any such instance.

(b) City shall dedicate rights-of-way on City owned property necessary for construction of improvements required pursuant to the Conditions of Approval as shown on Exhibit 8, attached hereto and incorporated herein by reference thereto. Such rights-of-way shall be dedicated without cost or expense to Orchard except as provided in the Conditions of Approval with respect to the improvement thereof.

(c) City shall cooperate with Orchard in its endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Property (such as public utilities or utility districts) and shall, from time to time, at the request of Orchard join with Orchard in the execution of such permit applications and agreements as may be required to be entered into with any such other agency, so long as the action of that nature will not require City to be exposed to any cost, liability or expense.

**Article 7. Mortgagee Protection; Certain Rights of Cure.**

7.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the

foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

7.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement; and provided, further, however, that nothing herein contained shall be deemed to waive all or any portion of the Conditions of Approval.

7.3. Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given Orchard hereunder and specifying the address for service thereof, then City shall deliver to such



Mortgagee, concurrently with service thereon to Orchard, any notice given to Orchard with respect to any claim by City that Orchard has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Orchard. Each Mortgagee shall have the right during the same period available to Orchard to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice.

**Article 8. Transfers and Assignments.**

8.1. Right to Assign. Prior to filing of the Final Map with respect to the Property and furnishing of the improvement commitments required in the conditions of approval, Orchard shall not sell, assign or transfer this Agreement or any of its rights hereunder without the prior written consent of City, which said consent shall not be unreasonably withheld (any such request for consent being evaluated on the basis of the financial strength and business reputation of the purchaser, successor or assign); provided, however, that nothing herein contained shall be deemed to prevent sale by Orchard of Parcel 1 and/or 2 as described in Exhibit 6 without City's consent, subject to all terms hereof that apply to said Parcels. After filing of the Final Map with respect to a

portion of the Property and provision of the commitments required pursuant to the Conditions of Approval, Orchard shall have the right to sell, assign or transfer its rights under this Development Agreement, and all of its rights, duties and obligations hereunder, with respect to the portion of the Property as mapped, without City's consent, to any person or entity at any time during the Term of this Development Agreement; provided, however, that in no event shall the rights, duties and obligations conferred upon Orchard pursuant to this Development Agreement be at any time so transferred or assigned except through a transfer of Orchard's interest in the Property, lot, parcel or portion thereof transferred.

8.2 Release Upon Transfer. Upon the sale, transfer or assignment in whole or in part of Orchard's rights and interests under this Development Agreement under Section 8.1 above, Orchard shall be released from its obligations with respect to the Property, lot, parcel, or portion thereof, so transferred arising subsequent to the effective date of such transfer (i) if Orchard is not then in default under this Development Agreement, (ii) Orchard has provided to City notice of such transfer, and (iii) with respect to sale or transfer to any lot that has not been fully improved, the transferee executes and delivers to City a written agreement

in which (A) the name and address of the transferee is set forth and (B) the transferee expressly and unconditionally assumes all of the obligations of Orchard under this Development Agreement with respect to the Property, lot, parcel or portion thereof, transferred. Orchard shall, in any event, give notice to City of any transfer hereunder, disclosing therein the identity of the transferee and such transferee's address. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 8.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

8.3. Covenants Run With The Land. For the term of this Development Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entity acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of Law or in any manner whatsoever, and shall inure to the benefit of the parties.

and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City owned property, (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

**Article 9. General Provisions.**

9.1. Project is a Private Undertaking. The development proposed to be undertaken by Orchard on the Property is a private development; except for that portion thereof to be devoted to public improvements to be constructed by Orchard in accordance with the conditions of approval, City has no

interest in, responsibility for or duty to third persons concerning any of said improvements; and Orchard shall exercise full dominion and control over the Property, subject only to the limitations and obligations of Orchard under this Development Agreement. Orchard shall hold and save City harmless and indemnify it of and from any and all loss, cost, damage, injury or expense, arising out of or in any way related to injury to or death of persons or damage to property that may arise by reason of the conduct of Orchard pursuant to this Development Agreement; provided, however, that the foregoing indemnity shall not include indemnification against suits and actions brought by Orchard by reason of City's default hereunder or arising from the negligence or willful misconduct of City, nor shall Orchard assume any responsibility by reason of the foregoing indemnity for claims arising in connection with or relating to planning for and construction of the improvements described in Section 3.1.2(b) hereof. The foregoing indemnity does not apply to any Mortgagee whether prior to or subordinate to this Development Agreement, who does not have fee title to the Property and shall not require any such Mortgagee, or any transferee of such Mortgagee, who acquires title to the Property as a result of a foreclosure or deed in lieu of foreclosure, to indemnify

City for loss, cost, damage, injury or expense arising by reason of the conduct of Orchard, or any transferee of Orchard.

9.2. Notices, Demands and Communications  
Between The Parties.

Formal written notices, demands, correspondence and communications between City and Orchard shall be sufficiently given if personally served or mailed by registered or certified mail, postage prepaid, return receipt requested, to the addresses of City or Orchard identified below. Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time-to-time designate by mail as provided in this section.

City:                      City Manager  
                              City of Livermore  
                              1052 South Livermore Ave.  
                              Livermore, CA 94550  
                              Attn: Mr. Lee J. Horner,  
                                      City Manager

Orchard:                    Orchard Properties  
                              Orchard Plaza  
                              2290 North First Street  
                              San Jose, CA 95131  
                              Attn: Mr. Gary Wimmer

9.3. No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as creating a joint venture or partnership between City and Orchard.

9.4. Severability. If any provision of this Development Agreement is held invalid, the remainder of this Development Agreement shall not be affected and remain in full force and effect unless amended or modified by mutual consent of the parties.

9.5. Completion Or Revocation. Upon completion of performance by the parties or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Orchard shall be recorded in the Office of the Recorder of the County of Alameda, California.

9.6. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Development Agreement is in full force and effect and a binding obligation of the parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments,

and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate or give a written detail response explaining why it will not do so within thirty (30) days following the receipt thereof. The Planning Director of City shall have the right to execute any certificate requested by Orchard hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees. At the request of Orchard, any certificate provided by City establishing the status of this Agreement with respect to any lot or parcel may be in recordable form and Orchard shall have the right to

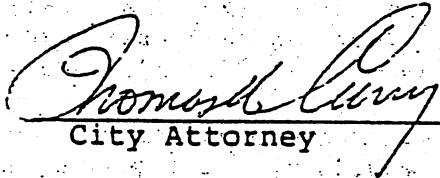


record the same with respect to the affected lot or parcel at its cost and expense.

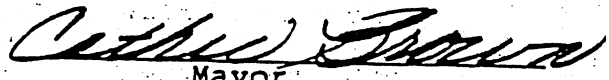
9.7. Time. Time is of the essence of each and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of the day and year first above written.

Approved as to Form:

  
City Attorney

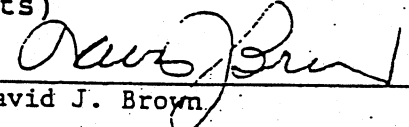
CITY OF LIVERMORE, a  
Municipal Corporation

By   
Mayor

ORCHARD LIVERMORE ASSOCIATES,  
a California general partnership

By ORCHARD PROPERTIES, a California  
corporation  
Its General Partner

(acknowledgments)

By:   
David J. Brown

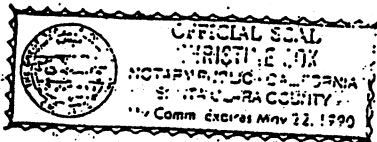
Its: President

Date: 1/17/90

STATE OF CALIFORNIA. )  
 ) ss:  
COUNTY OF SANTA CLARA )

On this 7<sup>th</sup> day of January, 1990 before me, the undersigned, a Notary Public in and for said State, duly commissioned and sworn, personally appeared DAVID J. BROWN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President of ORCHARD PROPERTIES, a California corporation, and he acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors, and he acknowledged to me that such corporation executed the within instrument as a partner on behalf of ORCHARD LIVERMORE ASSOCIATES, a California partnership, and he acknowledged to me that such partnership executed the within instrument, and that he executed the same on his own behalf, and, after being by me first duly sworn, he declared that the statements contained in the within instrument are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year in this certificate first above written.



Christine Cox  
NOTARY PUBLIC, State of California

My Commission Expires: May 22, 1990

CONSENT AND SUBORDINATION

The undersigned, Beneficiary under those certain Deeds of Trust in the amounts of Eight Million Nine Hundred Fifty Thousand and No/100 dollars (\$8,950,000.00) dated December 20, 1988 and Six Million No/100 dollars (\$6,000,000.00) dated December 20, 1988, executed by Orchard Livermore Associates, a partnership, as Trustors and recorded October 12, 1989 in the office of the Recorder of Alameda County, State of California, under series numbers 89-279607 and 89-279610 of Official Records, hereby consents to and subordinates their interest in said Deeds of Trust to said Development Agreement subject to the undersigned's rights as a Mortgagee thereunder.

New England Life Insurance Company, a Massachusetts Corporation

By: Copley Real Estate Advisors, Inc., its asset manager and advisor hereunto duly authorized

Bv: Kevin M. Mahony  
its: MANAGING DIRECTOR

Commonwealth of Massachusetts  
County of Suffolk

On February 15, 1990, before me, the undersigned, a Notary Public in and for said Commonwealth personally appeared Kevin M. Mahony, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as a Managing Director as his/her free act and deed, of Copley Real Estate Advisors, Inc., a Massachusetts Corporation, a duly authorized asset manager and advisor to New England Mutual Life Insurance Company, a Massachusetts Corporation therein named, pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal

Elizabeth McNamara  
Notary Public in and for said Commonwealth

ELIZABETH McNAMARA, Notary Public  
My Commission Expires Oct. 22, 1993

CONSENT AND SUBORDINATION

The undersigned, Beneficiary under those certain Deeds of Trust in the amounts of Ten Million and No/100 dollars (\$10,000,000.00) dated December 20, 1988, executed by Orchard Livermore Associates, a partnership, as Trustees and recorded October 12, 1989 in the office of the Recorder of Alameda County, State of California, under series numbers 89-279609 and 89-279612 of Official Records, hereby consents to and subordinates their interest in said Deeds of Trust to said Development Agreement subject to the undersigned's rights as a Mortgagee thereunder.

New England Life Insurance Company, a Massachusetts Corporation

By: Copley Real Estate Advisors, Inc., its asset manager and advisor hereunto duly authorized

By: Kevin M. Mahony

its: MANAGING DIRECTOR

Commonwealth of Massachusetts  
County of Suffolk

On February 15, 1990, before me, the undersigned, a Notary Public in and for said Commonwealth personally appeared Kevin M. Mahony, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as a Managing Director as his/her free act and deed, of Copley Real Estate Advisors, Inc., a Massachusetts Corporation, a duly authorized asset manager and advisor to New England Mutual Life Insurance Company, a Massachusetts Corporation therein named, pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal

Elizabeth McNamara  
Notary Public in and for said Commonwealth

ELIZABETH McNAMARA, Notary Public  
My Commission Expires Oct. 22, 1993

9/8/89

AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
THROUGH PURCHASE OR EXCHANGE

THIS AGREEMENT is entered into as of this \_\_\_\_ day of July, 1989, by and between the CITY OF LIVERMORE, a municipal corporation ("City") and ORCHARD LIVERMORE ASSOCIATES, a California general partnership ("Orchard").

RECITALS:

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Orchard is the owner of all that certain real property lying in the City of Livermore, County of Alameda, State of California, comprising approximately one hundred seventy-nine (179) acres commonly known as the Orchard/Airway Business Park and referred to herein as the "Property." The Property has been the subject of subdivision map proceedings resulting in approval by City of a tentative Tract Map No. 5420 with respect thereto creating the conditions for development thereof. City desires to obtain from Orchard a portion of the Property lying within Tract 5420 (shown as Parcel A on Exhibit A attached hereto and incorporated herein by reference thereto) as a right-of-way for the planned alignment of State Route 84 ("Route 84"). City also desires to obtain the 3.66 acre Parcel B shown on Exhibit A as a

trailway for the residents of City. Parcel A and B are referred to collectively herein as the "Orchard Parcels."

B. City owns certain real property lying in the City of Livermore, County of Alameda, State of California consisting of several parcels more particularly shown on Exhibit B, attached hereto and incorporated herein by reference thereto (the "City Parcels"). City desires to acquire the Orchard Parcels either by purchase or in exchange for the City Parcels pursuant to the authority granted to it under Government Code Section 37351 and 54221(b) and Streets and Highways Code Sections 8355 and 8356, all as City may determine in its discretion. If City determines to proceed by purchase, it shall also purchase Orchard Parcel C in recognition of the fact that use of that property would be substantially limited (if not entirely impaired) by the new alignment of State Route 84.

C. Orchard is willing to sell the Orchard Parcels and Orchard Parcel C to City, or enter into an exchange of the Orchard Parcels for the City Parcels and, in connection with the exchange, provide to City such waivers as may be required of any and all claim for severance damage and other damages Orchard might have by reason of the location of Route 84 within the Orchard Parcels, upon condition that the City Parcels and the other property owned by Orchard identified as Parcel C on Exhibit A ("Orchard

Parcel C"), have been made the subject of duly adopted General Plan Amendment and Zoning Ordinance establishing residential zoning with respect thereto in form and substance satisfactory to Orchard.

D. In entering into this Agreement, City has determined:

(1) The Agreement does not commit the City to a General Plan Amendment or Zoning Change. It is conditioned upon consummation of those discretionary acts. City reserves the right to approve or disapprove them on the merits.

(2) The proposed trail on one of the City Parcels has not been improved or used for trail purposes. A more appropriate location for a trailway would be adjacent to a road rather than between two (2) sets of backyards as in the current proposed location. A purchase or exchange would facilitate a more appropriate trail system.

(3) A purchase or exchange would allow City to acquire property in accordance with the currently planned alignment of Route 84. Acquisition of right-of-way is essential to procurement by City of funds needed to improve Route 84. The purchase or exchange would avoid any claim for inverse condemnation and severance damage, recognizing that Orchard's approved tentative map now allows development for industrial purposes. Consummation of the purchase or exchange would allow Orchard or City to assemble a parcel

sufficient to allow planned development for residential purposes. As a result, the exchange would facilitate a more orderly development and growth pattern.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

A. Decision To Proceed By Purchase Or Exchange.

1. Purchase Or Exchange. Orchard agrees, in the alternative, to:

(a) Exchange the Orchard Parcels for the City Parcels, or

(b) Sell the Orchard Parcels and Orchard Parcel C to City, as City may elect upon all of the terms, covenants and conditions herein contained.

2. Election To Proceed By Purchase Or Exchange.

City shall make its election to proceed either by purchase or by exchange by written notice given to Orchard not later than \_\_\_\_\_; provided, however, that City's right to proceed by way of exchange shall be subject to the condition precedent stated in Part B, paragraph 2.

B. Exchange Election.

1. Exchange. If City elects to proceed by way of exchange, this transaction shall be consummated as provided in this Part B.



2. Condition Precedent. The obligations of the parties to proceed by way of exchange shall be subject to the following condition precedent which shall be fulfilled in the manner hereinafter provided.

(a) Specific Condition Precedent. The specific condition precedent shall be:

(i) Adoption of a General Plan Amendment designating the City Parcels and Orchard Parcel C for residential use under City's General Plan; and

(ii) Adoption of a zone change consistent with the General Plan Amendment designating the City Parcels and Orchard Parcel C for residential use (PDRL-6) under City's Zoning Ordinance.

Both of the foregoing actions shall be deemed to have occurred when City's action has become final and the time for initiation of referendum or judicial review has expired without commencement of such proceedings.

(b) Time for Fulfillment of Conditions Precedent. City shall have until \_\_\_\_\_ to fulfill the foregoing condition precedent. Orchard acknowledges that City shall have no obligation to take any action with respect to the specific condition precedent other than to initiate appropriate proceedings. Orchard shall join with City in making such applications as may be required to bring about consideration of the required General Plan

Amendment and Zoning Change, Orchard's obligation, including, but without limitation, the obligation to pay such filing and processing fees as are customary and usual in connection with such applications.

(c) Failure to Fulfil the Condition Precedent. Unless the condition precedent is fulfilled as herein provided within the time limit herein specified, then this Agreement and all obligations of the parties arising hereunder shall terminate unless City determines to proceed to purchase the Orchard Parcels and Orchard Parcel C as hereinafter provided. Neither party shall have the right to waive the condition precedent and require performance on the part of the other.

(d) Effect Upon Tentative Tract Map No. 5420. City acknowledges that nothing herein contained, including, but without limitation, application by Orchard for the General Plan Amendment and adoption of Zone Change as herein provided shall constitute a waiver of any rights held by Orchard pursuant to the tentative subdivision map approval for Tract No. 5420 heretofore granted by City to Orchard.

3. Valuation For Purposes Of Exchange: Payment Of Additional Consideration If Value Of City Parcels Exceeds Value Of Orchard's Parcels.

(a) If the value of the Orchard Parcels exceeds the value of the City Parcels, the properties shall be exchanged as equivalent.

(b) If the value of the City Parcels exceed the value of the Orchard Parcels, Orchard shall pay the difference (the "Cash Portion") at the Closing Day (as hereinafter defined).

(c) The values of the Parcels shall be determined as follows:

(1) Within thirty (30) days after execution hereof, Orchard and City shall each obtain an appraisal of the Parcels prepared by duly qualified MAI appraisers familiar with the value of commercial real property in the City. Not later than forty (40) days after the date hereof, Orchard and City shall arrange for simultaneous exchange of their respective appraisals.

(2) Orchard and City shall negotiate in good faith in an attempt to reach agreement on a price for each of the Parcels, based upon the two appraisals, within thirty (30) days after the exchange thereof. Orchard and City shall each make available to the appraisers such information as they may have regarding the Parcels, including, but without limitation, easements, title reports, hazardous waste analyses and the like. The Orchard Parcels and the City Parcels shall be valued in their "as-is" condition.

(3) If the parties are unable to agree upon a value for all of the Parcels within said thirty (30)

day period, they shall, within ten (10) days thereafter, select a third (3rd) duly qualified MAI appraiser familiar with the value of commercial real property in City. If they are unable to agree on such a person within said ten (10) day period, either party may apply for appointment of the third appraiser by the Presiding Judge of the Superior Court of the State of California in and for the County of Alameda, acting in his individual capacity; and neither party shall have the right to object to any appointment so made or to question the power or authority of said Judge to make the appointment.

(4) The third appraiser so appointed shall, as diligently as possible after appointment, consider the appraisals submitted by the appraisers for City and Orchard and select the value stated in said appraisals on a Parcel by Parcel basis that most closely approximates the third appraiser's opinion of value of the respective Parcels. The appraiser shall have no right to select a different value or to average the appraisal submitted by the first two appraisers. The third appraiser's sole option shall be to select, with respect to each Parcel, the value proposed by either of the first two appraisers that most closely approximates his own opinion of value.

(5) All appraisers shall base their determination of value upon highest and best use under

current General Plan and land use designations for the respective Parcels prior to any changes made pursuant to paragraph 2 hereof as of the estimated Closing Day (but not later than one (1) year from the date hereof). Neither the Orchard Parcels nor the City Parcels shall be reduced in value due to possible future use such as (for example) use for the Route 84 right-of-way. For example, the Orchard Parcels shall be appraised as if they were 16.89 acres within the remainder of Tract No. 5420 zoned I-2 (Light Industrial) in rectangular lots with normal street frontage adjacent to Route 84, and as if the approved tentative map were not encumbered by the State Route 84 right-of-way. The City Parcels shall be appraised under current General Plan designation, also not encumbered by the Route 84 right-of-way or trailway easement, as residential parcels without housing and improvement program approval and as parcels without an approved tentative map.

(6) The value selected by agreement between the parties or by the third appraiser shall constitute the value for all purposes hereof and shall be final and binding upon the parties for the purposes of the exchange. Orchard and City shall each pay the cost and fees of the appraiser they select and they shall share equally in the costs and fees of any third party appraiser required to be selected in order to complete the process.

4. Waiver of Claims for Compensation If City Proceeds By Way Of Exchange.

Upon consummation of the acquisition through exchange, Orchard shall waive all claims it might otherwise have for damage to or taking of the Orchard Parcels, or any other property interest of Orchard by way of severance damage or on any other theory, arising by reason of or in any way connected with City's acquisition of the Orchard Parcels for use as a right-of-way for Route 84 or for any other public purpose. At the Closing Day, Orchard shall deliver to City in recordable form a release and waiver of claim sufficient in law to provide record evidence of the waiver and release provided for herein.

5. Condition of Title.

(a) The Orchard Parcels. The Orchard Parcels shall be conveyed by Orchard to City in fee simple absolute, subject to no exceptions, reservations or encumbrances other than:

- (i) A lien to secure real estate taxes not delinquent; and
- (ii) Public utility easements, covenants and conditions of record, none of which shall secure an obligation for payment of money.

The foregoing exceptions are referred to in the aggregate as the "Orchard Conditions of Title." Conclusive evidence of delivery of title in accordance with the foregoing shall be

the willingness of \_\_\_\_\_ ("Title Company") to delivery to City its standard owner's form policy of CLTA title insurance in the amount of the value attributed by the appraiser to the Orchard Parcels, subject to no exceptions, reservations or encumbrances other than the Orchard Conditions of Title.

(b) City Parcels. The City Parcels shall be conveyed by City to Orchard in fee simple absolute, subject to no exceptions, reservations or encumbrances other than:

(i) A lien to secure real estate taxes not delinquent; and

(ii) Public utility easements, covenants and conditions of record, none of which shall secure an obligation for payment of money.

The foregoing exceptions are referred to in the aggregate as the "City Conditions of Title." Conclusive evidence of delivery of title in accordance with the foregoing shall be the willingness of Title Company to delivery to Orchard its standard owner's form policy of CLTA title insurance in the amount of the value attributed by the appraiser to the City Parcels, subject to no exceptions, reservations or encumbrances other than the City Conditions of Title.

6. Escrow: Closing Day. On the sixtieth (60th) day after fulfillment of the conditions precedent (the "Closing Day") the parties shall consummate this transaction

through escrow established at the offices of Title Company at \_\_\_\_\_ . The transaction shall be consummated as follows:

(a) Orchard's Deposits. Orchard shall deposit:

- (i) A duly executed and acknowledged grant deed conveying the Orchard Parcels to City;
- (ii) Any Cash Portion required to be paid pursuant to paragraph 3(b) above;
- (iii) The waiver and release in recordable form provided for in paragraph 4 above;
- (iv) Such additional cash as may be required to pay Orchard's share of escrow costs and prorations; and
- (v) Escrow instructions consistent herewith.

(b) City's Deposits. City shall deposit:

- (i) A duly executed and acknowledged grant deed conveying the City Parcels to Orchard;
- (ii) Such cash as may be required to pay City's share of escrow costs and prorations; and
- (iii) Escrow instructions consistent herewith.

(c) Consummation of Transaction. Title Company shall consummate the transaction when it is in a



position to issue the title insurance referred to in paragraph 5 hereof and comply with the instructions of the parties. The Title Company shall consummate the transaction as follows:

(i) Recording of the Grant Deed to the Orchard Parcels and delivery of the same to City together with the policy of title insurance to be issued with respect thereto;

(ii) Recording of the Grant Deed to the City Parcels and delivery of the same to Orchard together with the policy of title insurance to be issued with respect thereto;

(iii) Payment to City of any Cash Portion of the acquisition price deposited by Orchard;

(iv) Recording of the waiver and release and delivery of same to City.

(d) Escrow Costs and Prorations.

(i) Real estate taxes and assessments shall be prorated between the parties as of the date of recordation of the Grant Deeds.

(ii) Each party shall pay any documentary transfer tax or conveyancing tax with respect to the Parcels it conveys;

(iii) Each party shall pay the premium on the title insurance issued with respect to the Parcels it is acquiring.

(iv) Escrow costs shall be shared equally between the parties.

(v) Each party shall pay the cost of recording the document or documents being delivered to it.

(vi) Any other costs and charges shall be allocated between the parties in accordance with the custom and usage that prevails in Alameda County.

C. Purchase Election.

1. Purchase. If City elects to proceed to purchase the Orchard Parcels and Orchard Parcel C, such election shall constitute a binding commitment to purchase said parcels (rather than acquiring the Orchard Parcels by way of exchange) upon all of the terms, covenants and conditions stated in this Part C.

2. Threat Of Condemnation. The Orchard Parcels and Orchard Parcel C shall be acquired by purchase under threat of condemnation. City shall execute such documents as may be required to establish the character of the acquisition as made under such threat.

3. Purchase Price. The Orchard Parcels and Orchard Parcel C shall be acquired at their fair market value, for their highest and best use at the date of election, or at the Purchase Closing Day (hereinafter defined) if the Purchase Closing Day occurs more than one (1) year after the date of election; provided, however, that the value of Orchard Parcel C shall be determined as though the same were restricted to residential use as contemplated under Part B, paragraph 2 hereof.

4. Determination Of Purchase Price By Way Of Appraisal And Arbitration. The price for the Orchard Parcels and Orchard Parcel C shall be determined as follows:

(a) Within thirty (30) days after the date hereof, Orchard and City shall deliver to each other a statement of the value of the Orchard Parcels and Orchard Parcel C, prepared by an MAI appraiser with not less than five (5) years experience in evaluation of comparable properties in the Livermore area. Such appraisals shall:

(1) In the case of the appraisal submitted by City, state the price City is willing to pay for the Orchard Parcels and Orchard Parcel C and the opinion of value upon which the statement is based.

(2) In the case of the appraisal submitted by Orchard, state the price Orchard is willing to accept for the Orchard Parcels and Orchard

Parcel C and the opinion of value upon which the statement is based.

(3) Orchard and City shall arrange in good faith for the simultaneous exchange of appraisals.

(b) If the parties are unable to agree on a purchase price for the Orchard Parcels and Orchard Parcel C within thirty (30) days after the exchange of the appraisals, then the parties shall select a third MAI appraiser with not less than five (5) years experience of evaluating comparable properties in the Livermore area to perform the function described in subparagraph 4(c) below. If the parties are unable to agree on the choice of such an MAI appraiser within thirty (30) days after expiration of the ten (10) day period described in this subparagraph 4(b), then either party shall be entitled to apply to the Presiding Judge of the Superior Court of Alameda County, California for appointment of the appraiser to perform the function described in subparagraph 4(c), each party waiving any right it might have to object to the qualification of said judge to make such appointment.

(c) The role of the third (3rd) appraiser shall be limited to a determination as to which of the appraisals submitted by Orchard or City pursuant to subparagraph 4(b) above most closely approximates the third (3rd) appraiser's opinion of fair market value for the

Orchard Parcels and Orchard Parcel C. The third appraiser shall have no right to compromise between the two appraisals or to select a third value.

(d) The decision of the third appraiser made in accordance herewith shall be final and binding upon the parties and constitute the purchase price to be paid by City to Orchard for Orchard Parcels and Orchard Parcel C.

(e) Each party shall pay the fees and costs of its own appraiser. The fees and costs of the third appraiser shall be paid by the party whose statement of value is not selected by the third appraiser.

5. Condition Of Title. Title to the Orchard Parcels and Orchard Parcel C shall be conveyed by Orchard to City in fee simple absolute subject to no exceptions, reservations or encumbrances other than those described in Part B, paragraph 5(a) with respect to the Orchard Parcels and comparable exceptions with respect to Orchard Parcel C. The foregoing exceptions are referred to in the aggregate as the "Purchase Conditions Of Title." Conclusive evidence of delivery of title in accordance with the foregoing shall be with willingness of Title Company to issue, upon payment of its regularly scheduled premium, its standard owners' form CLTA policy of title insurance in the amount of the purchase price, showing title to the Orchard Parcels and Orchard Parcel C vested of record in City subject to no exceptions,

reservation or encumbrances other than the Purchase Conditions of Title.

6. Waiver Of Claims. Upon acquisition of Orchard Parcels and Orchard Parcel C, Orchard shall provide to City a waiver (the "Orchard Waiver") in form reasonably satisfactory to City waiving and releasing any and all claim or demand that Orchard might have for compensation due to damage to or taking of its property in condemnation, under threat of condemnation or by reason of inverse condemnation, such waiver to be applicable to the Orchard Parcels, Orchard Parcel C and any other remaining property of Orchard affected by the purchase.

7. Consummation Of Purchase. The purchase shall be consummated at the \_\_\_\_\_ offices of Title Company as soon as possible after determination of the purchase price but in any event not later than one (1) year after City's election to proceed by way of purchase (such date being referred to herein as the "Purchase Closing Day"). On or before the Purchase Closing Day, the parties shall consummate the transaction by making the following deposits and proceeding as hereinafter set forth:

(a) Orchard Deposits. Orchard shall deposit:

(1) A duly executed and acknowledged grant deed conveying the Orchard Parcels and Orchard Parcel C to City; and

(2) The duly executed and acknowledged Orchard Waiver.

(3) Escrow instructions consistent herewith.

(b) City Deposits. City shall deposit:

(1) The purchase price plus City's share of escrow costs and prorations in cash; and

(2) Such written acknowledgment as Orchard may reasonably require establishing that Orchard Parcels and Orchard Parcel C have been acquired under threat of condemnation.

(3) Escrow instructions consistent herewith.

(c) Consummation. Title Company shall consummate the transaction when it is in a position to comply with the instructions of the parties and issue the title insurance policy referred to in paragraph 5 above. To consummate the transaction Title Company shall:

(1) Record the grant deed and deliver it to City.

(2) Issue the policy of title insurance to City.

(3) Deliver the Orchard Waiver to City.

(4) Pay the purchase price, after deducting Orchard's share of escrow costs and prorations, to Orchard.

(5) Deliver the document deposited by City establishing that the purchase has occurred under threat of condemnation to Orchard.

(d) Escrow Costs and Prorations. Escrow costs shall be allocated between the parties as follows: Orchard shall pay any documentary transfer tax or conveyancing tax and one-half (1/2) of the escrow fee. City shall pay one-half (1/2) of the escrow fee, the title insurance premium and the cost of recording the grant deed. All other costs and expenses shall be allocated between the parties in accordance with the custom and usage that prevails in Alameda County. Real estate taxes and assessments shall be prorated as between the parties as of the date of delivery of the Grant Deed. City shall take title subject to the outstanding principal amount of assessments.

D. Miscellaneous Provisions.

1. No Brokerage. Each party acknowledges to the other that no broker has been retained by either, nor has any



person acted in a manner that would entitle that person to claim a brokerage commission or finder's fee in procuring cause of this transaction. Each party shall indemnify the other and hold and save the other harmless of and from any and all loss, cost, damage, injury or expense arising out of or in any way related to claims for brokerage commission or finder's fee asserted by any person, firm or entity based upon contacts with the indemnifying party or the property of the indemnifying party.

2. Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

3. Notices. Any notices required to be given hereunder shall be given in writing and either personally served or mailed, United States first class registered mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

To City: City Hall  
1052 So. Livermore Avenue  
Livermore, California 94550  
Attention: City Manager

To Orchard: c/o Orchard Properties  
2290 N. 1st St., #300  
San Jose, California 95131  
Attn: Gary E. Wimmer,  
East Bay Manager

The foregoing addresses may be changed by notice given as above provided.

4. Attorneys' Fees. Should either party commence an action to obtain a declaration of rights hereunder, to seek damages for breach hereof or to enforce the provisions hereof in equity, the prevailing party in any such action shall recover its reasonable attorneys' fees in addition to the other relief it may obtain.

5. Time. Time is of the essence of each and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF LIVERMORE

By: \_\_\_\_\_

Its: \_\_\_\_\_

ORCHARD LIVERMORE ASSOCIATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
City Attorney

CONDITIONS OF APPROVAL

TENTATIVE PARCEL MAP # 5420  
Orchard Properties (Kittyhawk @ Las Positas)  
Amended by Staff 12/06/88 in Response to Revised  
Tentative Parcel Map Dated 11/3/88

PROJECT SPECIFIC CONDITIONS

1. All off-site public street improvements shall be assured at the time of filing of the first final map for any phase of this project.
2. The Phase I final map shall provide two points of public street access. One point of access shall be provided from Las Positas Blvd. west of Kittyhawk Blvd. The second point of access shall be provided on Kittyhawk Blvd. south of Las Positas Blvd. at the street previously designated Enterprise Drive. For Phase 1, the Kittyhawk access shall consist of a six lane improvement from Enterprise to Las Positas Blvd. If the final alignment for Kittyhawk has not been determined, a two lane, 32 foot width improvement may be utilized for a period not to exceed two years or until building permits have been issued on lots totalling one-half of the Phase I area (approximately 40 acres). With any phase following Phase 1, said access shall be improved to the complete street standards applicable to the street in question. Amended 11/21/88
3. Each phase of development shall be designed with an appropriate circulation systems having "street stubs" generally not exceeding 300 feet in length. Amended 11/21/88
4. Deleted 11/21/88
5. The permanent stub street ends of Discovery Street and Atlantis Street serving the property to the south shall provide temporary turn-arounds where the length exceeds 300 feet in accordance with the Subdivision Ordinance. Amended 11/21/88
6. In accordance with the General Plan policy encouraging pleasing design along significant entry roadways, those lots fronting Isabel Avenue not place loading or exterior storage areas at locations other than facing interior property lines, except for minor, incidental loading/storage areas. The applicant shall record a notice of this condition within the title to the effected lots to the satisfaction of the Planning Department. Amended 11/21/88
7. If the subject subdivision is approved with sub-standard street right-of-way width, the applicant shall grant to the City a landscaping easement of 35 feet in width (equivalent to the normal street standard plus landscaped building setback) adjacent to all public street rights-of-way. The easement may provide design

TPM# 5420

1.

EXHIBIT 2  
"CONDITIONS OF APPROVAL &  
ENGINEERING CONSIDERATIONS"

INITIAL  
[Signature]

and use flexibility consistent with the purpose and intent of the ordinance standards. Amended 11/21/88

8. The applicant's tentative map shall be amended to correct any street right-of-way cross sections revised by these conditions of approval.
9. The phased public improvements recommended by the Engineering Considerations are consistent with the environmental determination for this project, and are incorporated in these conditions by reference. No building permit shall be issued for any lot for which construction of all required public facilities has not commenced. No occupancy permit shall be granted until acceptance of all required public facilities to serve that permit. The final installation of all public facilities shall occur within three (3) years of recording of the final map. Amended 12/06/88

#### GENERAL CONDITIONS OF APPROVAL

##### A. ZONING

1. Development shall conform to the map designated by the City as Exhibit B-1. Exhibit B-1 shall consist of the submitted map amended by the applicant to reflect the changes indicated above in the Project Specific Conditions or required by the City in the approval process. The applicant shall submit any required amended maps to the Planning Department within 90 days of project approval. Failure to submit the amended map will result in a delay in approval of the final map.
2. Development shall conform to the requirements of I-2 Light Industrial District as it exists now or may be amended.
3. The tentative parcel map shall expire 2 years from the date of approval unless a request for extension is received and approved by the City.
4. Deleted 12/02/88: (Administrative Correction)
5. Minor amendment to the tentative parcel map may be approved by the Planning Department, provided that the map is still in substantial conformance with the original approval.

##### B. ENGINEERING

Development shall conform to the attached Engineering Considerations dated December 6, 1988.

*Amended by Staff 12/06/88*

##### C. FIRE

Development shall conform to the attached Fire Department Memo dated April 25, 1983.

## PHASED DEVELOPMENT

All required off-site public works improvements for this tentative map shall be constructed along with Phase I of the development except as otherwise noted herein.

Staff 11/88 A public street shall be developed out to Kitty Hawk Road along the Discovery Street, Enterprise Drive route or another route approved by the City and the west side of Kitty Hawk Road constructed from that street to Las Positas as part of Phase II. The 2+1 Emergency Access Road shown on the plans between Challenger Way and Las Positas Blvd. shall not be installed.

Staff 11/88 Phase II or Phase III on-site and off-site improvements shall be initiated with either (1) the sale of individual lots or (2) the start of construction upon the first lot in either phase, whichever comes first. The sale of an entire phase of lots will not trigger this requirement as long as the required improvement bonds are in place.

## SOILS

At the time of submission of the Final Map for checking by the Engineering Department, the Developer shall submit two (2) copies of a soils report prepared by a Registered Civil Engineer which shall include the following:

### 1. Geology Report

A preliminary soils and engineered geology report for excavation and grading per Chapter 70 of Volume of the latest City adopted edition of the Uniform Building Code.

Prior to acceptance of the public works for permanent maintenance by the City, the Developer shall file a final report which certifies that the provisions of the preliminary soils report have been complied with.

### 2. Structural Foundation Investigation

A structural foundation investigation shall be made and if critically expansive soils or other problems are revealed, a soils investigation of each lot shall be prepared.

### 3. Street Design

Soils tests and street section designs shall be made per the latest City Standard ST-11. Soil samples shall be taken at locations as directed by the City Engineer with at least three R-values per project, but not less than one per each one half mile of street.

DATE: June 6, 1988  
REVISED: November 11, 1988  
REVISION #2: December 6, 1988

ENGINEERING CONSIDERATIONS - EXHIBIT "A"  
(Subject to revision prior to final approval  
by Planning Commission and City Council)

Parcel Map: 5420  
(formerly PM 3752, expired tentative)  
LOCATION: South of Las Positas Boulevard,  
west of Kitty Hawk Road

DEFINITIONS:

For the purpose of this agreement, the following words shall have the meanings respectively ascribed to them by this section:

Developer:	ORCHARD PROPERTIES
Improvement Plans:	Construction drawings for required public works improvements
Services:	Utility lateral, or any portions of a conduit cable or duct, between a utility distribution line and the site it serves

GENERAL

An engineered public works improvement plan shall be prepared by the Developer for City approval which shall include, but not necessarily be limited to the following: existing site conditions, dedications, grading plan, street design and grades including curb, gutter, sidewalk and driveway grades; storm drain, sewer, water, and other utility system plan and profile; landscape and irrigation plans; traffic signal plans; signing and striping plans; and type, size and location of all other public works improvements as herein required. Said improvement plans shall be identified and referred to as Exhibit A-1 of the Subdivision Agreement.

Approval of this tentative map does not constitute approval of the details shown thereon. In any conflict between the tentative map and these Engineering Considerations, the Engineering Considerations shall govern.

Tentative Map shall be resubmitted to conform to these Engineering Considerations as revised. Map must be approved by the City Engineer prior to final approval of the tentative map by the City.

4. Conductivity Test  
Conductivity tests shall be made to establish the degree of soil corrosiveness. The following tests shall be required: (1) resistivity; (2) redox.; (3) pH and sulfide; and (4) moisture. The soils engineer shall suggest the proper materials for the protection of water mains, water services, etc.
5. Trench Backfill  
Trench backfill recommendations for all soils encountered in the subdivision shall be made so as to assure 90% relative compaction between the select bedding around the pipe to within two (2) feet of the sub-base. The final two (2) feet of trench shall be compacted to 95% relative compaction.
6. Grading Plan  
A grading plan shall be submitted with the final map for review and approval by the City Engineer based on Uniform Building Code Chapter 70 (latest City-adopted edition).
7. Compaction Testing  
The initial compaction test and one re-test will be performed by the City staff or by a soils testing firm employed by the City. Additional tests will be at the Developer's expense. All compaction tests will be taken at depths and locations as required by the City Engineer, and results of all tests will be submitted to the City Engineer for approval.
8. Erosion Control  
An interim erosion and sediment control plan, together with a final erosion and sediment control plan, shall be submitted with the public works improvement plans.  
  
The interim erosion control plan shall detail the specific measures to be constructed on or off site to prevent surface erosion during construction of the public works improvements.  
  
The final erosion control plan shall detail the specific facilities that will be constructed on-site to prevent surface erosion and/or deposition of sediment in channels.  
  
All erosion control measures used in the preliminary and final plans shall be in accordance with the latest edition of the Manual of Standards for Erosion and Sediment Control Measures as published by ABAG.  
  
For commencement of land-disturbing or filling activities during the wet season (October 15 to April 1), developer shall demonstrate that land disturbance is relatively minor and that erosion and sedimentation can be controlled. Prior to October 15th, developer must apply to the City Engineer for, and receive, special permission to proceed.

9. Topsoil

It will be the Developer's responsibility to remove and stockpile all topsoil scraped from lots during construction and respread it in all proposed landscape areas prior to occupancy.

STREETS

All streets shall have standard cross sections with monolithic vertical curb, gutter and sidewalk per City Standard Detail ST-2, except as shown and approved on revised tentative map.

The Developer shall dedicate and improve the following named streets in accordance with the City's General Plan and the following table:

<u>Street Name</u>	<u>Type</u>	<u>Ultimate Width</u>	<u>Street Dedication Required</u>	<u>Curb to Curb St. Width Req'd.</u>
Section D-D Enterprise Dr. and Atlantis St. btwn Las Positas Blvd. & Challenger Wy.	4-lane Ind.	78'	78'+15' PUE's*	76' width 16' medians
Section E-E Atlantis St. south of Challenger-Wy. & Discovery St.-south-of Enterprise-Br.	2 lane Collector	54'	54'+15' PUE's*	52'
Staff 11/88				
Section C-C Challenger Wy. Viking St. Voyager Wy. & Discovery St. North-of Enterprise-Br.	2 lane Ind.	50'	50'+15' PUE's*	48'
Staff 11/88				
Section B-B Las Positas Blvd.	6-lane Major	130'	130'+10' PUE	110' width 18' medians (no sidewalk on north side)
Staff 11/88				



<u>Street Name</u>	<u>Type</u>	<u>Ultimate Width</u>	<u>Street Dedication Required</u>	<u>Curb to Curb St. Width Req'd.</u>
Section A-A Kitty Hawk Road	6-lane Expressway	130'	130'+50' trail along east side+ additional width as shown on tentative map	110' width 18' medians

\* 15' PUE's to include five foot sidewalk poured monolithic with curb and gutter on one side only.

Monuments shall be installed per City Standard Detail ST-13.

All street design grades shall take into account existing Zone 7 and City of Livermore water and sewer lines. City and County standards for minimum cover shall be maintained, and all existing facilities shall be raised to grade.

All sewers and utility services shall be placed in the streets prior to paving to serve all lots.

All bridge and culvert designs shall include five foot sidewalks and the hydraulics and structural design shall be subject to the approval of Zone 7 and the City Engineer.

Compaction tests are required on all streets per City Standards. The initial test and one re-test will be performed by the City staff. All additional testing will be at the developer's expense.

Provide ramping curbs and sidewalks for the physically handicapped at all curb returns.

Existing utility trenches that were originally backfilled by the "field method" must be jetted and recompact to 95% relative compaction to assure that future settlement will not occur.

Median islands shall be constructed on the major streets to City design standards. A water service for irrigation shall be provided at locations designated by the City for irrigation.

Staff  
12/88

Temporary paved turnarounds (30 foot radius) are required on all stub streets over 300 feet long as required by Subdivision Ordinance (Section 18.28.070 of City Code). They should be of the on-lot (or off-site) design and an easement shall be provided to the City.

Staff 11/88 Sidewalks shall be standard five foot in width. Sidewalks are required on both sides of major streets except that sidewalks are not required along the north side of Las Positas Road, the west side of KittyHawk Road through the Airport property, or along the north side of Airway Blvd. Cushion materials shall be required where R values are less than 50.

Staff 12/88 moved Developer shall install fully actuated traffic signal on Las Positas Road at Atlantis Street. Developer shall install conduits for future traffic signal on Kitty Hawk Road at Enterprise Drive with Phase I and shall install fully actuated traffic signal at this intersection as part of the Phase II construction.

Staff 12/88 Developer shall dedicate no access strips along all major street frontages. City will, as part of site plan approval process, abandon the non access strip at two 30' driveways along Las Positas (one on each lot) and along KittyHawk (one each common lot line). No median breaks will be allowed at these driveways.

Staff 12/88 Developer shall waiver all rights to compensation for future closure of driveways along KittyHawk Road should it be designated as a freeway at any future date. Developer shall agree to remove driveways and replace them with landscaping and hard surfacing at his expense as approved by the City.

Staff 12/88 Developer shall construct acceleration/deceleration lanes at the aforementioned driveways as required by the City Engineer

Staff 11/88 TRAFFIC SIGNALS

Install fully traffic actuated traffic signals per current City and Caltrans standards and using equipment as specified by the City Engineer at the following intersections:

- (1) Las Positas Road and Atlantis Street - This signal shall be installed with Phase 1.
- (2) KittyHawk Road and Las Positas Road - This signal shall be installed with Phase 1.
- (3) KittyHawk Road and Enterprise Drive - This signal shall be installed with Phase II, with conduits to be installed with Phase I. (See section on off-site improvements subject to Traffic Impact Fee Credits).
- (4) KittyHawk Road and Airway Blvd. - This signal shall be installed with Phase I (See section on off-site improvements subject to Traffic Impact Fee credits).

A two (2") inch conduit for traffic signal interconnection shall be installed along all major streets and collector streets being constructed with this development and as required by the City Engineer. Pull boxes shall be installed at intersections and at regular 150' intervals.

This conduit is to provide for future City-wide interconnection of traffic signals to a central computerized traffic signal operations center.

Staff OFF-SITE IMPROVEMENTS (Subject to Traffic Impact Fee Credits)  
12/88

Developer shall construct the following off-site improvements. Construction costs will be credited against Developer's Traffic Impact Fee as allowed by the current or by future amendment to the Traffic Impact Fee Ordinance and policies.

Staff ~~(a) On Las Positas Blvd., developer shall obtain off-site right-~~  
11/88 ~~of-way, dedicate, and construct the full roadway improvements as~~  
~~described above from the west boundary of the property through the~~  
~~Kitty Hawk Road intersection.~~

Staff (a) On Las Positas Blvd., developer shall obtain and dedicate  
12/88 right-of-way and construct the full roadway improvements as  
described for the on-site section of Las Positas from the  
west boundary of the property up to 200' east of the  
Kitty Hawk Road intersection.

Staff ~~(b) Developer shall widen Kitty Hawk Road to four lanes from~~  
11/88 ~~Airway Blvd. south to tie into existing fully improved roadway ---~~  
~~adjacent to Water Reclamation Plant. --- This roadway may be designed~~  
~~to Caltrans rural four lane divided highway standards with no~~  
~~curbs, gutters or sidewalks required. --- City will provide all~~  
~~necessary right-of-way.~~

Staff (b) The City has been promised Federal Aid Urban (FAU) Funds to  
11/88 widen Kitty Hawk Road to the City standard six lane (130'  
right-of-way) major street standard from Airway Blvd. south  
to where it is currently widened at the north end of the  
Water Reclamation Plant. Developer shall design this section  
of roadway and prepare plans, specifications and estimates  
for Caltrans review and approval per FAU requirements prior  
to filing of the final map. City will bid and administer the  
contract. Developer shall deposit with the City at the time  
of filing of the final map the estimated non-FAU share of the  
project and contingencies as defined below. City will  
return any unused funds to the developer at the end of the  
project. City will provide all necessary rights-of-ways.

Staff  
11/88

The City intends to ask Caltrans to allow the City to build a four lane divided rural highway (using FAU funds) in lieu of the six lane major street for which City currently has funding. Developer is obligated for the difference in construction cost between the four lane roadway and the FAU share of said four lane roadway. The City will pay the non-FAU funded costs for two additional lanes should FAU require the six lane roadway to be built.

Staff  
11/88

~~(e) -- Developer shall obtain off-site right-of-way, dedicate and construct the full roadway improvements for the westerly one-half of Kitty Hawk Road from Las Positas Blvd. to the south side of Enterprise Drive or other approved access including the raised landscaped medians. Transition to full widening at Las Positas Blvd. shall be provided. Developer shall construct the remainder of the full Kitty Hawk Road improvements from Las Positas Blvd. to the south side of Enterprise Drive with Phase III.~~

Staff  
12/88

(c) Developer shall obtain and dedicate off-site right-of-way (not currently owned by City) construct Kitty Hawk Road to the City standard six lane (130' right-of-way) major street from Las Positas Road to the southerly tract boundary at the location shown on the tentative map, except as described in the following paragraph.

Staff  
12/88

A 15' landscape buffer shall be constructed between the existing backing lot wall and the east right-of-way line of Kitty Hawk Road shown on Section "AA" from Las Positas Road to approximately 575' south of Las Positas Road to provide the standard City residential major street backing lot treatment in this area.

With Phase I developer shall construct the section from Kitty Hawk Road to the south side of Enterprise Drive. With Phase II, developer shall construct the section from the south side of Enterprise Drive to the south tract boundary.

Staff  
11/88

City agrees that four lanes of this section of roadway are creditable towards the developer's Traffic Impact Fee. City also agrees to reimburse to developer all funds that have previously been collected in a trust account for construction of this roadway (current amount = \$77,000+/-).

Staff  
12/88

~~(d) -- Developer shall widen Airway Boulevard along Airport frontage to collector street standards and shall upgrade the existing roadway to collector street standards per City standard detail SF-11. Upgrading of existing roadway shall include reconstruction and/or overlay of the existing roadway based on structural analysis by a soils engineer and as approved by the City Engineer.~~

- (e) Developer shall install traffic signals at the intersection of KittyHawk Road and Airway Boulevard and at the intersection of KittyHawk Road and Las Positas Boulevard.

Staff OFF-SITE IMPROVEMENTS (Not subject to Traffic Impact Fee Credits)

12/88 Developer shall realign Airway Boulevard near Airport Terminal Building utilizing a 600' minimum radius curve to eliminate the existing 90° elbow. Realigned 600' radius roadway shall be standard collector street width (52' curb to curb) with no parking on both sides and striped with left turn lanes at existing side streets. Side streets shall be reconstructed as necessary to align with the new Airway Blvd.

Staff OFF-SITE IMPROVEMENTS (Not Subject to Reimbursement)  
11/88

~~Developer shall construct the following off-site improvements, which improvements will not be reimbursable under the Traffic Impact Fee Reimbursement Program:~~

~~(a) Developer shall install fully traffic actuated traffic signal at the following intersections: (1) Las Positas Blvd. and KittyHawk Road; (2) Kitty Hawk Road and Airway Blvd.~~

~~(b) Developer shall realign Airway Blvd. near Airport Terminal Building utilizing 600' radius minimum curve to eliminate the 90° elbow and new design. New roadway to be equivalent cross-section as existing Airway Blvd. with additional width as required for left turn lanes at existing side streets. City will provide the necessary rights-of-way for this work.~~

Staff TRAFFIC IMPACT FEE

11/88 Developer agrees to pay for the impact that traffic generated by this development has on the off-site transportation system.

Developer shall agree in the Subdivision Agreement to pay the Traffic Impact Fee if adopted by the City Council as part of the fee collected with each Building Permit. Credits will be given against this fee for off-site improvements subject to reimbursement installed as listed above.

### TRAFFIC CIRCULATION

Prior to acceptance by the City of the traffic circulation as indicated on the tentative map, the Developer shall provide a plan relative to the street patterns in adjoining undeveloped areas and existing tracts to demonstrate that the proposed street pattern provides functional traffic circulation.

Major arterials and collectors shall be provided as designated in the Transportation Circulation Element of the General Plan. Intersections with four or more approach legs shall not be permitted except that intersections with four approach legs will be permitted at the intersection of two major arterials where a fully actuated traffic signal shall be provided.

### BENEFIT DISTRICT

City will consider the formation of a Benefit District to reimburse developer's costs for off-site improvements not reimbursable by the Traffic Impact Fee. Area of benefit and participating properties must be approved by the City. Developer shall bear all costs of setting up any approved benefit districts.

### SANITARY SEWERS

Staff  
11/88

~~Preparation of a master plan of the west side industrial area will be undertaken by the City in the near future. Sewers shall be installed as required by this master plan. Should this master plan not be available at the time the developer is preparing his final plans, then~~ Developer shall develop a master plan for City approval of that area south of the Airport runway, west of Kitty Hawk Road, east of the Golf Course, and north of Stanley Boulevard.

Sewer mains shall be extended across the frontages of all lots and plugged.

The Sanitary Sewer System for this development shall be designed to transport as much of the sewage generated by this development and future upstream developments as possible to the Water Reclamation Plant by gravity flow. It is the City's intention that as much of this parcel map as possible be gravity fed to the Water Reclamation Plant. The existing west side sewage pump station and pressure sewer system shall be upgraded as necessary to provide sewer service from the remainder of the City's Master Plan Study Area to the Water Reclamation Plant. See section on Benefit Districts for possible reimbursement for oversizing of this facility for future development. The overall system and the remodeled pump station must be approved by Water Reclamation Plant Superintendent and the City Engineer.

Sanitary sewer mains shall be installed in the center 20 foot portion of the street to avoid conflict with gas and water lines.

Sanitary sewers shall be installed to City Standards - eight (8) inch minimum. The figure for I-2 zoning sanitary design is 5000 gallons/acre/day average daily flow. Peaking factor to be used in design is 2.5.

Sewer laterals shall be provided for all lots.

Sewer laterals shall be installed to service all lots before the streets are surfaced. See section entitled "Soils" for trench compaction requirements (Part 5).

All sewer lines shall pass an air test as per City Standards. All lines shall be cleaned with the "Wayne" ball or a City Engineer-approved method of cleaning. Rodding inlets will not be allowed (manholes only).

#### FLOOD CONTROL

Certain or all portions of this development may be within a flood-prone area as established by HUD and have been designated flood hazard areas per Ordinance No. 921 relative to flood control regulations. The areas adjacent to the arroyos and channels within these flood hazard areas have been established as flood plain districts and zoned OS-F (Open Space-Flood) per Ordinance No. 943. Maps outlining the boundaries of the OS-F zoning districts are on file in the Planning Department. The Developer shall dedicate to the City those areas within the development as outlined for flood control purposes.

Staff 11/88 Developer shall submit engineering data to substantiate whether or not development is in a flood prone area as defined by HUD.

#### STORM DRAINAGE

In-tract system shall be designed to transport the run-off from a ten year storm without flooding. Run-off calculations shall be in accordance with the current City master plan storm drain report for City-owned and maintained facilities.

A complete and accurate storm drainage master plan of the drainage areas servicing this development shall be submitted for approval prior to submittal of the final plans. Run-off volumes shall be calculated in accordance with the storm intensities specified in the Mancini Report. Drainage calculations, design and supportive maps shall be provided with the master plans submittal. Calculations shall take into consideration all drainage areas within the same drainage basin that drain to the periphery of the development, the in-tract run-off and the existing conditions of the downstream receiving facilities.

In-tract facilities shall be designed to transport, in addition to the in-tract design run-off, the upstream run-off in volume consistent with the ultimate upstream development.

Sheet drainage upgrade from the development shall be intercepted at the tract periphery and carried into the drainage system by an approved ditch, gutter or pipe.

Developer shall submit a detailed grading plan showing how the site is to be graded. (See Section "Soils, Grading Plan" Page 2 of this document)

All pipes shall be sized to carry the design flow at the final design slope.

The development shall be compatible with the flood hazard areas and regulations as outlined in Chapter 16 of the City Code. Any alteration or modification of a water course or flood hazard area will require the prior clearance by City from the Federal Insurance Administration. In the event of a conflict between Chapter 16 and these Engineering Considerations, the more restrictive shall govern.

On-street drainage shall not exceed a maximum gutter run of 1500 feet.

Cross gutters at intersecting streets will not be permitted.

All storm drainage facilities shall be piped (except Zone 7 channels as approved by Zone 7).

Storm drain main leading to the Arroyo Mocho from the southwest corner of the property shall be extended to the Arroyo Mocho and shall be sized to service all of the areas which naturally (and currently) drain to this line.

Storm drain main leading to the Arroyo Las Positas from the northwest corner of the property shall be extended to the Arroyo Las Positas and shall be sized to service all of the areas which naturally (and currently) drain to this line.

The Arroyo Las Positas Channel shall be modified and improved as necessary down to El Charro Road to handle the additional flows created by this development without causing flooding over and above the condition that currently exists.

The Arroyo Mocho Channel shall be modified and improved as necessary down to El Charro Road to handle the additional flows created by this development without causing flooding over and above the condition that currently exists.



Staff Developer shall dedicate all necessary right-of-way for Arroyo Las  
12/88 Positas and Arroyo Mocho Channel improvements that may be required  
west of property. City will not unreasonably deny permission for  
development of facilities across City property.

The Developer shall be obligated to pay storm drainage fees and  
will be allowed credit as outlined in Ordinance 604 and/or future  
modifications thereto.

All drainage channels must be fenced on both sides with an  
approved six foot chain link fence unless the channel is  
designated as an Arroyo Parkway by the City.

Bridges (if needed) constructed over the channel shall maintain  
minimum vehicle headroom per current Alameda County Zone 7  
Standards.

#### FIRE DEPARTMENT REQUIREMENTS

Fire hydrants are to be located as directed by the Fire Chief.  
Fire flow shall meet the requirements of the Insurance Service  
organizations. Fire hydrants shall be dedicated to the City.

The Developer shall participate in the installation of an  
Emergency Traffic Control System for signalized intersections if  
required by the Fire Department.

#### EASEMENTS AND RIGHTS OF WAYS

Easements and rights-of-ways shall be provided for all utilities  
and streets as required herein. City will require developer to  
acquire off-site right-of-way necessary to construct improvements  
in accordance with these Engineering Considerations, through the  
Subdivision Agreement. Said agreement shall (1) stipulate the  
City's obligation to use its powers of condemnation to acquire the  
land should the developer have followed all state and federal  
regulations regarding right-of-way acquisition by a public agency  
and should the developer request such assistance, (2) the  
Staff developer's obligation to pay all costs associated with said  
12/88 right-of-way acquisition except as provided herein, and (3) the  
timing required for completion of these off-site improvements.

Staff The City will not unreasonably deny permission for development of  
12/88 facilities required herein across City properties.

Staff Off-site rights-of-way obtained and dedicated by developer as  
12/88 required herein which are obtained from third parties and not  
owned by City, County and/or Caltrans may be subject to reimburse-  
ment subject to the benefit district paragraph contained herein,  
if determined to be legally permissible.

## AIRPORT LOCATION

This development is located in the vicinity of the Livermore Municipal Airport and is subject to noise from aircraft landing or departing from the Airport. A report must be filed with the Division of Real Estate relative to this matter.

The City will require the dedication of an aviation easement. Dedication shall be made on a standard Aviation Easement Grant, dated March 19, 1982 (Rev.), as provided by City.

## WATER SUPPLY (CITY)

A complete and accurate master plan for water distribution for the entire development must be submitted for approval by the City Engineer prior to approval of any portion of the system and prior to submittal of the final plans. Master Plan shall be coordinated with the design currently being prepared for the West Side Water District by James Montgomery & Associates report referred to below.

Staff  
11/88

~~Developer shall pay for his fair share of the West Side Water System currently under design by James Montgomery & Associates under contract to the City. Said West Side Water System is intended to include a six million plus gallon water storage reservoir, a looped transmission main system from the Zone 7 cross valley pipe line to the reservoir, a looped transmission main system serving this development from two directions off of the West Side Water Storage Reservoir, and all necessary pumping stations and appurtenances. Developer agrees to make a cash deposit to the City of \$1,200,000 (based on the West Assessment District cost spread by Greiner Engineering Dated May 15, 1986) as updated for inflation or post other security in a form satisfactory to the City Attorney, to cover developer's fair share of the water system. Should the actual fair share final construction costs be less than the amount deposited, plus accrued interest, developer will be reimbursed for the difference. Should the West Side Water System construction not be under construction at the time of filing of the final map, developer shall construct a second turnout from the Zone 7 cross valley pipe line and construct a looped system from the new Zone 7 turnout, through the development, and back to the existing Zone 7 turnout at the intersection of Airway Blvd. and Kitty Hawk Road.~~

Existing-City-mains-12"-and-greater-may-be-utilized-as-a-portion-of-this-loop.--The-City-may-allow-construction-of-lines-across-its Golf-Course-and-Airport-properties-along-a-route-to-be-approved-by the-City-Engineer.--Developer-will-not-be-charged-for-City-right-of-way.--Developer-must-restore-all-City-facilities-to-their existing-condition-as-required-by-the-City.

Developer shall install or pay the full estimated cost of the following West Side Water System improvements as follows:

- Staff  
12/88
- (1) Install a transmission main from the new turnout to the existing 12" line that ends at the current west end of Las Positas Boulevard. Loop main shall be constructed west of the existing runway unless not allowed by FAA in which case it would be west of extended runway. Size of the new main shall be as recommended by the West Side water System Design Report by Montgomery Engineering.

- Staff  
12/88
- (2) Pay fair share, based on final lot acreage of projects that are obligated by their current subdivision agreement to participate in the construction of the West Side Water System, of the following: (a) pump station, (b) transmission mains from new 6+ MG water storage reservoir to pump station and over to connect to the existing 16" main at the west end of Airway Boulevard, (c) 6.5+ million gallon water storage reservoir and appurtenances. Water storage reservoir appurtenances include all right-of-way costs, tank, pipelines, cathodic protection system, altitude control valves and other valves, vaults, paved access road, drainage system, and earthwork necessary to complete project to current City standards, (d) install new turnout to Zone 7 water line along the south side of I-580. Turnout shall be underground with location to be approved by the Director of Public Works. Lid shall be spring-loaded Bilco or equal.

(The Greenville/Vasco Water Assessment District storage reservoir, pump station and transmission main system is an example of current City standards).

Said fair share payment shall be made based on estimates prepared by the City's consulting engineer into a City Trust Account prior to filing of the final map. Developer's final cost shall be based on actual final construction costs, including change orders and City fees. Developer shall pay any additional fair share costs to the City upon demand and City shall reimburse any overpayment by developer.

Staff  
12/88

City will not charge developer for any right-of-way acquisition costs across City lands. Developer shall schedule construction across City lands at the full discretion of the Director of Public Works including any additional costs for night work or other off-peak hours dictated by golf course and airport operations. City will not unreasonably deny permission for development of facilities required herein.

See section entitled "Benefit District" regarding possible benefit district to reimburse developer for share of water system costs which may be shown to benefit other future industrial or commercial development in the area, excluding City properties.

Developer will be relieved of the requirement to pay City water storage fee at time of Building Permit issuance due to participation in the West Side Water System Construction as outlined above.

Water services to provide fire, domestic, and irrigation service, shall be installed to all lots before the streets are surfaced.

Appropriate soil tests shall be made within the site area to determine the proper materials to be used for the protection of water services.

Water service of an approved size shall be provided to all park sites, medians or other public and private landscaped areas.

Backflow prevention devices shall be installed as required by the State Health Department Manual of Cross Connection Control.

#### TRAILWAY/BIKEWAY REQUIREMENTS

##### 1. Livermore Trailway System

Certain portions of this development may be within the Livermore Trailway System Plan established and adopted as part of the General Plan per Resolution 281-81. The Developer will be required to dedicate and develop that certain land within his development for trailway purposes as established by Resolution 281-81.

##### 2. Bicycle Route Plan

Certain portions of this development may be within the Bicycle Route Plan established and adopted as a part of the General Plan per Resolution 281-81. The Developer will be required to dedicate and develop that certain land within his development for bicycle route purposes as established by Resolution 281-81.

### MEDIAN LANDSCAPING

A landscape and irrigation plan shall be submitted showing the proposed planting to be installed and shall be subject to the requirements of the Director of Public Works.

Proposed landscaping materials and layout must be submitted to the Director of Public Works for approval. Any special landscaping requested by the developer shall be maintained by the developer through the formation of a landscape maintenance district to be set up at the expense of the developer.

An automatic irrigation system shall be installed. All equipment shall be as specified by the Director of Public Works.

All irrigation lines shall be Schedule 40.

Water service and electrical service shall be provided as required. All service shall be installed prior to paving.

Backflow prevention devices shall be installed as required by the State Health Department Manual of Cross Connection Control. Backflow prevention device must be on current City of Livermore approved backflow prevention device list.

Install hose bib in landscaped area as required.

### TREES

The improvement plans shall include a street tree planting plan which shall require trees on all street frontages in accordance with the Department of Public Works Standard Details. The species of tree for each street in the development will be determined by the Public Works Department. Planting is required just prior to final occupancy. Trees shall be located at least ten feet from sewer and water services.

### FENCES

Standard six foot chain link fences shall be constructed along all channel rights-of-way.

### TRAFFIC SIGNING AND STRIPING

A signing and striping plan shall be provided and developer shall install all required signing and striping for both on-site and off-site improvements.

Street name signs shall be installed at each intersection. Additional advance street name signs shall be installed along all major streets. Street name signs at signalized intersections shall be the illuminated type mounted on the mast arms.

Bicycle lanes shall be striped along all major and collector streets as required by the City Engineer.

No Parking signs shall be installed along all streets.

#### UNDERGROUND UTILITIES

All existing and new electric and communication lines along the project frontage shall be placed underground. Electric, gas, Viacom Cablevision and Pacific Bell utilities are required to all lots and shall be placed in a common trench, along with City street light and traffic signal interconnect conduits.

See section entitled "Soils" Part 5, for trench compaction requirements for all underground utilities.

Staff Existing overhead utilities along required off-site improvements  
11/88 are not required to be undergrounded.

#### STREET LIGHTS AND ELECTRICAL SERVICES

Street lights shall be installed at locations shown on the plans in accordance with City Standard Street Light Specifications and City Standard Detail ST-14. Street lights are City-owned and operated under P.G. & E. rate schedule LS-2(c). The cost of construction of the street light and electrical system shall be included in the subdivision bonds. Under the LS-2(c) schedule, the Developer is required to provide the design and installation of the high-pressure sodium street light system and circuitry. The street lighting conduit shall be located in the utility joint trench. Coordination for street light conduit installation is required between the Developer and the utility company installing the joint trench and will be the responsibility of the developer. The street light conduits shall not be installed until the Developer has provided an acceptable street light wiring plan indicating the wiring run location between the street light and the power source for review by the City Engineer.

Electrical services shall be provided to all lots, street lights, traffic signals, and other areas potentially requiring electrical power.

GAS SERVICE

The Developer must make provisions for the installation of a gas distribution system on all streets and at the sizes determined by the utility. The cost of the system shall be included in the subdivision bonds.

TELEPHONE

The Developer must make provisions for the installation of underground telephone service. The cost of the system shall be included in the development bonds.

TELEVISION (Cablevision)

The Developer must make provisions for the installation of underground television service. The cost of the system shall be included in the development bonds.

Staff 11/88 The developer may choose not to install these improvements should he obtain Viacom Cablevision approval not to install Cable TV.

WELLS

Staff 11/88 Any existing wells on the site shall be abandoned and sealed per Alameda County Zone 7 specifications, unless approved for the continuing monitoring of toxic migration.

AIR QUALITY IMPACT

If this development creates or modifies a stationary source of air pollution, the Developer must obtain a permit from the Bay Area Quality Management District (BAQMD), and place a copy on file with the City prior to executing the development agreement.

ELEVATIONS

All elevations shall be based on the official City of Livermore datum.

DEED RESTRICTIONS

Any proposed deed restrictions shall be submitted prior to approval of improvement plans.

## BONDS

Faithful Performance and Labor and Material Bonds shall be filed with the City Clerk to cover all improvements, including utilities, and to guarantee the completion of the improvements within one year from the filing date of the Parcel Map. A Maintenance Bond shall be provided in the amount of 15% of the Performance Bond and shall remain in full force and effect for one year after date of acceptance of the improvements by the Council.

Staff  
11/88

Bonding for Phase II and Phase III shall be escalated by a 10% per year inflation factor and shall be written to guarantee the completion of these phases within three years of the filing of the final map.

## IN LIEU BONDS

Alternate methods of surety may be accepted by the City in lieu of bonding. The following security devices have been approved by the City Attorney:

1. Instruments of Credit for Faithful Performance and Labor and Materials from an approved financial institution.
2. Certificates of Deposit in trust accounts with the City itself, an approved escrow company or trust company.

## DEVELOPMENT CHECKLIST

The checklist entitled "City of Livermore, Development Plan Review Checklist," shall be adhered to in designing the final parcel map and the required improvement plans.

## TRUCK ACCESS AND HAUL ROADS

Access to the development by construction equipment, material delivery and other heavy loads shall be limited by the Developer to the following route:

Staff  
11/88

-El-Charro-Road/I-580/Airway Blvd./Kitty Hawk Road

Such heavy loads will not be allowed on existing residential streets in the vicinity of the development.

The wheel-loading on the above routes shall not exceed State load limits.



## FEE AMOUNTS

The Developer will be required to pay current development fees as adopted by the City Council. They may be adjusted from time to time to reflect the cost of providing service, and the amount which is in effect when Building Permits are issued, or when the fee is otherwise collected, shall be the amount charged except as otherwise altered by these Engineering Considerations.

## SUBDIVISION AGREEMENT

Following tentative map approval, the Subdivision Improvement Agreement will not be submitted to the City Council until the Developer has submitted the final drafts of the following:

1. Final map with affidavit sheet or parcel map.
2. Final construction plans and specifications all in conformance with City Standards and conditions of tentative map approval.
3. Certificate of Insurance(\$1,000,000).
4. Approved cost estimates of Public works improvements.
5. Faithful Performance Bond, 100% of approved Engineer's Cost Estimate, as modified for future phases.
6. Labor and Materials Bond, 50% of approved Engineer's Cost Estimate, as modified for future phases.
7. Maintenance Bond, 15% of Performance Bond, as modified for future phases.
8. Required dedications to City submitted (easements, fee title).
9. Mathematical closures.
10. Recorded documents of adjacent ownerships.
11. Signed Subdivision Agreement, including special conditions regarding off-site right-of-way acquisition and driveway waiver.
12. Cash deposits or other securities as may be required by these Engineering Considerations.

Staff  
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CITY OF LIVERMORE  
FIRE PREVENTION BUREAU  
INTEROFFICE MEMORANDUM

RECEIVED  
APR 26 1988  
PLANNING DEPARTMENT

DATE: April 25, 1988

TO: Planning Department  
FROM: Fire Prevention Bureau  
SUBJECT: Tentative Parcel Map #5420 - Orchard Properties Subdivide 173  
Acres into 30 Lots South of Las Positas Blvd. West of Kitty  
Hawk Road

The following are requirements of the Livermore Fire Department:

1. Fire hydrants shall be installed according to City of Livermore Public Works Standard Number W-1 in such a number and location as approved by the Fire Chief and/or Fire Marshal.
2. Phase I and II indicate one (1) means of access to the entire Parcel Map. A second means of access will be required for both Phase I and II either via the Ashwill property or via an emergency vehicle access along the future Kitty Hawk Road extension. Such emergency vehicle access shall be an all weather surface capable of supporting a 55,000 pound GVWR fire truck.
3. Two (2) points of water supply shall be provided with Phase I construction.

*Eric Carlson /sb*

Eric Carlson  
Deputy Fire Marshal

ERC/sb

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE

STATE OF CALIFORNIA

A RESOLUTION APPROVING A TENTATIVE PARCEL MAP  
(Tentative Parcel Map No. 5420)

WHEREAS, the application by Orchard Properties for a Tentative Parcel Map No. 5420 to divide a 179± site into 30 industrial lots ranging from 2 to 14 acres in size on property located west of Kittyhawk Boulevard, south of Las Positas Boulevard was considered by the Planning Commission in a public hearing on June 7, 1988; and

WHEREAS, the Planning Commission reviewed the Livermore General Plan and determined that the proposed development is consistent with it; and

WHEREAS, the Planning Commission filed its report recommending conditional approval of the Tentative Parcel Map with this Council; and

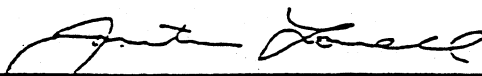
WHEREAS, this Council held a public hearing on December 12, 1988 and considered the recommendations of the Planning Commission together with pertinent drawings, documents, and testimony; and

WHEREAS, this Council is satisfied with the recommendations and findings of the Planning Commission contained in its Resolution No. 65-88 and adopts the same by reference.

NOW, THEREFORE, BE IT RESOLVED by the Livermore City Council that the proposed development is found consistent with the General Plan and Tentative Parcel Map No. 5420 is approved subject to the conditions contained in Planning Commission Resolution No. 65-88, attached and incorporated by reference.

BE IT FURTHER RESOLVED an initial study of the effect of the use on the environment has been made with the result that a determination has been made that there will be no significant effect on the environment and that the Negative Declaration is approved and certified as being complete and accurate and the City Clerk is directed to file a Notice of Determination with the Alameda County Clerk.

APPROVED AS TO FORM:

  
ASSISTANT CITY ATTORNEY

RESOLUTION NO. 2-89

On motion of Councilmember Bartoli, seconded by Councilmember Wieskamp, the foregoing action was taken this 12th day of December, 1988, by the following vote:

AYES: COUNCILMEMBERS Bartoli, Wieskamp, Brown and Mavor Turner

NOES: NONE

ABSENT: COUNCILMEMBER Vargas

On motion of Councilmember Vargas, seconded by Councilmember Brown, the foregoing Resolution was passed and adopted on the Consent Calendar this 9th day of January, 1989, by the following vote:

AYES: COUNCILMEMBERS Vargas, Brown and Wieskamp

NOES: NONE

ABSENT: COUNCILMEMBER Bartoli and Mavor Turner

*Ray Wieskamp*  
MAYOR, CITY OF LIVERMORE, CALIFORNIA  
PRO TEM

ATTEST:

*Audrey Bruce Depante*  
CITY CLERK

IN THE PLANNING COMMISSION  
OF THE CITY OF LIVERMORE  
STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL

Tentative Parcel Map #5420  
Orchard Properties (Las Positas @ Kittyhawk)

WHEREAS, the City has received an application for the above mentioned tentative parcel map; and

WHEREAS, The Planning Commission held a public hearing, considered the staff recommendation for approval subject to conditions, heard public testimony, and adopted the following findings:

1. The proposed tentative parcel map is consistent with the Low Intensity Industrial designation of the General Plan.
2. The design and improvement of the proposed subdivision are consistent with the General Plan.
3. The site is flat and is physically suitable for industrial development.
4. The site is physically suitable for industrial development.
5. The design of the subdivision and the proposed improvements included as conditions of this map will not cause substantial environmental damage.
6. The design of the subdivision and the type of improvements will not cause serious health problems.
7. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision in that there are no such easements reported on the property.

BE IT RESOLVED by the Livermore Planning Commission that the above mentioned tentative parcel map is recommended for approval

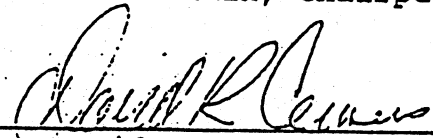
On the motion by Commissioner Perry, seconded by Commissioner Clutinger, the foregoing resolution was adopted at the Planning Commission Meeting of June 7, 1988, by the following vote:

AYES: Clutinger, de Bruin, and Perry

NOES: None

ABSENT: Brovont and Maciel

Peter de Bruin, Chairperson

  
by David R. Clemens, Secretary

tpm5420.res

## EXHIBIT #3

### Part III-D.2 (3) Industrial Land Use Policies of the Livermore Community General Plan

#### LAND USE GOALS AND POLICIES

#### 2. General Policies

#### (3) Industrial Land Use Policies

In support of the community's goal to reduce commuting and to improve the community's economic base, the City shall:

- (a) reserve sufficient space for industry, recognizing industry's greater land requirements due to new methods of operation;
- (b) designate a variety of locations to avoid creation of a monopoly in the industrial land market;
- (c) apply regulations which reserve large tracts for exclusive industrial use to encourage development of an industrial "community" and prevent encroachment by incompatible uses;
- (d) assign high priority for the extension of urban services particularly those where multiple modes of transportation are available;
- (e) evaluate proposed industrial development in terms of its impact on local employment; and
- (f) make industrial development subject to design principles and performance standards which support environmental resources management policies.

EXHIBIT 3  
"APPLICABLE GENERAL  
PLAN PROVISIONS"

Applicable General Plan Provisions



Part IV-B.3 Industrial Development Land Use Proposals  
of the Livermore Community General Plan

B. LAND USE ELEMENT PROPOSALS

3. Industrial Development

To support land use policies on industrial development, industrial areas are designated in the Plan. Major area for high intensity industrial uses lie between Patterson Pass Road and I-580 generally between future Mines Road and Greenville Road. The primary area for low intensity industrial expansion surrounds the Municipal Airport. Low intensity industrial uses, as defined in the zoning ordinance, are also proposed within the area east of the airport runway to the extent that they do not violate the "clear zone" restrictions or impact existing residential areas.

Because many of the areas are closely related to the airport and freeway interchange approaches to the City, quality site planning and design standards should be carefully applied.

The City shall encourage the formation of an Industrial Park Foundation for purposes of establishing an industrial park as an added inducement in attracting new industries.



## EXHIBIT #4

### CHAPTER 14A.00 I-2 (LIGHT INDUSTRIAL DISTRICT)

#### ARTICLE I - Purpose, I-2 District

- 14A.10 Purpose, I-2 District: The purpose of the I-2 (Light Industrial) District is to provide an environment exclusively for and conducive to the development of modern professional and administrative facilities, research institutions, and manufacturing operations, all of a non-nuisance type, and which are not proposed to be located in a campus or park-like environment. It is intended to provide an optimum general industrial environment by providing an alternate choice for industrial uses that are not objectionable nor detrimental to adjacent properties because of hazards, noise, or other disturbance.

#### ARTICLE II - Uses Permitted, I-2 District

- 14A.20 Principal Permitted Uses: The following are the principal permitted uses in an I-2 District:
- A. Manufacturing, assembling, processing, storage or packaging of products, except:
    - 1. Uses manufacturing chemicals, petroleum, and heavy agricultural products.
    - 2. Vehicle dismantling yards, scrap and waste yards.
  - B. Warehousing and distribution facilities.
  - C. Research and development facilities.
  - D. Professional and administrative offices.
  - E. Restaurants, except fast food.
  - F. Wholesale Certified Recycler where located within a building or fully screened from public view by a solid wall or fence. (Ord. 1239)
  - G. Recycle Processor provided all activities occur within a wholly enclosed building. (Ord. 1239)
- 14A.30 Accessory Uses: The following are the accessory uses permitted in the I-2 District:
- A. Signs complying with the regulations governing Industrial Districts in the Sign Ordinance. (Section 21.70).
  - B. Accessory uses and buildings customarily appurtenant to a permitted use.
  - C. Living quarters determined by the Zoning Administrator to be necessary for surveillance purposes.
  - D. Off-street parking and loading spaces in accordance with Section 21.40.

EXHIBIT #4

Applicable Municipal Code

1.

EXHIBIT 4  
"APPLICABLE MUNICIPAL  
REGULATIONS"



- 14A.40 Conditional Uses: The following uses are permitted subject to Conditional Use Permit approval in addition to any other prerequisite permits and conformance to all applicable regulations set forth in this Chapter and elsewhere in the Zoning Ordinance:
- A. Public and quasi-public uses.
  - B. Motels, fast-food businesses, banks, personal services or goods reasonably required for the convenience and support of occupants of uses in the surrounding I District(s).
  - C. Contractor's storage yard, truck terminal, or other open storage use when screened by a solid wall or fence, not to include vehicle dismantling yards, scrap and waste yards.
  - D. Any uses determined by the Planning Commission to be similar to, ancillary to, or compatible with those listed in the permitted or conditional use category of this District.
- 14A.70 Lot Coverage: The building coverage maximum shall be forty-five percent.

A two (2") inch conduit for traffic signal interconnection shall be installed along all major streets and collector streets being constructed with this development and as required by the City Engineer. Pull boxes shall be installed at intersections and at regular 150' intervals.

This conduit is to provide for future City-wide interconnection of traffic signals to a central computerized traffic signal operations center.

Staff 12/88 OFF-SITE IMPROVEMENTS (Subject to Traffic Impact Fee Credits)

Developer shall construct the following off-site improvements. Construction costs will be credited against Developer's Traffic Impact Fee as allowed by the current or by future amendment to the Traffic Impact Fee Ordinance and policies.

Staff 11/88 ~~(a) On Las Positas Blvd., developer shall obtain off-site right-of-way, dedicate, and construct the full roadway improvements as described above from the west boundary of the property through the Kitty Hawk Road intersection.~~

Staff 12/88 (a) On Las Positas Blvd., developer shall obtain and dedicate right-of-way and construct the full roadway improvements as described for the on-site section of Las Positas from the west boundary of the property up to 200' east of the Kitty Hawk Road intersection.

Staff 1/88 ~~(b) Developer shall widen Kitty Hawk Road to four lanes from Airway Blvd. south to tie into existing fully improved roadway adjacent to Water Reclamation Plant. This roadway may be designed to Caltrans rural four-lane divided highway standards with no curbs, gutters or sidewalks required. City will provide all necessary right-of-way.~~

Staff 1/88 (b) The City has been promised Federal Aid Urban (FAU) Funds to widen Kitty Hawk Road to the City standard six lane (130' right-of-way) major street standard from Airway Blvd. south to where it is currently widened at the north end of the Water Reclamation Plant. Developer shall design this section of roadway and prepare plans, specifications and estimates for Caltrans review and approval per FAU requirements prior to filing of the final map. City will bid and administer the contract. Developer shall deposit with the City at the time of filing of the final map the estimated non-FAU share of the project and contingencies as defined below. City will return any unused funds to the developer at the end of the project. City will provide all necessary rights-of-ways.

EXHIBIT 5

CERTAIN PROVISIONS OF THE CONDITIONS  
OF APPROVAL



staff  
1/88

The City intends to ask Caltrans to allow the City to build a four lane divided rural highway (using FAU funds) in lieu of the six lane major street for which City currently has funding. Developer is obligated for the difference in construction cost between the four lane roadway and the FAU share of said four lane roadway. The City will pay the non-FAU funded costs for two additional lanes should FAU require the six lane roadway to be built.

staff  
1/88

(e) -- Developer shall obtain off-site right-of-way, dedicate and construct the full roadway improvements for the westerly one-half of Kitty Hawk Road from Las Positas Blvd. to the south side of Enterprise Drive or other approved access including the raised landscaped medians. Transition to full widening at Las Positas Blvd. shall be provided. Developer shall construct the remainder of the full Kitty Hawk Road improvements from Las Positas Blvd. to the south side of Enterprise Drive with Phase III.

staff  
2/88

(c) Developer shall obtain and dedicate off-site right-of-way (not currently owned by City) construct Kitty Hawk Road to the City standard six lane (130' right-of-way) major street from Las Positas Road to the southerly tract boundary at the location shown on the tentative map, except as described in the following paragraph.

staff  
/88

A 15' landscape buffer shall be constructed between the existing backing lot wall and the east right-of-way line of Kitty Hawk Road shown on Section "AA" from Las Positas Road to approximately 575' south of Las Positas Road to provide the standard City residential major street backing lot treatment in this area.

With Phase I developer shall construct the section from Kitty Hawk Road to the south side of Enterprise Drive. With Phase II, developer shall construct the section from the south side of Enterprise Drive to the south tract boundary.

aff  
/88

City agrees that four lanes of this section of roadway are creditable towards the developer's Traffic Impact Fee. City also agrees to reimburse to developer all funds that have previously been collected in a trust account for construction of this roadway (current amount = \$77,000+/-).

iff  
'88

(d) -- Developer shall widen Airway Boulevard along Airport frontage to collector street standards and shall upgrade the existing roadway to collector street standards per City standard detail SS-11. Upgrading of existing roadway shall include reconstruction and/or overlay of the existing roadway based on structural analysis by a soils engineer and as approved by the City Engineer.

- (e) Developer shall install traffic signals at the intersection of KittyHawk Road and Airway Boulevard and at the intersection of KittyHawk Road and Las Positas Boulevard.

Staff OFF-SITE IMPROVEMENTS (Not subject to Traffic Impact Fee Credits)

12/88 Developer shall realign Airway Boulevard near Airport Terminal Building utilizing a 600' minimum radius curve to eliminate the existing 90° elbow. Realigned 600' radius roadway shall be standard collector street width (52' curb to curb) with no parking on both sides and striped with left turn lanes at existing side streets. Side streets shall be reconstructed as necessary to align with the new Airway Blvd.

Staff OFF-SITE IMPROVEMENTS (Not Subject to Reimbursement)  
1/88

~~Developer shall construct the following off-site improvements, which improvements will not be reimbursable under the Traffic Impact Fee Reimbursement Program:~~

~~(a) -- Developer shall install fully traffic actuated traffic signal at the following intersections: -- (i) -- Las Positas Blvd. and KittyHawk Road; -- (ii) -- Kitty Hawk Road and Airway Blvd.~~

~~(b) -- Developer shall realign Airway Blvd. near Airport Terminal Building utilizing 600' radius minimum curve to eliminate the 90° elbow and new design. -- New roadway to be equivalent cross section as existing Airway Blvd. with additional width as required for left turn lanes at existing side streets. City will provide the necessary rights-of-way for this work.~~

Staff TRAFFIC IMPACT FEE

1/88 Developer agrees to pay for the impact that traffic generated by this development has on the off-site transportation system.

Developer shall agree in the Subdivision Agreement to pay the Traffic Impact Fee if adopted by the City Council as part of the fee collected with each Building Permit. Credits will be given against this fee for off-site improvements subject to reimbursement installation as listed above.

Job #8904036.10  
November 28, 1989  
Revised December 19, 1989  
Revised January 9, 1990  
Page 1 of 2

BISSELL & KARN, INC.

EXHIBIT 6  
SCOPE OF WORK  
FOR  
AIRWAY BOULEVARD CONSTRUCTION  
(FROM THE AIRWAY RADIUS TO KITTYHAWK ROAD)

Developer shall make the following improvements on Airway Boulevard from the intersection of Kittyhawk Road to the 600 foot curve radius as described Engineering considerations - Exhibit "A" of proposed Parcel Map 5420. This is approximately 1550 linear feet of Airway Boulevard.

1. Remove and replace existing cracked curb, gutter and sidewalk that shall be designated in the field by the City of Livermore Public Works Staff.
2. The proposed improvements shall be made with accordance to the City of Livermore Standard Plans and Specifications. The improved street shall have a five foot sidewalk located only along the south curb, and a cross section as shown as "Collector Street" on Detail ST-2 of City of Livermore Standard Plans.
3. The Developer shall construct necessary curb gutter and storm drainage structures to adequately drain the existing street to the adjacent Las Positas Channel.
4. The Developer shall have a qualified engineering firm determine what portions of the existing pavement need to be reconstructed to bring the street up to a traffic index of 9.0. This engineering firm shall make their recommendations in a published report for review and approval by the City Engineer.

The Developer shall install reconstructed pavement where it is needed as specified in the above engineering report and new pavement where none exists. The developer shall install 1-1/4 inch A.C. overlay over existing pavement, as a minimum.

5. Developer shall install proper signing and striping in accordance to the City of Livermore Standard Details and Specifications. The street striping shall be as determined by the City's traffic engineer.
6. Developer shall provide uniform street lighting, in that existing and new types of street lights shall be grouped together and not inter-mixed. All new electrical wiring shall be installed underground.



EXHIBIT 6

Job #8904036.10  
November 28, 1989  
Revised December 19, 1989  
Revised January 9, 1990  
Page 2 of 2

BISSELL & KARN, INC.

7. All existing overhead wiring shall be undergrounded in accordance with the governing utility guidelines. All existing utility manholes, valves, box lids and grates are to be adjusted to finish grade.
8. The Developer shall install the necessary new fire hydrants, as required, in accordance to the City of Livermore guidelines.
9. Developer shall install irrigation laterals, including electrical, as necessary to provide for future irrigation of the south side of Airway Boulevard. Developer shall install landscaping and irrigation along the north side. Landscaping will be limited to trees and shrubs. Trees would be at a minimum 35' O.C. mixed with drought resistant shrubs.

\*\*\*\*\*  
\*\*\*\*\*

DOCUMENT: exchange agmt/c 9/8  
FOLDER: trial  
DRAWER: orchard  
CABINET: ellman  
FILEROOM: LOCAL

USER: sandy  
DATE: 09/08/89  
TIME: 08:45

\*\*\*\*\*  
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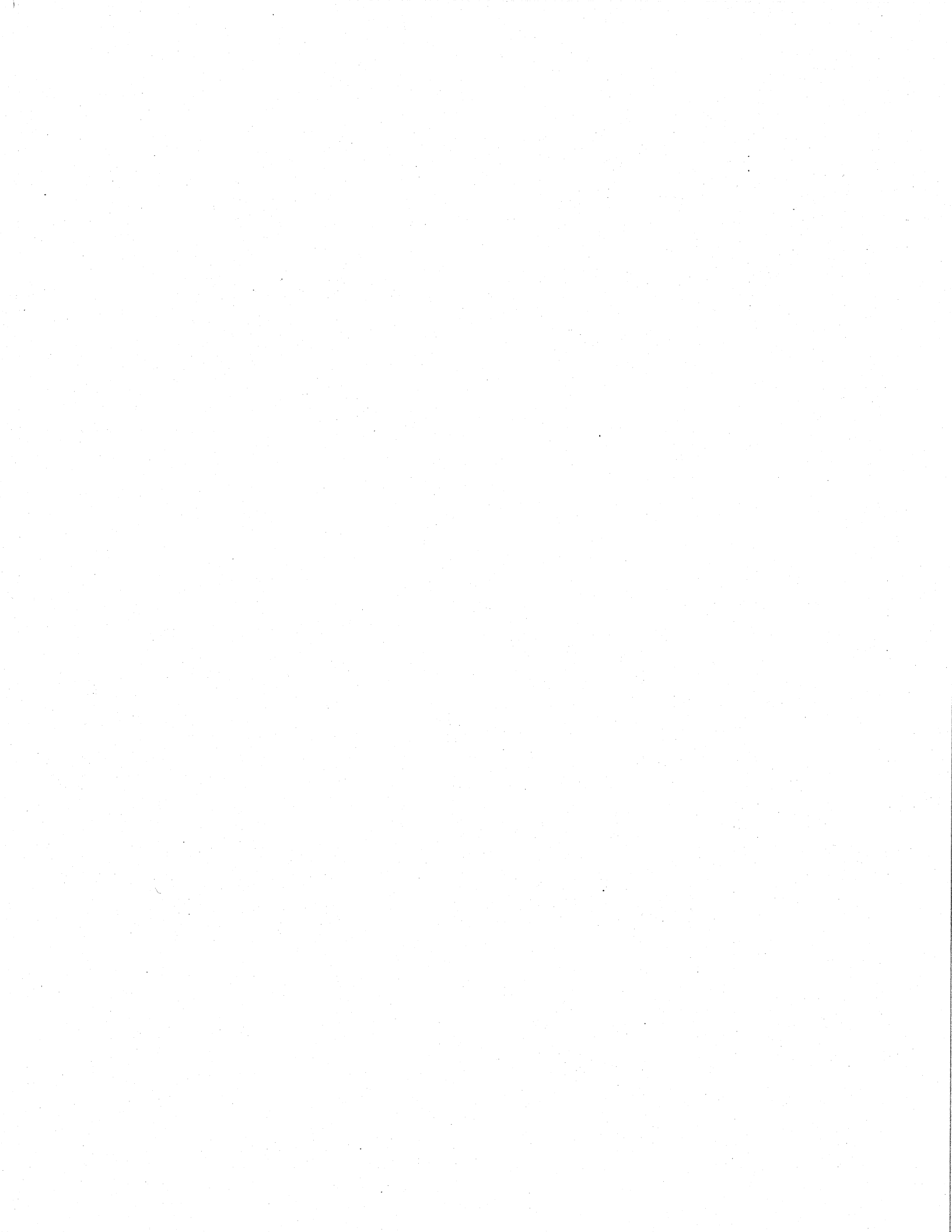
EXHIBIT 7  
DRAFT EXCHANGE AGREEMENT



EXHIBIT 7  
"DRAFT EXCHANGE







# CITY OF LIVERMORE



'Wine  
Country  
Since  
1849'

October 3, 2000

**Administration Building**  
52 S. Livermore Avenue  
Livermore, CA 94550-4899  
(510) 373-5100  
Fax (510) 373-5135

**Mayor / Council**  
(510) 373-5149

**City Manager**  
(510) 373-5140

**City Attorney**  
(510) 373-5120  
Fax (510) 373-5125

**City Clerk**  
(510) 373-5130

**Community Development**  
**Building Division**  
(510) 373-5180  
Fax (510) 373-5183  
**Engineering Division**  
(510) 373-5240  
Fax (510) 373-5267  
**Planning Division**  
(510) 373-5200  
Fax (510) 373-5135

**Economic Development**  
(510) 373-5095

**Finance Department**  
(510) 373-5150

**Fire Department**  
4550 East Avenue  
(510) 454-2361  
Fax (510) 454-2367

**Library**  
800 S. Livermore Avenue  
(510) 373-5500

**Personnel**  
(510) 373-5110  
Fax (510) 373-5035

**Police Department**  
110 S. Livermore Avenue  
(510) 371-4900  
Fax (510) 371-4950

**Public Services**  
(510) 373-5270  
Fax (510) 373-5317

Thomas A. Larsen  
Howard, Rice, Nemerovski, Canady, Falk, & Rabkin  
Three Embarcadero Center  
Seventh Floor  
San Francisco, CA 94111-4065

Dear Mr. Larsen:

Attached for your information is the Final Environmental Impact Report (FEIR) on the Regional (Major Projects) Component of the Traffic Impact Fee Program. The response to your comment on the Draft EIR is included in the FEIR.

A Public Hearing on this issue is scheduled at the October 16, 2000 City Council meeting. The meeting will be in the Livermore Council Chambers, 3575 Pacific Avenue,

Sincerely,

Dan Smith  
Assistant City Engineer

cc: D. Jamieson ✓

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FINAL  
ENVIRONMENTAL IMPACT REPORT

REGIONAL(MAJOR PROJECTS)  
COMPONENT OF THE  
TRAFFIC IMPACT FEE PROGRAM

City of Livermore, CA

State Clearinghouse # 2000072077

Prepared by Lamphier & Associates  
1944 Embarcadero  
Oakland, CA 94606

September 2000.

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## TABLE OF CONTENTS

	<b>Page</b>
<b>PREFACE</b>	<b>P-1</b>
A. Purpose of the Final Environmental Impact Report	P-1
B. Organization of the Final EIR	P-3
C. Scope of the EIR	P-3
D. Public Review Process	P-4
<b>REVISIONS TO THE DRAFT EIR</b>	<b>R-1</b>
<b>COMMENTS AND RESPONSES</b>	<b>C&amp;R -1</b>

TABLE OF CONTENTS

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## PREFACE

### A. PURPOSE OF THE FINAL ENVIRONMENTAL IMPACT REPORT

This Final Environmental Impact Report (EIR) provides responses to comments submitted by government agencies, organizations and individuals on the Draft EIR on the proposed Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program.

In accordance with the requirements of the California Environmental Quality Act (CEQA), this Final EIR formally consists of the responses to comments and a revision of those portions of the Draft EIR which have been modified in response to comments received during the public review period on the Draft EIR. This Final EIR includes copies of all written comments received during the public review period following publication of the Draft EIR, and verbal comments received at two public hearings held during the review period, and provides responses to those comments. In several cases, the responses have also resulted in revisions to the Draft EIR, and all such changes are reflected in this document. As required by CEQA, this document addresses those comments received during the public review period which relate directly to the adequacy and completeness of the Draft EIR. The Final EIR does not address those comments received which relate to the Regional (Major Projects) Component in those instances where the Draft EIR's analysis of program-related environmental issues are not directly involved.

The EIR (which is comprised of the Draft EIR and the Final EIR, and assigned State Clearinghouse #SCH 2000072077) is intended to be certified as a complete and thorough record of the environmental impacts of the proposed project by the City of Livermore. Certification of the EIR as adequate and complete must take place prior to any formal action on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee

## PREFACE

Program itself, and EIR certification does not equate to adoption of the Regional (Major Projects) Component.

The EIR has been prepared pursuant to the California Environmental Quality Act (CEQA) as amended (commencing with Section 21000 of the California Public Resources Code), and the CEQA Guidelines. The Lead Agency for the project, as defined by CEQA, is the City of Livermore.

The EIR is meant to provide an objective, impartial source of information to be used by the lead and responsible agencies, as well as the public, in their considerations regarding the project. The basic purposes of CEQA are to:

- (a) inform governmental decision-makers and the public about the environmental effects of proposed activities;
- (b) involve the public in the decision-making process;
- (c) identify ways that damage to the environment can be avoided or significantly reduced; and
- (d) prevent environmental damage by requiring changes in the project through the use of alternatives or mitigation measures.<sup>1</sup>

The analysis in the EIR concentrates on the aspects of the Regional (Major Projects) Component that are likely to have a significant adverse effect on the environment, and identifies reasonable and feasible measures to mitigate (i.e., reduce or avoid) these effects. The CEQA Guidelines define "significant effect on the environment" as "a substantial, or potentially substantial adverse change in any of the physical conditions within the area affected by the project ...."<sup>2</sup> The determination of significance of potential environmental effects is based, in part, on the discussion of environmental effects which are normally considered to be significant found in Appendix G of the CEQA Guidelines.

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<sup>1</sup> State of California, Governor's Office of Planning and Research, *California Environmental Quality Act Statutes and Guidelines*, 1995, Section 15002(a).

<sup>2</sup> *Ibid*, Section 15382.



## B. ORGANIZATION OF THE FINAL EIR

This Final EIR, which includes revisions to the Draft EIR on the Regional (Major Projects) Component, responds to verbal and written comments on the Draft EIR received during the public review period ending September 12, 2000.

The Final EIR consists of the following major sections:

- **Preface** - outlines the objectives of the EIR and important preliminary information.
- **Revisions to the Draft EIR** - contains revisions to the Draft EIR text and new text for inclusion in the Draft EIR.
- **Comments and Responses** - contains the letters of comment on the Draft EIR, verbal comments recorded at the public hearings on the Draft EIR (August 21, 2000 and September 11, 2000), and responses to those comments.

This EIR has been prepared for the City of Livermore (the Lead Agency) by Lamphier & Associates, Environmental Planners. Each participant in the preparation of the EIR has extensive experience and knowledge in their respective fields. The information in the EIR has been compiled from a variety of sources, including published studies, applicable maps and independent field investigations. Unless otherwise noted, all background documents are incorporated into this EIR by reference, and are available for inspection at the City of Livermore offices.

## C. SCOPE OF THE EIR

The Draft EIR and the Final EIR together constitute the full EIR required by the California Environmental Quality Act.

In compliance with Section 15088 of the CEQA Guidelines, this Final EIR responds to comments received on the Draft EIR, providing detailed responses to comments on environmental issues or on the adequacy of the environmental analysis contained in the Draft EIR. Where necessary and appropriate in response to the comments received, the Final EIR also provides for the revision of the Draft EIR.

## **D. PUBLIC REVIEW PROCESS**

The Notice of Preparation of the Draft EIR was released on June 22, 2000. It is included in **Appendix A** of the Draft EIR, along with a response to the Notice of Preparation.

The Draft EIR was completed late July, 2000, and was circulated for a 52-day public review period. During this time, members of the public and responsible agencies and organizations submitted comments on the sufficiency or adequacy of the Draft EIR in evaluating the environmental effects associated with the implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. Two public hearings were held by the Livermore City Council on August 21, 2000 and on September 11, 2000, during the public review period. A summary of the verbal comments received at the public hearings are included in this document. The public review period on the Draft EIR ended at 5:00 P.M. on September 12, 2000.

The Final EIR will be presented to the Livermore City Council for review and certification as an accurate and complete record of the environmental impacts which may be associated with the implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, in accordance with Section 15080 of the CEQA Guidelines. While certification of the Final EIR affirms that the record of potential environmental impacts and available means of reducing or avoiding such impacts is complete and adequate, it does not constitute adoption of the Regional (Major Projects) Component.

Upon certification of the EIR, the Livermore City Council will make a separate decision on the adoption of the Regional (Major Projects) Component.

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## REVISIONS TO THE DRAFT EIR

During the public review period on the Draft EIR (and often in response to comments received during that time), the Lead Agency determined that some changes to the text of the Draft EIR were appropriate. The following changes in the text presented in the Draft EIR have been made:

On Draft EIR pages ES-1, I-1 and 1-3, the text of the second bullet has been modified to read as follows

- Construction of Bay Area Rapid Transit (BART) facilities in Livermore (which may include the development of an inter-regional transit hub near Greenville Road); and"

On Draft EIR page ES-2, the text of the second bullet has been modified to read as follows:

- The proposed widening of Isabel Parkway between I-580 and Vallecitos Road would be expected to be accommodated mostly within the existing right-of-way, and would only require the acquisition of additional right-of-way along the east side of Isabel Parkway between Stanley Boulevard Concannon Boulevard and Vineyard Avenue."

On Draft EIR page 1-5, the text of the bullet has been modified to read as follows:

- The proposed widening of Isabel Parkway between I-580 and Vallecitos Road would be expected to be accommodated mostly within the existing right-of-way, and would only require the acquisition of additional right-of-way along the east side of Isabel Parkway between Stanley Boulevard Concannon Boulevard and Vineyard Avenue."

On Draft EIR pages 2-2, 2-4, 2-9, 2-13, 2-18, 2-20, 2-23, 2-27, 2-36, 2-41, 2-45, 2-48, 2-51, 2-53 and 2-59, the first line under "Thresholds of Significance" has been modified to read as follows:

"The project program would have a significant environmental impact if it were to result in:"

On Draft EIR page 2-22, the following has been added immediately following the first bullet:

- "• Installation of silt fencing around construction areas;
- Installation of barriers or catch-basins to protect storm drains;
- Covering or revegetation of all exposed soil during the rainy season;"

On Draft EIR page 2-30, the text of **MITIGATION MEASURE: Storm Water Pollution Prevention Plans** has been modified to read as follows:

**"MITIGATION MEASURE: Storm Water Pollution Prevention Plans and NPDES Construction Stormwater Permits.** Those appropriate agencies responsible for the actual implementation of individual projects identified in the Regional (Major Projects) Component should, through the environmental review process for each project, determine whether construction of the proposed project could entail the introduction of pollutants to local bodies of water through storm water runoff. In those instances where such pollution may be anticipated, the agencies should develop Storm Water Pollution Prevention Plans, which will incorporate specific measures designed to reduce the volume of pollutants which may enter local water bodies through storm water runoff. If the proposed project would result in the disturbance of five or more acres of land during construction, it must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The lead agency for each individual project must propose and implement control measures that are consistent with the General Permit and with the recommendations and policies of the local agency and the Regional Water Quality Control Board. The effective implementation of Storm Water Pollution Prevention Plans and compliance with NPDES General Permit requirements could be expected to reduce this impact to a level of *less than significant*."

On Draft EIR page 2-31, the second bulleted paragraph has been modified to read as follows:

- "• Based on the results of the drainage/groundwater recharge evaluation, the proposed project should be designed to minimize the area of impervious surface and to maintain existing drainage/groundwater recharge patterns to the extent practicable. If the proposed project would increase the area of impervious surfaces on the project site, the lead agency responsible for the

implementation of the project should include in the Storm Water Pollution Prevention Plan long-term storm water control measures to be effective for the life of the project, consistent with the Manual of Standards for Erosion and Sedimentation Control Measures and recommendations by the Regional Water Quality Control Board."

On Draft EIR page 2-53, the second bullet has been modified to read as follows:

- "• Exceeding (either individually or cumulatively) a level of service standard established by the County Congestion Management Agency for designated roads or highways (Note: the Alameda County Congestion Management Plan does not establish service level standards on the MTS network);"

On Draft EIR page 2-54, the fourth bullet has been modified to read as follows:

- "• On any Alameda County Congestion Management Agency facility (i.e., I-580 and SR 84) or other Routes of Regional Significance, the threshold of acceptability for the purposes of this evaluation will be a Level of Service (LOS) E. (Note: the Alameda County Congestion Management Plan does not establish service level standards on the MTS network). This is consistent with the policies of the Tri-Valley Transportation Council, and this threshold has been adopted in Livermore's general Plan for those portions of Routes of Regional Significance that traverse the City."

On Draft EIR page 2-55, the fourth complete paragraph has been modified to read as follows:

"Since the proposed transportation system improvement projects would not generate any additional traffic, these projects would not contribute to any exceedance ~~a level of service standard established by the Alameda County Congestion Management Agency~~ of the threshold of significance value used for this evaluation, level of service (LOS) E."

REVISIONS TO THE DRAFT

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## COMMENTS AND RESPONSES

This chapter contains comments, both written and verbal, on the Draft EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. Letters received during the 51-day public review period are listed first. These letters are followed by the comments received at the public hearings on the Draft EIR conducted by the Livermore City Council on August 21, 2000, and September 11, 2000. Each letter is marked to identify distinct comments on the Draft EIR, and responses to these comments are provided following each letter. Individual comments received during the public hearings are summarized based on notes taken during the hearings, and each public hearing comment is then followed by a response.

As noted in the PREFACE, in several cases, responding to a comment received on the Draft EIR has resulted in a revision to the text of the Draft EIR. In other cases, the information provided in the response is deemed adequate in providing clarification to material presented in the Draft EIR, and modification of the Draft EIR text was not deemed appropriate.

In reviewing the comments received on the Draft EIR, it should be noted that while some of the material submitted provides opinion on the Regional (Major Projects) Component or addresses features and characteristics of the Regional (Major Projects) Component, such material may not address the environmental analysis presented in the Draft EIR. The responses which are presented in this document focus only on those comments which bear a direct relationship to the Draft EIR, as required under CEQA. While other comments which are not directly related to the Draft EIR may be acknowledged, it is beyond the scope of the Final EIR to provide responses to these comments or opinions.

Several additional points to keep in mind in reviewing the comments received on the Draft EIR are presented in Section 15204 of the CEQA Guidelines (as revised on October 28, 1998) which states that a Lead Agency need not "conduct every test or perform all research, study, and experimentation recommended or demanded by commentors.", in Section 15003 (h) which states that "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only

determines if the EIR is sufficient as an informational document.", and in Section 15003 (j), which states: "CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

The letters received on the Draft EIR are listed below, followed by the comments received verbally during the public hearings of August 21, 2000, and September 11, 2000. Each letter has been marked to identify each specific comment on the Draft EIR by a notation in the right-hand margin (i.e., A-2, B-1, etc.). Following each letter, the response to each identified comment in that letter is presented sequentially (for example, the first comment on the Draft EIR identified in LETTER A is identified as A-1 in the right-hand margin of the letter, and the corresponding response immediately following LETTER A is coded as RESPONSE A-1).

## LIST OF LETTERS

- A. Douglas E. Goodman (September 2, 2000).
- B. Martin Musonge, Water Resources Control Engineer, California Regional Water Quality Control Board, San Francisco Region, September 5, 2000.
- C. Beth Walukas, Senior Transportation Planner, Alameda County Congestion Management Agency, September 7, 2000.
- D. Thomas Larsen, Howard Rice Nemerovski Canady Falk & Rabkin, September 14, 2000.

Comments from the Public Hearing, Livermore City Council (August 21, 2000).

Comments from the Public Hearing, Livermore City Council (September 11, 2000).



## LETTER A

-----Original Message-----

From: Doug Goodman [mailto:deg1@pacbell.net]  
Sent: Saturday, September 02, 2000 7:33 PM  
To: marc roberts  
Subject: Comments on DEIR - Regional (Major Projects) TIF

Marc:

First, thank you for providing the DEIR. My comments are as follows:

1. In all sections "Impacts and Mitigation Measures, Thresholds of Significance", the paragraph begins "The project..." To be consistent with the purpose of the DEIR; a program EIR, this should read "The program..." A-1
2. Section 2 O, Regional Roadways, I-580. This paragraph includes Portola Avenue as one of the interchanges, however, does not mention, or include impact of the Portola Interchange being closed during Phase I of the Isabelle Interchange. This should be corrected. A-2
3. Section 2 O, Defining the Base Case 2020 Scenario. The housing increase from 2000 to 2020 as stated in this paragraph is 5,724. If North Livermore goes forward as planned, the increase there alone is 12,500. All other planning documents I have seen include North Livermore and stress the 12,500 is part of the Livermore General Plan build-out. Why is North Livermore not mentioned in this DEIR? A-3
4. Section 3 D, Enhanced Transit Alternative, raises an interesting point. In the middle of the paragraph the words "low density residential development patterns ..." The point this raises is that since one of the elements of this program is BART in Livermore, no mention is made of BART's requirement that extensions will only be considered if cities develop transit-centered, higher density housing. This BART requirement needs to be addressed on how current Livermore development patterns, as expressed in this paragraph, would have to change for this element to be considered. A-4
5. In the letter from the Alameda County CMA dated July 19, 2000, the last paragraph requests that impacts on transit and highway networks be addressed for 2005 and 2020. How is this request addressed in the DEIR? I do not see any reference to 2005. Also, is the DEIR being prepared too early? If the CMA will not look at these projects until 2005, will this EIR be current in five years? Shouldn't this EIR be pushed back at least two years? A-5

Douglas E. Goodman

1779 Corte Sueno  
Livermore, CA 94550  
(925) 454-1714  
deg1@pacbell.net

**Douglas E. Goodman**

- A-1. Comment noted. On Draft EIR pages 2-2, 2-4, 2-9, 2-13, 2-18, 2-20, 2-23, 2-27, 2-36, 2-41, 2-45, 2-48, 2-51, 2-53 and 2-59, the first line under "Thresholds of Significance" has been modified to read as follows:

"The program would have a significant environmental impact if it were to result in:"

- A-2. On Draft EIR page 2-52, the first paragraph discusses Interstate 580 within the context of the regional roadway network, and identifies the interchanges serving the Livermore area at Airway Boulevard, Portola Avenue, North Livermore Avenue, First Street, Vasco Road and Greenville Road. This paragraph also indicates that a new interchange is planned to be located on I-580 at Isabel Parkway, between the Portola Avenue and Airway Boulevard interchanges, to connect SR 84 (Isabel Parkway) to I-580. While the Draft EIR provides a general discussion of the types of environmental effects which may be anticipated with the Phase 2 improvements at the Isabel Parkway/I-580 interchange at a "program" level (with the understanding that additional, site-specific environmental review will be necessary when the individual projects associated with the Regional (Major Projects) Component are formally proposed), it does not address project-specific effects which may be associated with Phase 1 of the Isabel Parkway/I-580 interchange (including those associated with the permanent closure of the Portola Avenue/I-580 interchange as part of Phase 1 construction of the Isabel Parkway/I-580 interchange), since funding for Phase 1 of that interchange project would not be provided by the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. However, the Phase I improvement at the Isabel Parkway/I-580 interchange does include the elimination and permanent closure of the Portola Avenue on- and off-ramps as part of the Isabel interchange design. Portola Avenue will continue to cross over I-580, but the westbound on-ramp will be closed. Instead, traffic will continue westward on Portola to Isabel Parkway, where westbound ramps will provide access to I-580.
- A-3. As indicated on Draft EIR page I-1, the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program is intended to provide partial funding for those transportation system improvements which have been identified as essential in mitigating regional transportation impacts associated with future development anticipated to occur as a result of General Plan buildout in Livermore and the surrounding region. However, in developing the modified base case 2020 scenario for projecting future traffic volumes, the land use assumptions

for the North Livermore Specific Plan were not included in this base case scenario in order to avoid "double counting" the effects of the North Livermore plan. Adoption of the North Livermore Specific Plan, in its current form, would enable the annexation of the North Livermore Specific Plan's Urban Area and the construction of up to 12,500 new residential units. Traffic impacts associated with the implementation of the North Livermore Specific Plan have been evaluated separately in the North Livermore Specific Plan Draft EIR, so that "double-counting" traffic impacts or fees will be avoided. The regional transportation system improvements which are identified in the Regional (Major Projects) Component would be necessary to support anticipated development by year 2020, with or without the North Livermore Specific Plan. If the Regional (Major Projects) Component were to be adopted, residential development that could be anticipated under the North Livermore Specific Plan (assuming that it may be adopted in its present form) would be required to pay all of the adopted traffic impact fees.

- A-4. As indicated on Draft EIR page 1-3, BART currently has no formal plans to extend BART to Livermore. BART has also indicated that there is no formal requirement that plans for transit-centered, higher density housing be a prerequisite for future BART extensions. In December, 1999, the BART Board of Directors adopted a system extension policy which identified the demonstration of a commitment to transit-supportive growth and development as one of its seven framework goals. Within the strategies section of the system extension policy, one of the criteria is to maximize ridership by supporting efficient and desirable growth patterns (telephone conversation with Malcolm Quint, Long Range Planning, BART on September 11, 2000). Although BART clearly supports the concept of transit-supportive development, this does not mean that the existing pattern of residential development in the Livermore area would preclude an extension of BART into Livermore at some point in the future. In addition, the City continues to explore development of an inter-regional transit hub, and will complete further land use planning in the area of this hub when the exact hub location is determined.
- A-5. None of the Major Projects which the funds generated under the Regional Component of the Traffic Impact Fee Program would contribute to are expected to be completed by 2005, so traffic conditions at that time would not be affected by the adoption of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. As indicated in Table 1.1 on Draft EIR page 1-6, each of the Major Projects currently lack the funding necessary to move forward, and it is unlikely that any of these projects would be formally proposed in the absence of assured funding. To date, no formal plans have been submitted for construction of High Occupancy Vehicle (HOV) lanes on I-580 within Livermore, BART has no formal plans to extend BART to Livermore, and no formal plans

## COMMENTS AND RESPONSES

have been submitted for the widening of Isabel Parkway of Phase 2 improvements at the Isabel Parkway/I-580 interchange. The development of site-specific engineering plans for each of these projects could be expected to take a number of months, followed by additional months of environmental review prior to project approval and subsequent construction. In the absence of assured funding for these projects, such efforts are unlikely to begin. Were the Regional (Major Projects) Component of the Traffic Impact Fee to be adopted in 2000, at \$720 per new trip, it would take time for the related fees to accumulate to a level which could contribute significantly to Major Projects which now lack sufficient funding. The Lead Agency (City of Livermore) has determined that the preparation of an EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program is required, and the EIR must be certified as adequate and complete prior to any action to adopt the Regional Component. Since the City of Livermore anticipates the adoption of the Regional Component as part of the Traffic Impact Fee Update effort to be completed in 2000, the timing of the "program"-level environmental review associated with the Regional (Major Projects) Component is appropriate. As indicated on Draft EIR page I-3, as individual transportation system improvement projects are formally proposed, site-specific environmental review may be required by those agencies responsible for actually implementing such projects. These project-specific EIRs would be completed following formal proposal of such projects, and would be subject to CMA review at that time. Delaying the preparation of a "program"-level EIR on the Regional Component "for at least two years" (as suggested in this comment), would serve no useful purpose, and would result in the loss of two years of fees which might otherwise be collected under the Regional Component (if adopted).



# California Regional Water Quality Control Board

## San Francisco Bay Region



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.jwrcb.ca.gov>  
1515 Clay Street, Suite 1400, Oakland, California 94612  
Phone (510) 622-2300 • FAX (510) 622-2460

LETTER B

RECEIVED

SEP 09 2000

CITY OF LIVERMORE  
ENGINEERING DIVISION

Date: September 5, 2000  
File No. 2198.09 (MYM)

Mr. Dan Smith  
City of Livermore  
3589 Pacific Avenue  
Livermore, CA 94550-7017

Re: Draft Environmental Impact Report (EIR) for Regional (Major Projects)  
Component, Livermore Traffic Impact Fee Program (2000072077), Livermore, County  
of Alameda

Dear Mr. Smith:

We have received the above referenced draft (EIR) and provide the following comments for your consideration.

### Project Description

This project proposes three major components:

- Construction of a High Occupancy Vehicle (HOV) lanes on I-580 within Livermore;
- Construction of Bay Area Rapid Transit (BART) facilities within Livermore; and
- Widening of the Isabel Parkway from 2 lanes to 6 lanes south from I-580 to Stanley Boulevard, and from 2 lanes to 4 lanes south from Stanley Boulevard to Vallecitos Road, and Phase 2 improvements at the Isabel Parkway/I-580 interchange.

Possible Impacts: Stormwater Pollution. Without proper control and mitigation measures, the construction of the project could potentially result in:

- Stormwater pollution impacting waters of the State of California. This could occur if pollutants on the construction site such as fuel, oils, and metals from construction vehicles were mobilized by runoff water and entered storm drains. As the project would result in the paving of some previously impervious surfaces, it could also cause a long-term increase in the volume and velocity of stormwater leaving the property. This, in turn, could result in onsite pollutants being carried to nearby surface waters, as well as increased offsite erosion that could cause sedimentation of these waters. B-1

- Erosion which could increase sediment loads in nearby surface waters, thus impairing water quality. B-2

#### Board Staff's Comments and Recommendations

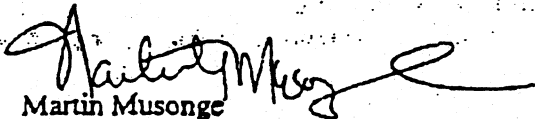
- **Stormwater Control:** To prevent stormwater pollution during the construction period, the project proponent should develop a Stormwater Pollution Prevention Plan (SWPPP) that would result in the onsite capture and treatment of all polluted runoff during the construction period. If the project would increase the area of impervious surfaces on the project site, the project applicant should include in the SWPPP long-term stormwater control measures to be effective for the life of the project. More information on stormwater control is included in the Board's General comments (attached). B-3
- **Erosion Control:** The project proponent should describe specific erosion and sediment control measures to be implemented during the project's construction. These might include silt fencing around construction areas, barriers or catch-basins to protect storm drains, and the covering or revegetation of all exposed soil during the rainy season. B-4
- **NPDES Construction Stormwater Permit:** If the proposed development would disturb five or more acres of land during construction, it must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). This permit can be obtained by filing a Notice of Intent with the State Water Resources Control Board, Division of Water Quality. Application forms are available on-line at the State Board's website, [www.swrcb.ca.gov](http://www.swrcb.ca.gov). The project proponent must propose and implement control measures that are consistent with the General Permit and with the recommendations and policies of the local agency and the RWQCB. B-5
- **Water Quality Certification:** If the proposed project involves fill or disturbance to wetlands or other waters of the U.S. or waters of the State, the applicant must obtain a Clean Water Act Section 401 water quality certification that the proposed project will not violate State water quality standards. An application for water quality certification can be obtained by contacting our main office at (510) 622-2300. B-6

#### Closing Remarks

Regional Board staff encourage the project proponent and the lead agency to refer to a copy of "Start at the Source," a design guidance manual for stormwater quality protection, which provides innovative ways of designing structures, parking lots, drainage systems, and landscaping. This manual may be obtained at most cities' planning departments, or by contacting the San Francisco Estuary Project at (510) 622-2465. B-7

I have also attached a copy of our **General Comments**, which discuss the Regional Board's area of responsibility, and which should help guide in the preparation of further CEQA documentation. If you have any questions, please call Emily Guglielmo at (510) 622-2344 or e-mail at [stu26@rb2.swrcb.ca.gov](mailto:stu26@rb2.swrcb.ca.gov).

Sincerely,



Martin Musonge  
Water Resources Control Engineer

cc: w/o Attach.: State Clearinghouse  
Enclosure: General Comments



# California Regional Water Quality Control Board

## San Francisco Bay Region



Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.rwqcb.ca.gov>  
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### General Comments

The San Francisco Regional Water Quality Control Board (Regional Board or RWQCB) is charged with the protection of the Waters of the State of California in the San Francisco Bay Region, including wetlands and stormwater quality. The Regional Board is responsible for administering the regulations established by the Federal Clean Water Act. Additionally, the California Water Code establishes broad state authority for regulation of water quality. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) explains the Regional Board's strategy for regulating water quality. The Basin Plan also describes the range of responses available to the Regional Board with regard to actions and proposed actions that degrade or potentially degrade the beneficial uses of the Waters of the State of California.

### NPDES

Water quality degradation is regulated by the Federal National Pollutant Discharge Elimination System (NPDES) Program, established by the Clean Water Act, which controls and reduces pollutants to water bodies from point and nonpoint discharges. In California, the program is administered by the California Regional Water Quality Control Boards. The Regional Board issues NPDES permits for discharges to water bodies in the San Francisco Bay Area, including Municipal (area- or county-wide) Stormwater Discharge Permits.

Projects disturbing more than five acres of land during construction must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). This can be accomplished by filing a Notice of Intent with the State Water Resources Control Board. An NOI and the General Permit can be obtained from the Board at (510) 622-2300. The project sponsor must propose and implement control measures that are consistent with the General Permit and with the recommendations and policies of the local agency and the RWQCB.

Projects that include facilities with discharges of Storm Water Associated with Industrial Activity must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity. This may be accomplished by filing a Notice of Intent. The project sponsor must propose control measures that are consistent with this, and with recommendations and policies of the local agency and the RWQCB. In a few cases, the project sponsor may apply for (or the RWQCB may require) issuance of an individual (industry- or facility-specific) permit.

The RWQCB's Urban Runoff Management Program requires Bay Area municipalities to develop and implement storm water management plans (SWMPs). The SWMPs must include a program for implementing new development and construction site storm water quality controls. The objective of this component is to ensure that appropriate measures to control pollutants from new development are considered during the planning phase, before construction begins; implemented during the construction phase; and maintained after construction, throughout the life of the project.

California Environmental Protection Agency





## Impacts and Mitigation Measures

### Wetlands

Wetlands enhance water quality through such natural functions as flood and erosion control, stream bank stabilization, and filtration and purification of contaminants. Wetlands also provide critical habitats for hundreds of species of fish, birds, and other wildlife, offer open space, and provide many recreational opportunities. Water quality impacts occur in wetlands from construction of structures in waterways, dredging, filling, and altering drainage to wetlands.

The Regional Board must certify that any permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (covering, dredging, or filling of Waters of the United States, including wetlands) complies with state water quality standards, or waive such certification. Section 401 Water Quality Certification is necessary for all 404 Nationwide permits, reporting and non-reporting, as well as individual permits.

All projects must be evaluated for the presence of jurisdictional wetlands and other Waters of the State. Destruction of or impact to these waters should be avoided. If the proposed project impacts wetlands or other Waters of the State and the project applicant is unable to demonstrate that the project was unable to avoid those adverse impacts, water quality certification will most likely be denied. 401 Certification may also be denied based on significant adverse impacts to wetlands or other Waters of the State. In considering proposals to fill wetlands, the Regional Board has adopted the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993). The goals of the Policy include ensuring "no overall net loss and achieving a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values." Under this Policy, the Regional Board also considers the potential post-construction impacts to wetlands and Waters of the State and evaluates the measures proposed to mitigate those impacts (see Storm Water Quality Control, below).

The Regional Board has adopted U.S. EPA's Clean Water Act Section 404(b)(1) "Guidelines for Specification of Disposal Sites for Dredge or Fill Material," dated December 24, 1980, in the Board's Basin Plan for determining the circumstances under which fill may be permitted.

Section 404(b)(1) Guidelines prohibit all discharges of fill material into regulated waters of the United States, unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative that will achieve the basic project purpose. For non-water dependent projects, the guidelines assume that there are less damaging alternatives, and the applicant must rebut that assumption.

The Section 404(b)(1) Guidelines sequence the order in which proposals should be approached. First, impacts to wetlands or Waters of the State must be avoided to the maximum extent practicable. Second, the remaining impacts must be minimized. Finally, the remaining unavoidable adverse impacts to wetlands or Waters of the State must be mitigated. Mitigation will be preferably in-kind and on-site, with no net destruction of habitat value. A proportionately greater amount of mitigation is required for projects that are out-of-kind and/or off-site. Mitigation will preferably be completed prior to, or at least simultaneous to, the filling or other loss of existing wetlands.

Successful mitigation projects are complex tasks and difficult to achieve. This issue will be strongly considered during agency review of any proposed wetland fill. Wetland features or ponds

*California Environmental Protection Agency*

created as mitigation for the loss of existing jurisdictional wetlands or Waters of the United States cannot be used as storm water treatment controls.

In general, if a proposed project impacts wetlands or Waters of the State and the project applicant is unable to demonstrate that the project was unable to avoid adverse impacts to wetlands or Waters of the State, water quality certification will be denied. 401 Certification may also be denied based on significant adverse impacts to wetlands or other Waters of the State.

### Storm Water Quality Control

Storm water is the major source of fresh water to creeks and waterways. Storm water quality is affected by a variety of land uses and the pollutants generated by these activities. Development and construction activities cause both site-specific and cumulative water quality impacts. Water quality degradation may occur during construction due to discharges of sediment, chemicals, and wastes to nearby storm drains or creeks. Water quality degradation may occur after construction is complete, due to discharges of petroleum hydrocarbons, oil, grease, and metals from vehicles, pesticides and fertilizers from landscaping, and bacteria from pets and people. Runoff may be concentrated and storm water flow increased by newly developed impervious surfaces, which will mobilize and transport pollutants deposited on these surfaces to storm drains and creeks. Changes in runoff quantity or velocity may cause erosion or siltation in streams. Cumulatively, these discharges will increase pollutant loads in creeks and wetlands within the local watershed, and ultimately in San Francisco Bay.

To assist municipalities in the Bay Area with complying with an area-wide NPDES Municipal Storm Water Permit or to develop a Baseline Urban Runoff Program (if they are not yet a co-permittee with a Municipal Storm Water Permit), the Regional Board distributed the *Staff Recommendations for New and Redevelopment Control for Storm Water Programs (Recommendations)* in April 1994. The Recommendations describe the Regional Board's expectations of municipalities in protecting storm water quality from impacts due to new and redevelopment projects, including establishing policies and requirements to apply to development areas and projects; initiating appropriate planning, review, approval, and inspection procedures; and using best management practices (BMPs) during construction and post-construction.

Project impacts should be minimized by developing and implementing a Storm Water Pollution Prevention Plan (SWPPP). A SWPPP is required by the State Construction Storm Water General Permit (General Permit). The SWPPP should be consistent with the terms of the General Permit, the Manual of Standards for Erosion & Sedimentation Control Measures by the Association of Bay Area Governments (ABAG), policies and recommendations of the local urban runoff program (city and/or county), and the Recommendations of the RWQCB. SWPPPs should also be required for projects that may have impacts, but which are not required to obtain an NPDES permit. Preparation of a SWPPP should be a condition of development. Implementation of the SWPPP should be enforced during the construction period via appropriate options such as citations, stop work orders, or withholding occupancy permits.

Impacts identified should be avoided and minimized by developing and implementing the types of controls listed below. Explanations of the controls are available in the Regional Board's construction *Field Manual*, available from Friends of the San Francisco Estuary at (510) 286-0924, in BASMAA's *Start at the Source*, and in the *California Storm Water Best Management Practice Handbooks*.

*California Environmental Protection Agency*

### Site Planning

The project should minimize impacts from project development by incorporating appropriate site planning concepts. This should be accomplished by designing and proposing site planning options as early in the project planning phases as possible. Appropriate site planning concepts to include, but are not limited to the following:

- Phase construction to limit areas and periods of impact.
- Minimize directly connected impervious areas.
- Preserve natural topography, existing drainage courses and existing vegetation.
- Locate construction and structures as far as possible from streams, wetlands, drainage areas, etc.
- Provide undeveloped, vegetated buffer zones between development and streams, wetlands, drainage areas, etc.
- Reduce paved area through cluster development, narrower streets, use of porous pavement and/or retaining natural surfaces.
- Minimize the use of gutters and curbs which concentrate and direct runoff to impermeable surfaces.
- Use existing vegetation and create new vegetated areas to promote infiltration.
- Design and lay-out communities to reduce reliance on cars.
- Include green areas for people to walk their pets, thereby reducing build-up of bacteria, worms, viruses, nutrients, etc. in impermeable areas, or institute ordinances requiring owners to collect pets' excrement.
- Incorporate low-maintenance landscaping.
- Design and lay out streets and storm drain systems to facilitate easy maintenance and cleaning.
- Consider the need for runoff collection and treatment systems.
- Label storm drains to discourage dumping of pollutants into them

### Erosion

The project should minimize erosion and control sediment during and after construction. This should be done by developing and implementing an erosion control plan, or equivalent plan. This plan should be included in the SWPPP. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Limit access routes and stabilize access points.
- Stabilize denuded areas as soon as possible with seeding, mulching, or other effective methods.
- Protect adjacent properties with vegetative buffer strips, sediment barriers, or other effective methods.
- Delineate clearing limits, easements, setbacks, sensitive areas, vegetation and drainage courses by marking them in the field.
- Stabilize and prevent erosion from temporary conveyance channels and outlets.
- Use sediment controls and filtration to remove sediment from water generated by dewatering or collected on-site during construction. For large sites, stormwater settling basins will often be necessary.

## Chemical and Waste Management

The project should minimize impacts from chemicals and wastes used or generated during construction. This should be done by developing and implementing a plan or set of control measures. The plan or control measures should be included in the SWPPP. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Designate specific areas of the site, away from streams or storm drain inlets, for storage, preparation, and disposal of building materials, chemical products, and wastes.
- Store stockpiled materials and wastes under a roof or plastic sheeting.
- Store containers of paint, chemicals, solvents, and other hazardous materials stored in containers under cover during rainy periods.
- Berm around storage areas to prevent contact with runoff.
- Cover open Dumpsters securely with plastic sheeting, a tarp, or other cover during rainy periods.
- Designate specific areas of the site, away from streams or storm drain inlets, for auto and equipment parking and for routine vehicle and equipment maintenance.
- Routinely maintain all vehicles and heavy equipment to avoid leaks.
- Perform major maintenance, repair, and vehicle and equipment washing off-site, or in designated and controlled areas on-site.
- Collect used motor oil, radiator coolant or other fluids with drip pans or drop cloths.
- Store and label spent fluids carefully prior to recycling or proper disposal.
- Sweep up spilled dry materials (cement, mortar, fertilizers, etc.) immediately—do not use water to wash them away.
- Clean up liquid spills on paved or impermeable surfaces using "dry" cleanup methods (e.g., absorbent materials, cat litter, rags) and dispose of cleanup materials properly.
- Clean up spills on dirt areas by digging up and properly disposing of the soil.
- Keep paint removal wastes, fresh concrete, cement mortars, cleared vegetation, and demolition wastes out of gutters, streams, and storm drains by using proper containment and disposal.

## Post-Construction

The project should minimize impacts from pollutants that may be generated by the project following construction, when the project is complete and occupied or in operation. These pollutants may include: sediment, bacteria, metals, solvents, oil, grease, and pesticides, all of which are typically generated during the life of a residential, commercial, or industrial project after construction has ceased. This should be done by developing and implementing a plan and set of control measures. The plan or control measures should be included in the SWPPP.

The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the source controls and treatment controls listed in the Recommendations. Appropriate control measures are discussed in the Recommendations, in:

- Table 2: Summary of residential post-construction BMP selection
- Table 3: Summary of industrial post-construction BMP selection
- Table 4: Summary of commercial post-construction BMP selection

Additional sources of information that should be consulted for BMP selection include the *California Storm Water Best Management Practice Handbooks*; the Bay Area Preamble to the *California Storm Water Best Management Practice Handbooks and New Development Recommendations*; the BASMAA New Development Subcommittee meetings, minutes, and distributed information; and Regional Board staff. Regional Board staff also have fact sheets and other information available for a variety of structural stormwater treatment controls, such as grassy swales, porous pavement and extended detention ponds.

**Martin Musonge, Water Resources Control Engineer, California Regional Water Quality Control Board, San Francisco Bay Region**

- B-1. Anticipated water quality/storm water impacts which may be associated with the adoption and implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program are addressed at a "program" level on pages 2-30 and 2-31 of the Draft EIR. Although the adoption of the Regional (Major Projects) Component would not, in and of itself, entail any hydrological or water quality impacts, projects identified in the Regional (Major Projects) Component may introduce pollutants to local bodies of water through storm water runoff, and could be expected to result in the area of impervious surface and/or modifications in local drainage patterns. As indicated in the Draft EIR, these project-specific effects can be mitigated by the appropriate lead agencies responsible for the implementation of each project through the development and implementation of Storm Water Pollution Prevention Plans, and through the evaluation of site-specific drainage characteristics and the incorporation of design features to minimize the area of impervious surface and maintain existing drainage patterns to the extent practicable.
- B-2. Anticipated erosion effects which may be associated with the adoption and implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program are addressed at a "program" level on pages 2-21 and 2-22 of the Draft EIR. Although the adoption of the Regional (Major Projects) Component would not, in and of itself, entail any erosion-related impacts, projects identified in the Regional (Major Projects) Component may result in increased soil erosion and loss of topsoil during construction. As indicated in the Draft EIR, these project-specific effects can be mitigated by the appropriate lead agencies responsible for the implementation of each project through the preparation and implementation of detailed erosion control plans.
- B-3. On Draft EIR page 2-30, the development and implementation of Storm Water Pollution Prevention Plans has been identified as a means of mitigating project-specific potentially adverse construction-related water quality effects.

The second bulleted paragraph on Draft EIR page 2-31 has been modified to read as follows:

- "• Based on the results of the drainage/groundwater recharge evaluation, the proposed project should be designed to minimize the area of impervious surface and to maintain existing drainage/groundwater recharge patterns to the extent practicable. If the proposed project would increase the area of impervious surfaces on the project site, the lead agency responsible for the

implementation of the project should include in the Storm Water Pollution Prevention Plan long-term storm water control measures to be effective for the life of the project, consistent with the Manual of Standards for Erosion and Sedimentation Control Measures and recommendations by the Regional Water Quality Control Board."

- B-4. As indicated on Draft EIR pages 2-21 and 2-22, the development and implementation of project-specific erosion control plans would be the responsibility of the lead agency responsible for the actual implementation of individual transportation system improvement projects. These site-specific plans would be expected to describe those erosion and sediment control measures to be implemented during construction of each project.

On Draft EIR page 2-22, the following has been added immediately following the first bullet:

- "• Installation of silt fencing around construction areas;
- Installation of barriers or catch-basins to protect storm drains;
- Covering or revegetation of all exposed soil during the rainy season;"

- B-5. Comment noted. On Draft EIR page 2-30, the text of **MITIGATION MEASURE: Storm Water Pollution Prevention Plans** has been modified to read as follows:

**"MITIGATION MEASURE: Storm Water Pollution Prevention Plans and NPDES Construction Stormwater Permits.** Those appropriate agencies responsible for the actual implementation of individual projects identified in the Regional (Major Projects) Component should, through the environmental review process for each project, determine whether construction of the proposed project could entail the introduction of pollutants to local bodies of water through storm water runoff. In those instances where such pollution may be anticipated, the agencies should develop Storm Water Pollution Prevention Plans, which will incorporate specific measures designed to reduce the volume of pollutants which may enter local water bodies through storm water runoff. If the proposed project would result in the disturbance of five or more acres of land during construction, it must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The lead agency for each individual project must propose and implement control measures that are consistent with the General Permit and with the recommendations and policies of the local

COMMENTS AND RESPONSES

agency and the Regional Water Quality Control Board. The effective implementation of Storm Water Pollution Prevention Plans and compliance with NPDES General Permit requirements could be expected to reduce this impact to a level of *less than significant*."

- B-6. Anticipated effects on wetlands which may be associated with the adoption and implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program are addressed at a "program" level on pages 2-16 and 2-17 of the Draft EIR. Although the adoption of the Regional (Major Projects) Component would not, in and of itself, entail any wetlands-related impacts, projects identified in the Regional (Major Projects) Component could result in the modification of wetlands. As indicated in the Draft EIR, these project-specific effects can be mitigated by the appropriate lead agencies responsible for the implementation of each project through avoidance, or (where avoidance of wetlands is not possible) through compliance with the permit requirements of all appropriate regulatory agencies. As indicated in this comment, depending on the project-specific effects, this could include compliance with the requirements associated with a Clean Water Act Section 401 water quality certification that the proposed project would not violate State water quality standards.
- B-7. Comment noted. As individual transportation system improvement projects are formally proposed, "Start at the Source" and the General Comments will provide guidance to lead agencies responsible for the implementation of these individual projects during the site-specific environmental review process.



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P.01

# ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY



LETTER C

AC Transit  
Director  
Alan Williams

September 7, 2000

Alameda County  
Supervisor  
Gail Savelle  
Scott Haggerty

Mr. Dan Smith  
City of Livermore - Engineering Division  
3589 Pacific Avenue  
Livermore, CA 94550-7017

City of Alameda  
Mayor  
Ralph Applegate

City of Albany  
Mayor  
Frank Thompson

**SUBJECT:** Comments on the Draft Environmental Impact Report for the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program

BART  
Director  
Pete Snyder

City of Berkeley  
Councilmember  
Kris Worthenquist

Dear Dan:

City of Dublin  
Councilmember  
George A. Ziba

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. The Regional (Major Projects) Component of the Traffic Impact Fee Program is intended to provide additional funds for the construction of three transportation system improvements which have been identified as essential in mitigating regional transportation impacts associated with development taking place in Livermore and the surrounding area. The funds for completion of these three projects are inadequate. The three projects are:

City of Emeryville  
Councilmember  
Nora Davis

City of Fremont  
Mayor  
Gus Morrison

City of Hayward  
Chairperson  
Mayor  
Madelia Cooper

- Construction of High Occupancy Vehicle Lanes on I-580 within Livermore
- Construction of BART facilities within Livermore
- Widening of Isabel Parkway from 2 to 6 lanes between I-580 and Stanley Boulevard and 2 to 4 lanes between Stanley Boulevard and Vallecitos Road

City of Livermore  
Councilmember  
Tom V. Aggio

City of Newark  
Councilmember  
Susan Rogge

The Program EIR for the Component focuses on probable environmental effects associated with construction of the projects. Site specific impacts will be deferred until more detailed information is available.

City of Oakland  
Councilmember  
Lara Kuhl

City of Piedmont  
Councilmember  
Valerie Metzger

The ACCMA respectfully submits the following comments. Where possible DEIR page numbers are cross-referenced with the comment.

City of Pleasanton  
Vice Chairperson  
Councilmember  
Tom Pao

City of San Leandro  
Mayor  
Nolan Young

City of Union City  
Mayor  
Mark Tomasi

Executive Director  
Dennis R. Fay

- Pages 2-53, 54, 55: The CMP does not establish service level standards on the MTS network and reference to this in the DEIR must be deleted. The LOS E standard applies to the LOS Monitoring Study and the identification of deficient existing segments and is not intended for application in the Land Use Analysis Program. The Land Use Analysis Program does not apply thresholds of significance to determine project impacts. Whether the MTS is impacted by the C-1

Mr. Dan Snel...  
September 7, 2000  
Page 2

project should be determined using a "reasonableness test". The DEIR should be modified to clarify this. It does not appear that any additional analysis is required because implementation of these projects would result in improved roadway service levels.

- The project impacts for 2005 conditions must also be addressed in the EIR. C-2
- Page 2-55: The analysis of project impacts was done using the Tri-Valley model. Because the projects are roadway or transit projects, the use of this model is acceptable for CMP purposes. Please note that for land use development projects, the Alameda Countywide Model would need to be used for CMP analysis purposes C-3
- Page 2-56: Please clarify the source of and the relationship between the level of service criteria and volume-to-capacity ratio assumptions used in the analysis. It seems to be much more conservative than the usual standard. C-4

Thank you for the opportunity to comment on this DEIR. Please do not hesitate to contact me at 510/836-2560 ext. 13 if you require additional information.

Sincerely,



Beth Walukas  
Senior Transportation Planner

cc: Jean Hart, Deputy Director  
file. CMP/Environmental Review Opinions - Responses - 2000

**Beth Walukas, Senior Transportation Planner, Alameda County Congestion Management Agency**

C-1. Comment noted. On Draft EIR page 2-53, the second bullet has been modified to read as follows:

- "• Exceeding (either individually or cumulatively) a level of service standard established by the County congestion management agency for designated roads or highways (Note: the Alameda County Congestion Management Plan does not establish service level standards on the MTS network);"

On Draft EIR page 2-54, the fourth bullet has been modified to read as follows:

- "• On any Alameda County Congestion Management Agency facility (i.e., I-580 and SR 84) or other Routes of Regional Significance, the threshold of acceptability for the purposes of this evaluation will be a Level of Service (LOS) E (Note: the Alameda County Congestion Management Plan does not establish service level standards on the MTS network). This is consistent with the policies of the Tri-Valley Transportation Council, and this threshold has been adopted in Livermore's general Plan for those portions of Routes of Regional Significance that traverse the City."

On Draft EIR page 2-55, the fourth complete paragraph has been modified to read as follows:

- "• Since the proposed transportation system improvement projects would not generate any additional traffic, these projects would not contribute to any exceedance of the threshold of significance value used for this evaluation, level of service (LOS) E."

C-2. None of the Major Projects which the funds generated under the Regional Component of the Traffic Impact Fee Program would contribute to are expected to be completed by 2005, so traffic conditions at that time would not be affected by the adoption of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. As indicated in Table 1.1 on Draft EIR page 1-6, each of the Major Projects currently lack the funding necessary to move forward, and it is unlikely that any of these projects would be formally proposed in the absence of assured funding. To date, no formal plans have been submitted for construction of High Occupancy Vehicle (HOV) lanes on I-580 within Livermore, BART has no formal plans to extend BART to Livermore, and no formal plans have been submitted for the widening of Isabel Parkway of Phase 2 improvements at the Isabel Parkway/I-580 interchange. The development of site-specific

## COMMENTS AND RESPONSES

engineering plans for each of these projects could be expected to take a number of months, followed by additional months of environmental review prior to project approval and subsequent construction. In the absence of assured funding for these projects, such efforts are unlikely to begin. Were the Regional (Major Projects) Component of the Traffic Impact Fee to be adopted in 2000, at \$720 per new trip, it would take time for the related fees to accumulate to a level which could contribute significantly to Major Projects which now lack sufficient funding.

C-3. Comment noted.

C-4. The volume-to-capacity (V/C) ratio criteria used to determine level of service was derived from the Florida Department of Transportation (FDOT) highway capacity methodology. That methodology in turn is based on the *Highway Capacity Manual*, Special Report 209, Transportation research Board. For the I-580 freeway segments, Dowling Associates (the firm that prepared "TIF Nexus Analysis - Regional Transportation Facilities", July 19, 2000, Table 3, page 5, which provided the basis for Table 2.3 in the Draft EIR) used the FDOT freeway capacity levels to develop the V/C ratio ranges for the level of service criteria. For the Isabel Parkway segments, Dowling Associates used the FDOT capacity levels for multi-lane highways and Class I arterials to develop level of service V/C ratio ranges. These are somewhat different from more simplified V/C ratio ranges sometimes used for level of service determination. Dowling Associates believe the methodology used is superior because it is tied directly to the *Highway Capacity Manual*, which is the nationally recognized standard for capacity analysis.

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September 14, 2000

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 Livermore CA 94550-4899

Paul C. Anderson, Esq.  
 McDonough Holland & Allen  
 1999 Harrison Street, Suite 1300  
 Oakland, CA 94612

LETTER D

RECEIVED

SEP 19 2000

CITY OF LIVERMORE  
 ENGINEERING DIVISION

Re: Pleasanton Gravel; Cumulative Impact of Runoff into the Arroyo Mocho

Dear Tom and Paul:

We appreciated the opportunity to meet with you on Monday.

Given our discussions regarding flood control, we have reviewed the July 2000 Draft Environmental Impact Report governing Regional (Major Projects) Component of the Traffic Impact Fee Program which, on pages 10-11, emphasizes the need to mitigate storm water runoff caused by increased areas of impervious surfaces.

Given our historic (see the attached June 5, 1992 letter) concerns about the impact of new development on the Arroyo Mocho, we trust that the City will take into consideration the substantial adverse impacts which could be caused by allowing increased impervious surfaces on the 173 acres owned by AEW which is north and east of Pleasanton Gravel's land and west of Isabel (Area B-2 on our aerial photo). We are very concerned that the development of this parcel could cause flooding of the Arroyo

D1

Tom Curry, Esq.  
Paul C. Anderson, Esq.  
September 14, 2000  
Page 2

Mocho, particularly as exacerbated by the cumulative impact of increased runoff from the proposed widening of Isabel. Serious flooding would cause substantial damage to the gravel operations on Pleasanton's property and significantly impair the value of its property.

We look forward to talking with you about a mutually satisfactory global resolution.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tom Larsen', written in a cursive style.

Thomas A. Larsen

TAL/dod  
cc: Dan Smith  
Lamphier & Associates  
Douglas M. Jamieson

IRVING LOUBE  
KLAUSE L. LOWEN  
DANA SACK  
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June 5, 1992

Ms. Natalie E. West  
McDonough, Holland & Allen  
1999 Harrison Street, Suite 1300  
Oakland, CA 94612

Re: Pleasanton Gravel v. City of Livermore

Dear Natalie:

Pursuant to our announced position at our settlement discussions on the 3rd, enclosed please find a copy of a Dismissal Without Prejudice which I am sending out for filing this same date.

As stated by me at our meeting, and as reaffirmed in this letter, by filing the Dismissal my clients are not waiving any of their rights or damages against the City of Livermore, retrospectively or prospectively. They are not waiving their right to file a similar action at any time in the future if they determine that it is in their best interests to do so.

A significant factor leading to the decision to file a dismissal at this time was the representation that the City was requiring new development south of Stanley to drain into the Arroyo del Valle, except in a situation where it is physically prevented by substantial topographic consideration.

Another factor was the position by the City that any upstream development in the Arroyo Mocho drainage area would follow Zone 7 plans and require drainage fees suggested by Zone 7, and that the City would press Zone 7 to commence a program which would address the improvement of the Arroyo Mocho through the property of my clients.

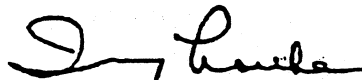
We made it clear that my clients were not developers and therefore had no reason to be drawn into carrying any of the costs for the improvement of the Arroyo Mocho and that they had down through the years performed voluntary work on the Arroyo Mocho on their property in order to mitigate potential damages and were not bound to continue to do so.

Ms. Natalie E. West  
June 5, 1992  
Page 2 of 2 pages

Finally, they again voiced their concerns that any flooding in the Arroyo Mocho drainage area could not be handled by the present condition of the Arroyo Mocho, which could well cause my clients damages in the millions to their property and operations, which damage the City would be liable for to my clients.

I trust that our respective clients can work cooperatively to resolve the situation. However, it seems to me that the City of Livermore is in the position in which it can cause Zone 7 to adopt an active role in correcting the inadequacy of the Arroyo Mocho with an expedited plan of improvement of the Arroyo Mocho.

Very truly yours,



Irving Doube

IL160:bl

cc: Don Kahler (w/enc.)  
Bill Jamieson (w/enc.)  
Ted Fairfield (w/enc.)



**Thomas Larsen, of Howard Rice Nemerovski Canady Falk & Rabkin**

- D-1 Anticipated effects of increased runoff attributable to increased impervious surfaces (i.e., widening of Isabel Parkway) which may be associated with the adoption and implementation of the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program are addressed at a "program" level on pages 2-30 and 2-31 of the Draft EIR. Although the adoption of the Regional (Major Projects) Component would not, in and of itself, entail any increase in runoff, projects identified in the Regional (Major Projects) Component, including the widening of Isabel Parkway could result in an increase of impervious surface and contribute to a cumulative increase in surface runoff, potentially exceeding the capacity of storm water drainage systems. As indicated in the Draft EIR, these project-specific and cumulative effects can be mitigated by the appropriate lead agencies responsible for the implementation of each project through incorporation of project design features either on- or off-site to reduce this impact to a level of less than significant. As indicated in this comment, depending on the nature of project-specific effects associated with widening of Isabel Parkway and the cumulative effects of all new development within the Arroyo Mocho watershed, a cumulative, or "global" solution may be needed for this area.

**Comments from the Public Hearing, Livermore City Council (August 21, 2000)**

Comment (Mayor Cathie Brown): Would the development of the proposed BART facilities identified in the Regional (Major Projects) Component preclude the development of an inter-regional transit hub at Greenville and I-580? The City has the opportunity to capture about 13 modes of transportation at that site, and would like to begin looking at phasing a project and defining it by acquiring an HOV lane in the median of I-580 and using it for express buses to the Dublin-Pleasanton BART station and incrementally putting down track to Greenville and I-580. She hopes that the Regional Component of the Traffic Impact Fee Program allows for that kind of creativity so that Livermore does not lose any opportunity to strengthen the transit hub idea.

Response: Marc Roberts, Community Development Director for the City of Livermore, indicated that those kinds of programs would be consistent with the objectives and goals of the Regional Component. This comment does not address the Draft EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, and no further response is necessary.

Comment (Mayor Cathie Brown): Would this program provide an opportunity to begin the express bus service?

Response: Marc Roberts, Community Development Director for the City of Livermore, indicated that the fees generated by the Regional Component would be set aside for capital work, and not for operations. This comment does not address the Draft EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, and no further response is necessary.

Comment (Councilmember Tom Reitter): The staff report notes that the total cost of \$199 million would be attributable to development in Livermore, but that the fee is designed to capture only \$48 million of that, so what would make up the difference?

Response: Marc Roberts, Community Development Director for the City of Livermore, indicated that State, Federal and regional funding sources would make up the balance. This comment does not address the Draft EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, and no further response is necessary.

Comment (Councilmember Tom Reitter): Does the \$48 million correspond to the TIF increase of \$720 per trip?

Response: Marc Roberts, Community Development Director for the City of Livermore, indicated that this was correct. This comment does not address the Draft EIR on the

Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, and no further response is necessary.

Comment (Shyam Chetal): In the 20-Year Transportation Allocation Plan, no money has been identified for the extension of BART to Livermore. In 1980, BART acquired the Vasco Road site. Now, twenty years later, the City of Livermore needs to develop a specific plan for BART, just as Millbrae, South San Francisco, and Dublin/Pleasanton did. If BART can adopt a specific plan, and the City of Livermore does its own projects, the City will get rich and will be able to build the BART extension to Livermore. Approximately 15,000 people take BART from Dublin. The City of Livermore will need 1,000 to 2,000 acres for a specific plan. Colma has done a specific plan showing that the station there will support BART traffic. The City of Livermore has no specific plan for BART, so must plan around it.

Response: Although this comment relates to the extension of BART to Livermore and suggests a need to develop a specific plan, it does not address the Draft EIR on the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, and no response is necessary.

Comment (Councilmember John Stein): Had a concern about the timing of proposed improvements if six lanes of traffic are dumped into Vallecitos, which could result in more passing- and merging-related accidents. Need to ensure that reasonable transitions can be accomplished. Also concerned about the effects of roadway widening on wildlife migration patterns, since traffic takes a heavy toll on wildlife (i.e., deer, skunks, amphibians, etc.) crossing Vallecitos. The installation of culverts should be explored as a mitigation measure.

Response: As indicated on Draft EIR page 1-3, in the absence of site-specific plans for each individual transportation system improvement project identified in the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program, it would be premature to make final decisions on the implementation of these major projects. When the widening of Isabel Parkway is formally proposed as a project, it will be necessary to evaluate the site-specific safety concerns related to the transition from six lanes of traffic to four lanes of traffic, and from four lanes of traffic to two lanes of traffic.

As indicated on Draft EIR page 2-15, construction of the individual transportation system improvement projects identified in the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program could interfere with the movement of resident or migratory wildlife species. These effects would have to be evaluated on a site-specific basis as individual projects are formally proposed, and where interference with the movement of wildlife cannot be avoided, design features such as culverts may need to be incorporated. Consultation with the U.S. Fish and Wildlife Service and the California

Department of Fish and Game may be required to ensure that the proposed mitigation measures effectively provide the level of protection required.

**Comments from the Public Hearing, Livermore City Council (September 11, 2000)**

Comment (Mayor Cathie Brown): Since this is a "program" EIR, would it also cover the development of an inter-regional transit hub?

Response: In response to this comment, the description of the program has been modified to include the development of an inter-regional transit hub as a project which could be funded under the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. On Draft EIR pages ES-1, I-1 and I-3, the text of the second bullet has been modified to read as follows

- "• Construction of Bay Area Rapid Transit (BART) facilities in Livermore (which may include the development of an inter-regional transit hub near Greenville Road); and . . ."

Comment (Councilmember Lorraine Dietrich): The Draft EIR indicates that additional right-of-way will need to be acquired east of Isabel Parkway for the proposed widenings. Isn't there already sufficient right-of-way to accommodate the proposed widenings?

Response: Acquisition of additional right-of-way would be necessary to support a widened Isabel Parkway between Concannon Boulevard and Vineyard Road due to bridge constraints which would require a shift in the alignment of Isabel Parkway. On Draft EIR page ES-2, the text of the second bullet has been modified to read as follows:

- "• The proposed widening of Isabel Parkway between I-580 and Vallecitos Road would be expected to be accommodated mostly within the existing right-of-way, and would only require the acquisition of additional right-of-way along the east side of Isabel Parkway between Concannon Boulevard and Vineyard Avenue."

On Draft EIR page I-5, the text of the bullet has been modified to read as follows:

- "• The proposed widening of Isabel Parkway between I-580 and Vallecitos Road would be expected to be accommodated mostly within the existing right-of-way, and would only require the acquisition of additional right-of-way along the east side of Isabel Parkway between Concannon Boulevard and Vineyard Avenue."

Comment (Vice Mayor Tom Vargas): Is there land available for the necessary right-of-way needed to widen Isabel Parkway as proposed?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that there is sufficient land available for the additional right-of-way required to support a widened Isabel Parkway.

Comment (Vice Mayor Tom Vargas): What are the limits of the HOV lanes?

Response: The proposed HOV lanes on I-580 would extend from the city limit on the west (El Charro Road) to the city limits on the east (Greenville Road).

Comment (Vice Mayor Tom Vargas): Is there enough room in the I-580 median for BART?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that, although the precise alignment of a BART extension to Livermore has not been defined, the existing I-580 median would not be wide enough to support an extension of BART.

Comment (Vice Mayor Tom Vargas): The Draft EIR indicates that of the \$722 million still required to complete the regional projects, the Regional Component of the Traffic Impact Fee would provide approximately \$48 million. Are the other TIF projects fully funded?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that for projects funded under the existing Traffic Impact Fee program, there is limited reliance on grants from the state and federal governments. Such grants would be expected to provide a larger portion of the funding necessary to complete the regional transportation system improvement projects identified in the Regional (Major Projects) Component.

Comment (Vice Mayor Tom Vargas): Would regional traffic impact fees go for designated projects, or could these fees be shifted among the projects?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that funds generated through the Regional (Major Projects) Component could be shifted among the projects identified via the Capital Improvement Plan budget process.

Comment (Vice Mayor Tom Vargas): Is there any obligation to fund each project?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that there was no obligation to fund any of the projects identified in the Regional (Major Projects) Component of the Traffic Impact Fee Program in any sort of proportional manner, and

that such funds would be allocated to the various projects through the Capital Improvement Plan budget process.

Comment (Vice Mayor Tom Vargas): The Draft EIR indicates that there would be no significant increase in regional emissions associate with implementation of the projects identified in the Regional Component, but I am skeptical. If highway capacity is freed up by these projects, then wouldn't there be an additional incentive to drive alone, and with more people driving alone, wouldn't that have an adverse effect on air quality?

Response: The completion of the two roadway improvement projects identified in the Regional (Major Projects) Component would result in an increase in the capacity of I-580 and Isabel Parkway, as indicated on Draft EIR page 2-11. These projects would not involve any changes in existing or future land uses. Changes to land use provide the basis for estimating regional emissions related to development under the modeling techniques currently recommended by the Bay Area Air Quality Management District. However, recent studies have indicated that increased roadway capacity may induce increased traffic, which could in turn have an adverse effect on regional emissions, as this comment suggests (telephone conversation with Jean Roggenkamp, Planning and Transportation Manager, Bay Area Air Quality Management District on September 12, 2000). As individual roadway improvement projects identified in the Regional (Major Projects) Component are formally proposed, detailed traffic analysis will be necessary to provide the information necessary to determine the extent to which increases in roadway capacity may adversely affect air quality.

Comment (Councilmember Tom Reitter): Does the Regional Component take inflationary factors into account? Is the ENR Index an adequate method for adjusting the TIF for inflation?

Response: Dan McIntyre, City Engineer for the City of Livermore indicated that the Traffic Impact Fee Program is updated every three years (providing an opportunity to update cost estimates to reflect inflation), and that cost estimates are also adjusted for inflation during interim periods by resolution based on the ENR index.

Comment (Councilmember John Stein): Would Isabel Parkway be six lanes north of Vineyard and four lanes between Vineyard and Vallecitos?

Response: Yes. As indicated in the Livermore General Plan, Isabel Parkway would ultimately be widened to six lanes north of Vineyard Avenue, and to four lanes between Vineyard and Vallecitos.

Comment (Douglas Goodman): The Draft EIR needs to address impacts associated with the closure of the Portola/I-580 interchange during Phase 1 of the Isabel Extension project.

Response: The Draft EIR provides a general discussion of the types of environmental effects which may be anticipated with the Phase 2 improvements at the Isabel Parkway/I-580 interchange at a "program" level (with the understanding that additional, site-specific environmental review will be necessary when the individual projects associated with the Regional (Major Projects) Component are formally proposed). It does not address project-specific effects which may be associated with Phase 1 of the Isabel Parkway/I-580 interchange, which include the permanent closure of the existing I-580 ramps at Portola Avenue. Funding for Phase 1 of that interchange project would not be provided by the Regional (Major Projects) Component of the Livermore Traffic Impact Fee Program. The Phase I improvement at the Isabel Parkway/I-580 interchange does include the elimination and permanent closure of the Portola Avenue on- and off-ramps as part of the Isabel interchange design. Portola Avenue will continue to cross over I-580, but the westbound on-ramp will be closed. Instead, traffic will continue westward on Portola to Isabel Parkway, where westbound ramps will provide access to I-580. Analysis of the traffic impacts associated with this interchange closure will be addressed in the environmental review conducted for the Phase I improvement.

Comment (Douglas Goodman): The 2020 development scenario does not reflect the 12,500 residential units which may be built in North Livermore, and the Draft EIR needs to look at the full impact of development which could occur.

Response: In developing the modified base case 2020 scenario for projecting future traffic volumes, the land use assumptions for the North Livermore Specific Plan were not included in this base case scenario in order to avoid "double counting" the effects of the North Livermore plan. Adoption of the North Livermore Specific Plan, in its current form, would enable the annexation of the North Livermore Specific Plan's Urban Area and the construction of up to 12,500 new residential units. Traffic impacts associated with the implementation of the North Livermore Specific Plan have been evaluated separately in the North Livermore Specific Plan Draft EIR, so that "double-counting" traffic impacts or fees will be avoided. The regional transportation system improvements which are identified in the Regional (Major Projects) Component would be necessary to support anticipated development by year 2020, with or without the North Livermore Specific Plan. If the Regional (Major Projects) Component were to be adopted, residential development that could be anticipated under the North Livermore Specific Plan (assuming that it may be adopted in its present form) would be required to pay all of the adopted traffic impact fees.

Comment (Douglas Goodman): In addressing the enhanced transit alternative, the Draft EIR mentions the low-density residential development patterns in Livermore. This type

of development flies in the face of BART's stated intention of taking BART to high density, transit-supported development.

Response: As indicated on Draft EIR page 1-3, BART currently has no formal plans to extend BART to Livermore. BART has also indicated that there is no formal requirement that plans for transit-centered, higher density housing be a prerequisite for future BART extensions. In December, 1999, the BART Board of Directors adopted a system extension policy which identified the demonstration of a commitment to transit-supportive growth and development as one of its seven framework goals. Within the strategies section of the system extension policy, one of the criteria is to maximize ridership by supporting efficient and desirable growth patterns (telephone conversation with Malcolm Quint, Long Range Planning, BART on September 12, 2000). Although BART clearly supports the concept of transit-supportive development, this does not mean that the existing pattern of residential development in the Livermore area would preclude an extension of BART into Livermore at some point in the future.

Comment (Tom Harper): The Draft EIR does not address the development of 12,500 new residential units in North Livermore, or future development in Area A.

Response: As noted in the response to Mr. Goodman above, traffic impacts associated with the implementation of the North Livermore Specific Plan have been evaluated separately in the North Livermore Specific Plan Draft EIR, so that "double-counting" traffic impacts or fees will be avoided. The regional transportation system improvements which are identified in the Regional (Major Projects) Component would be necessary to support year 2020 buildout with or without the development anticipated under the North Livermore Specific Plan.

Development anticipated in "Area A" under a specific plan which is currently being prepared (the Vasco-Laughlin Specific Plan) is expected to be less than anticipated under the current Livermore General Plan. The modeling assumptions used in the Draft EIR regarding buildout represent a "worst case" scenario in terms of trip generation from "Area A". If the Regional (Major Projects) Component were to be adopted, residential development within the North Livermore Specific Plan Area (assuming that it may be adopted in its present form) and in "Area A" (Vasco-Laughlin) would be required to pay all of the adopted traffic impact fees.

Comment (Tom Harper): The Draft EIR makes no mention of Vasco Road as a traffic problem.

Response: As indicated on Draft EIR page I-3, the EIR has been prepared as a Program EIR which assesses the impacts of a funding mechanism for three capital improvement projects; HOV lanes on I-580, the extension of BART to Livermore (including development of a regional transit hub near Greenville Road), and widening of Isabel Parkway. Vasco Road improvements are not identified as improvements eligible for



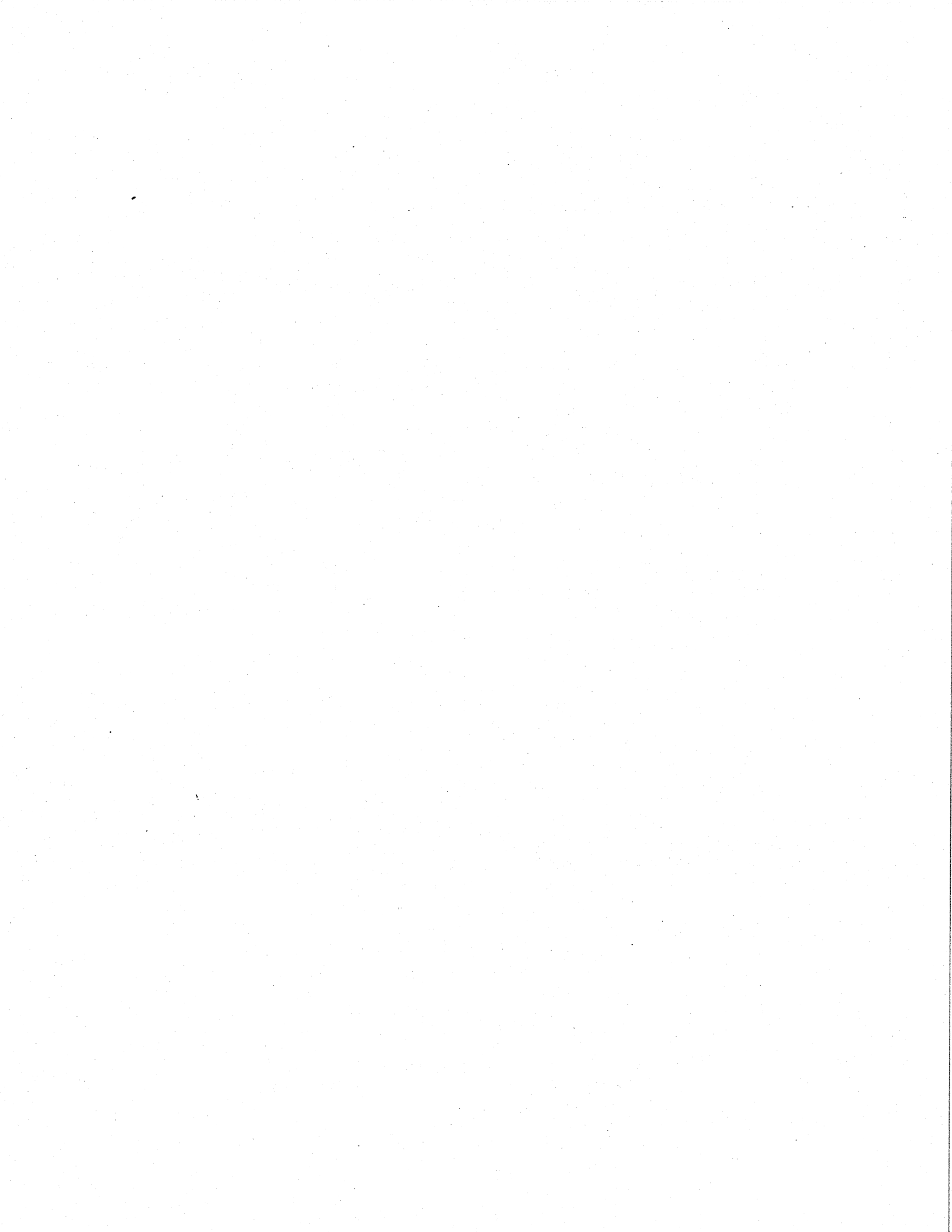
Regional Component funds. It is beyond the scope of this Draft EIR to evaluate existing or projected traffic problems on Vasco Road. As individual transportation system improvement projects identified in the Regional (Major Project) Component are formally proposed, their potential effects to traffic levels on Vasco Road may need to be evaluated.

Comment (Tom Harper): Pleasanton has expressed concern related to cut-through traffic using Vineyard and Stanley as a way to avoid traffic on I-580 and I-680, but this was not addressed in the Draft EIR.

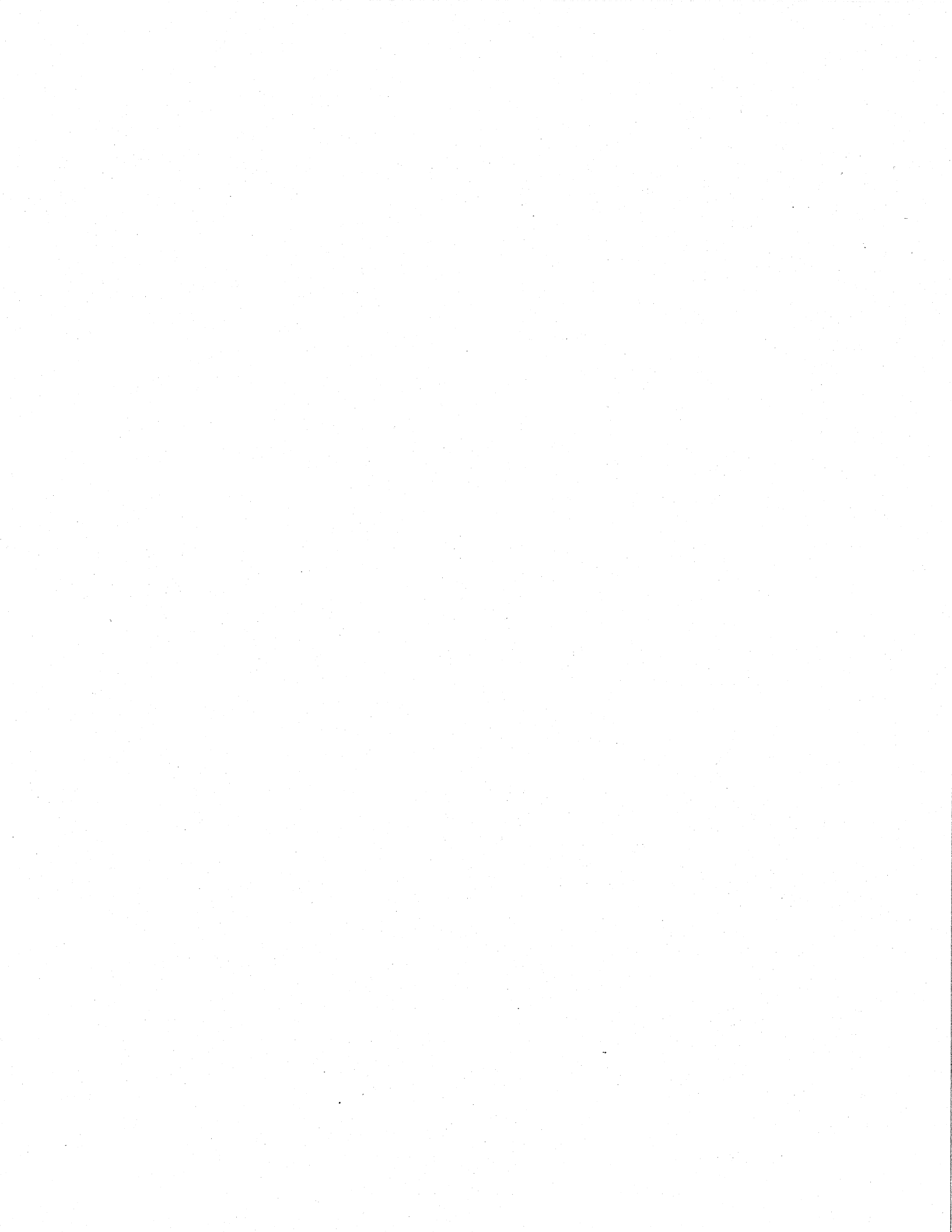
Response: As indicated on Draft EIR page I-3, the EIR has been prepared as a Program EIR which assesses the impacts of a funding mechanism for three specific capital improvement projects. It is beyond the scope of this Draft EIR to evaluate project-specific traffic impacts which may be associated with a particular transportation system improvement project or as a result of cumulative traffic demands in the region. As individual transportation system improvement projects identified in the Regional (Major Project) Component are formally proposed, the related environmental review will need to evaluate project-related traffic impacts associated with "cut-through" traffic (if any).

Comment (Tom Harper): Regarding higher-density development at the future BART station, I question the location at Greenville Road, where the station location is shown on the south side of I-580. Isn't that the site of a proposed lumberyard? The Greenville Fault would run right through that BART station. During the 1980 earthquake, the eastbound section of the Greenville/I-580 interchange collapsed. How would the BART station be affected?

Response: The symbol denoting the easternmost BART Station in Figure 1.2 on Draft EIR page 1-4 shows the general location of a future BART station, and not an actual site. As indicated on Draft EIR page 1-3, BART currently has no formal plans to extend BART to Livermore. At such time as a BART station may be formally proposed in the vicinity of Greenville Road, project-specific environmental review will be necessary to determine the extent to which such a facility might be subject to hazards associated with seismic activity, and to identify site-specific mitigation measures and/or alternatives which would reduce these effects (see Draft EIR page 2-21).







1 Les A. Hausrath (Bar No. 57253)  
2 David L. Preiss (Bar No. 104797)  
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4 P.O. Box 2047  
5 Oakland, California 94604-2047  
6 Telephone: (510) 834-6600  
7 Fax: (510) 834-1928

**ENDORSED  
FILED**

SEP 27 1999

5 Attorneys for Petitioner and Plaintiff  
6 CalMat Co.

RONALD G. OVERHOLT, Exec. Dir./Clerk  
By GR Solberg, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

11 CALMAT CO., a Delaware corporation;  
12 PLEASANTON GRAVEL CO., a California  
13 corporation; RANCHO DEL CHARRO,  
14 INC., a California corporation,

Case No. V016022-3

**JUDGMENT GRANTING  
PEREMPTORY WRIT OF  
MANDATE**

14 Petitioners and Plaintiffs,

15 vs.

16 CITY OF LIVERMORE, a municipal  
17 corporation; DOES 1 through 20,

17 Respondents and Defendants.

18 JOHNSON/HIMSL PARTNERSHIP, a  
19 California general partnership; SAADEH  
20 CORPORATION, a California corporation,  
21 d.b.a. ALAMEDA COUNTY AUCTION;  
22 ADEL SAADEH, an individual,

22 Real Parties in Interest.

23 This matter came on regularly for hearing on May 24, 1999, in Department 707  
24 (formerly Department 50) of this Court on the Petition for Writ of Mandate filed by  
25 Petitioners CalMat Co., Pleasanton Gravel Co., and Rancho Del Charro, Inc.

26 Les A. Hausrath and David L. Preiss and Wendel, Rosen, Black & Dean, LLP,  
27 appeared on behalf of Petitioner CalMat Co. Richard C. Jacobs and Howard, Rice,  
28 Nemerovski, Canady, Falk & Rabkin appeared on behalf of Petitioners Pleasanton Gravel

WENDEL, ROSEN, BLACK & DEAN, LLP  
P.O. Box 2047  
Oakland, California 94604-2047

1 Co., and Rancho Del Charro, Inc. Craig Labadie and McDonough, Holland & Allen  
2 appeared for Respondent City of Livermore and Real Parties in Interest Saadeh  
3 Corporation, dba Alameda County Auction, and Adel Saadeh. Roy O. Gorman appeared  
4 for Real Party in Interest Johnson/Himsl Partnership.

5 The Court having reviewed the record of Respondent's administrative proceedings  
6 in this matter and having considered the briefs submitted by the parties and the arguments  
7 of counsel, and the matter having been submitted for decision, the Court issued its Order  
8 on Petition for Writ of Mandate, dated June 2, 1999, granting Petitioners' Petition For  
9 Writ of Mandate and ordering that a Writ of Mandate issue in this proceeding.

10 Upon the motion of Respondent and Real Parties in Interest, and the Court having  
11 considered the briefs submitted by the parties and the arguments of counsel at a hearing  
12 on June 23, 1999, and the matter having been submitted for decision, the Court issued its  
13 minute order Ruling on Motion for Order Specifically Addressing Alleged Grounds for  
14 CEQA Noncompliance, dated June 25, 1999. In said Ruling, the Court found and  
15 determined that its Order dated June 2, 1999 fully complied with the requirements of  
16 CEQA and that, although neither party timely requested a Statement of Decision, the  
17 Court would amend its June 2, 1999 Order to specifically address what the Court found to  
18 be noncompliance by the City with CEQA requirements and to specify what actions by  
19 the City are necessary to comply with CEQA.

20 Whereupon, the Court having issued its Amended Order on Petition for Writ of  
21 Mandate, dated July 12, 1999, granting Petitioners' Petition for Writ of Mandate and  
22 ordering that a Writ of Mandate issue in this proceeding.

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 24 1. Judgment be entered in favor of Petitioners in accordance with the Court's  
25 Amended Order on Petition for Writ of Mandate, dated July 12, 1999.
- 26 2. The Court hereby makes the following findings of fact and conclusions of law:
- 27 (a) The Court fails to find substantial evidence in the record to support the  
28 City's decision to certify the EIR and approve the Project. The City's environmental

1 determinations are not supported by substantial evidence in the record in the following  
2 respects: (1) the EIR contained an inadequate and incomplete Project description. The  
3 Project is improperly characterized as "temporary" and "intermittent" when it may likely  
4 be renewed after five years. The auction's proposed attendance is understated and  
5 reasonably foreseeable future expansion activities are not considered; (2) the EIR did not  
6 adequately address traffic/safety impacts, e.g., the potential backup onto I-580 and the  
7 safety of truck and car traffic mixing; (3) the EIR did not adequately discuss the safety  
8 aspects of parking for the Project; (4) the Supplemental Traffic Analysis and Final EIR  
9 improperly rested its conclusions on unbuilt roadway improvements; (5) the EIR failed to  
10 adequately discuss cumulative impacts of the Project in conjunction with three other  
11 Projects in the same area: (i) Staples Ranch; (ii) Dublin Ranch; and (iii) proposed work  
12 on the Arroyos; (6) the EIR failed to discuss what is going to happen to the vacant 37-  
13 acre property immediately adjacent to the Project property, designated "Business and  
14 Commercial Park" use, and owned by Real Party In Interest Johnson/Himsl; (7) the EIR  
15 did not contain an adequate comparative factual analysis of the potential alternatives to  
16 the Project as required by CEQA; (8) the EIR did not adequately identify/mitigate certain  
17 inconsistencies with the applicable General and Specific Plans and Zoning Ordinances, as  
18 follows: (i) the Project violates the City of Livermore General Plan which requires  
19 commercial development to pay its "fair share" of public infrastructure and services; (ii)  
20 the Project violates the City of Livermore General Plan re: new development to be located  
21 adjacent to established urban areas, except where "special conditions warrant" (no  
22 "special conditions" mentioned in EIR); (iii) the Project affects the City of Livermore  
23 General Plan policy and the City of Pleasanton's Stoneridge Drive Specific Plan policy  
24 re: extension of Stoneridge Drive and its realignment with Freisman Rd.; and (iv) the  
25 Project violates the City of Livermore Zoning Ordinance that specifically governs  
26 "temporary uses."

27 (b) The Court also finds that the City abused its discretion in failing to  
28 proceed in the manner required by law, using an erroneous legal standard in its review of

1 the EIR/Project. Specifically, the EIR did not use the correct CEQA legal standard to  
2 determine whether the Project's Traffic Impacts would have a "significant effect on the  
3 environment."

4 3. A peremptory writ of mandate, in the form attached hereto, shall issue  
5 immediately under the seal of this Court directed to Respondent City of Livermore, (a)  
6 ordering Respondent to void, vacate and set aside: (i) its certification dated June 22,  
7 1998, of the environmental impact report at issue in this litigation; and (ii) its decisions  
8 approving the Planned Unit Development Permit (P.U.D. #125) and the Development  
9 Agreement (D.A. #49-98) 98, each of which is at issue in this litigation; and (b) ordering  
10 Respondent: (i) to issue a supplemental EIR and adopt a Statement of Overriding  
11 Considerations, if applicable; and (ii) to take those other specific actions necessary to  
12 bring its actions into compliance with the Amended Order on Petition for Writ of  
13 Mandate, this judgment, the peremptory writ of mandate, and applicable law;

14 4. Pursuant to Public Resources Code Section 21168.9, Respondent and Real  
15 Parties in Interest are hereby directed to suspend any further physical activities relating to  
16 the Project, until Respondent has complied with the Amended Order on Petition for Writ  
17 of Mandate, this judgment, the peremptory writ of mandate, and applicable law;

18 5. Petitioners be awarded their costs of suit;

19 6. The Court reserves jurisdiction to determine, upon motion by Petitioners,  
20 whether to award attorneys' fees to Petitioners pursuant to applicable law, and, if so, in  
21 what amount; and

22 7. The Court reserves jurisdiction to determine, by return to the peremptory writ  
23 of mandate, whether Respondent has taken those actions necessary to comply with the

24 ///  
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28 ///

Cakland, California 91604-2047



1 Court's Amended Order on Petition for Writ of Mandate, this judgment, the peremptory  
2 writ of mandate, and applicable law.

3 Dated: <sup>Sept 27</sup> August \_\_, 1999

4  
5  
6 GEORGE C. HERNANDEZ  
7 Judge of the Superior Court  
8

9 APPROVED AS TO FORM:

10 By Harriet Steiner  
11 HARRIET A. STEINER, ESQ.  
12 McDonough, Holland & Allen, Counsel for  
13 Respondent City of Livermore and Real Parties In  
Interest Saadeh Corporation and Adel Saadch

14 APPROVED AS TO FORM:

15  
16 By ROY O. GORMAN, ESQ.  
17 Counsel for Real Party In Interest  
18 Johnson/Himsl Partnership  
19  
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WENDEL ROSEN EIAL LLP  
P.O. Box 2047  
Oakland, California 94604-2047

1 Court's Amended Order on Petition for Writ of Mandate, this judgment, the peremptory  
2 writ of mandate, and applicable law.

3 Dated: August \_\_, 1999  
4  
5

6 GEORGE C. HERNANDEZ  
7 Judge of the Superior Court  
8

9 APPROVED AS TO FORM:  
10

11 By HARRIET A. STEINER, ESQ.  
12 McDonough, Holland & Allen, Counsel for  
13 Respondent City of Livermore and Real Parties In  
Interest Saadeh Corporation and Adel Saadeh

14 APPROVED AS TO FORM:  
15

16 By   
17 ROY S. GORMAN, ESQ.  
18 Counsel for Real Party In Interest  
19 Johnson/Himsl Partnership  
20  
21  
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23  
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25  
26  
27  
28

Calland, California 91604-2047





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6 Richard C. Jacobs (No. 49538)  
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10 Facsimile: 415/217-5910

11 Attorneys for Petitioners and Plaintiffs  
12 PLEASANTON GRAVEL CO. AND RANCHO  
DEL CHARRO, INC.

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ALAMEDA

16 CALMAT CO., a Delaware corporation;  
17 PLEASANTON GRAVEL CO., a California  
corporation; RANCHO DEL CHARRO,  
18 INC., a California corporation,

19 Petitioners and Plaintiffs,

20 v.

21 CITY OF LIVERMORE, a municipal  
corporation; DOES 1 through 20,

22 Respondents and Defendants.

23  
24 JOHNSON/HIMSL PARTNERSHIP, a  
California general partnership; SAADEH  
CORPORATION, a California corporation,  
25 d.b.a. ALAMEDA COUNTY AUCTION;  
ADEL SAADEH, an individual,  
26

27 Real Parties in Interest.  
28

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 03 2000

CLERK OF THE SUPERIOR COURT

By ROSANNE CASE

Deputy

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE, HEREBY GIVEN, that on February 23, 2000, the  
3 Honorable George C. Hernandez, Judge of the Superior Court, signed and entered the  
4 attached order granting Petitioners' motion for award of attorneys' fees. This order awards  
5 Petitioners attorneys' fees of \$246,866.25 and costs of \$5,522.48 as against Respondent City  
6 of Livermore and Real Parties in interest Johnson/Himsl Partnership, a California general  
7 partnership, and Saadeh Corporation, a California corporation, dba Alameda County Auction.

8  
9 DATED: February 29, 2000.

10 Respectfully,

11 RICHARD C. JACOBS  
12 HOWARD, RICE, NEMEROVSKI, CANADY,  
13 FALK & RABKIN  
14 A Professional Corporation

15 By: *Richard C. Jacobs*  
16 RICHARD C. JACOBS

17 Attorneys for Petitioners and Plaintiffs  
18 PLEASANTON GRAVEL CO. AND RANCHO  
19 DEL CHARRO, INC.

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WD 022900/F-1238111/W11/818842/v1

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10 Facsimile: 415/217-5910

11 Attorneys for Petitioners and Plaintiffs  
12 PLEASANTON GRAVEL CO. AND RANCHO  
DEL CHARRO, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ALAMEDA

16 CALMAT CO., a Delaware corporation;  
17 PLEASANTON GRAVEL CO., a California  
corporation; RANCHO DEL CHARRO,  
18 INC., a California corporation,

19 Petitioners and Plaintiffs,

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21 CITY OF LIVERMORE, a municipal  
corporation; DOES 1 through 20,

22 Respondents and Defendants.

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24 JOHNSON/HIMSL PARTNERSHIP, a  
California general partnership; SAADEH  
CORPORATION, a California corporation,  
25 d.b.a. ALAMEDA COUNTY AUCTION;  
26 ADEL SAADEH, an individual,

27 Real Parties in Interest.  
28

**ENDORSED  
FILED**

FEB 25 2000

RONALD G. OVERHOLT, Exec. Off./Clerk  
By GR Solberg, Deputy

No. V016022-3

ORDER GRANTING PETITIONERS'  
MOTION FOR AWARD OF  
ATTORNEYS' FEES  
(C.C.P. §1021.5)

1           Petitioners' Motion for an Award of Attorneys' Fees pursuant to C.C.P. §1021.5  
2 (the "Motion") against Respondent City of Livermore and Real Parties in Interest  
3 Johnson/Himsl Partnership, Saadch Corporation dba Alameda County Auction, and Adel  
4 Saadeh, came on regularly for hearing on January 19, 2000, in Department 705 of this Court.

5           David L. Preiss and Wendel, Rosen, Black & Dean, LLP, appeared on behalf of  
6 Petitioner CalMat Co. Richard C. Jacobs and Howard, Rice, Nemerovski, Canady, Falk &  
7 Rabkin appeared on behalf of Petitioners Pleasanton Gravel Co., and Rancho Del Chano, Inc.  
8 Craig Labadie and McDonough, Holland & Allen appeared for Respondent City of  
9 Livermore and, together with Richard M. Osborne and Law Offices of Richard M. Osborne,  
10 appeared for Real Parties in Interest Saadeh Corporation, dba Alameda County Auction, and  
11 Adel Saadeh. There was no appearance for Real Party in Interest Johnson/Himsl Partnership.

12           The Court, having considered the briefs, declarations and other papers submitted  
13 by the parties and the arguments of counsel, and the Court having issued its minute Order,  
14 dated January 25, 2000, granting the Motion, IT IS HEREBY ORDERED, ADJUDGED  
15 AND DECREED that:

- 16           1.     Petitioners' Motion is granted.
- 17           2.     Petitioners are entitled to an award of attorneys' fees and costs under Code  
18 of Civil Procedure §1021.5. Based on their Petition filed herein, Petitioners obtained a  
19 Judgment Granting Peremptory Writ of Mandate and a Peremptory Writ of Mandate setting  
20 aside (i) Respondent City's certification of the Environmental Impact Report (EIR) for Real  
21 Parties in Interest's proposed auto auction project at issue in this litigation, and  
22 (ii) Respondent City's decisions approving the Planned Unit Development Permit and  
23 Development Agreement for that project. The Judgment included findings of fact and  
24 conclusions of law that specify the lack of substantial evidence in the record to support the  
25 City's decision to certify the EIR and approve the project and that specify the manner in  
26 which the City abused its discretion in failing to proceed in the manner required by law.  
27 Petitioners' actions in the administrative proceedings leading up to this litigation and  
28 Petitioners' successful pursuit of this litigation have resulted in the enforcement of important



1 rights affecting the public interest and have conferred significant benefits upon a large class  
2 of persons and the general public. The Court further finds that the necessity and financial  
3 burden of private enforcement are such as to make the award of attorneys' fees and costs  
4 appropriate in this case.

5 3. Petitioners are awarded attorneys' fees of \$246,866.25 and costs of  
6 \$5,522.48 as against Respondent City of Livermore and Real Parties in Interest  
7 Johnson/Himsl Partnership, a California general partnership, and Saadeh Corporation, a  
8 California corporation, dba Alameda County Auction. Of these amounts, Petitioner  
9 CALMAT CO. is awarded attorneys' fees of \$189,660.25 and costs of \$3,616.02, and  
10 Petitioners PLEASANTON GRAVEL CO. and RANCHO DEL CHARRO, INC. are awarded  
11 attorneys' fees of \$57,206 and costs of \$1,906.46.

12 4. Real Party in Interest Adel Saadeh, individually, shall not have any personal  
13 liability for this award of attorneys' fees.

14 5. Interest shall accrue on this award from January 25, 2000, at the legal rate.

15  
16 Dated: FEB 23 2000, 2000.

17  
18 ~~GEORGE C. HERNANDEZ, JR.~~  
19 GEORGE C. HERNANDEZ  
20 Judge of the Superior Court  
21  
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1 APPROVED AS TO FORM:

2 By: \_\_\_\_\_  
3 CRAIG LABADIE, ESQ.  
4 McDonough, Holland & Allen, Counsel for  
5 Respondent City of Livermore and Real Parties in  
6 Interest Saadeh Corporation and Adel Saadeh

7 APPROVED AS TO FORM:

8 By: \_\_\_\_\_  
9 RICHARD M. OSBORNE, ESQ.  
10 Law Offices of Richard M. Osborne, Counsel for  
11 Real Parties in Interest Saadeb Corporation and Adel Saadeh

12 APPROVED AS TO FORM:

13 By: \_\_\_\_\_  
14 ROY GORMAN, ESQ.  
15 Counsel for Real Party in Interest Johnson/Himsl Partnership  
16  
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1 PROOF OF SERVICE BY MAIL

2 I am employed in the City and County of San Francisco, State of California. I am  
3 over the age of eighteen (18) years and not a party to the within action; my business address  
4 is Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4065.

5 I am readily familiar with the practice for collection and processing of documents  
6 for mailing with the United States Postal Service of Howard, Rice, Nemerovski, Canady, Falk  
7 & Rabkin, A Professional Corporation, and that practice is that the documents are deposited  
8 with the United States Postal Service with postage fully prepaid the same day as the day of  
9 collection in the ordinary course of business.

10 On February 29, 2000, I served the foregoing document(s) described as NOTICE  
11 OF ENTRY OF ORDER GRANTING PETITIONERS' MOTION FOR AN AWARD OF  
12 ATTORNEYS' FEES on the persons listed below by placing the document(s) for deposit in  
13 the United States Postal Service through the regular mail collection process at the law offices  
14 of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, A Professional Corporation, located  
15 at Three Embarcadero Center, 7th Floor, San Francisco, California, to be served by mail  
16 addressed as follows:

17  
18 Les Hausrath, Esq.  
19 David L. Preiss, Esq.  
20 Wendel, Rosen, Black & Dean  
21 1111 Broadway, 24th Floor  
22 Oakland, CA 94607  
23 Facsimile 510/834-1928  
24 Tel. No.: 510/834-6600  
25 Attorneys for Petitioners/Plaintiffs,  
26 Calmat Company

Roy Gorman, Esq.  
436 14th Street, Suite 13  
Oakland, CA 94612  
Facsimile 510/496-3311  
Tel. No.: 510/465-4494  
Attorneys for RPI:  
Johnson-Himsl Partnership, Charlotte  
Himsl

WARD  
RICE  
ROVSKI  
NADY  
FALK  
RABKIN  
Prof Corporation

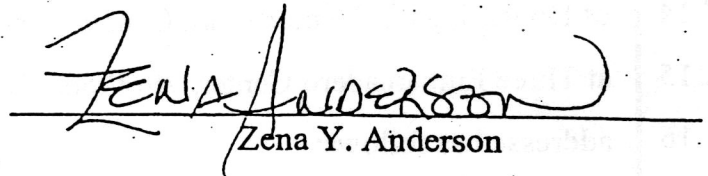
1 Geoff Etnire, Esq.  
2 4900 Hopyard, Suite 100  
3 Pleasanton, CA 94588  
4 Facsimile 925/734-9170  
5 Tel. No.: 925/734-9950  
6 Attorneys for RPI, Adel Saadeh

7 Craig Labadie, Esq.  
8 McDonough, Holland & Allen  
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11 Facsimile 510/839-9104  
12 Tel. No.: 510/839-8780  
13 Attorneys for RPI: Saadeh Corporation  
14 dba Alameda County Auction; Adel  
15 Saadeh

Thomas R. Curry, City Attorney  
Gabrielle P. Whelan, Esq.  
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Tel. No.: 510/373-5121  
Attorneys for Respondent/Defendant,  
City of Livermore

Richard M. Osborne, Esq.  
Alameda County Auction  
1 Calypso Lane  
San Carlos, CA 94070  
Facsimile: 650/802-0985  
Tel. No. 650/802-9940  
Co-Counsel for RPI, Saadeh Corporation  
dba Alameda County Auction, Adel Saadeh

16 I declare under penalty of perjury that the foregoing is true and correct. Executed  
17 at San Francisco, California on February 29, 2000.

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Zena Y. Anderson