



Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number:
P.C. 08/11/04 Item:

File Number:
GP03-05-04 and UGB03-01

Council District and SNI Area:
5 – N/A

Major Thoroughfares Map Number:
69

Assessor's Parcel Number(s):
612-29-002, -003

Project Manager: Elena Lee

GENERAL PLAN REPORT

2004 Summer Hearing

PROJECT DESCRIPTION:

General Plan amendment request to amend the Land Use/Transportation Diagram to allow for the minor expansion of the Urban Growth Boundary and the expansion of the Urban Service Area to allow for connection to City services.

LOCATION: North side of Fleming Avenue, between Impresario Way and Warner Drive (1230 and 1238 Fleming Avenue)

ACREAGE: 2 Acres

APPLICANT/OWNER:

Mark Thomas & Company/Carl & Helen Gunnels Trust

GENERAL PLAN LAND USE / TRANSPORTATION DIAGRAM DESIGNATION:

Existing Designation: Non-Urban Hillside and outside the Urban Growth Boundary and the Urban Service Area

Proposed Designation: Non-Urban Hillside and inside the Urban Growth Boundary and the Urban Service Area

EXISTING ZONING DISTRICT(S): Unincorporated County

SURROUNDING LAND USES AND GENERAL PLAN DESIGNATION(S):

North: Single-Family Residential and Vacant – Non-Urban Hillside

South: Single-Family Residential – Low Density Residential (5 DU/AC)

East: Vacant – Non-Urban Hillside

West: Single-Family Residential and Vacant – Non-Urban Hillside

ENVIRONMENTAL REVIEW STATUS:

Mitigated Negative Declaration pending

PLANNING STAFF RECOMMENDATION:

Non-Urban Hillside and inside the Urban Growth Boundary and Urban Service Area

Approved by:

Date:

PLANNING COMMISSION RECOMMENDATION:

CITY COUNCIL ACTION:

CITY DEPARTMENT AND PUBLIC AGENCY COMMENTS RECEIVED:

- Department of Transportation (DOT) – The proposed land use change would not result in a long-term traffic impact.
- Pacific Gas and Electric (PG&E) – PG&E has no comments.
- Department of Public Works (DPW) – There are no significant Public Works issues or constraints for this site. The project is located in a Geological Hazard Zone and a State Landslide Zone. However, the project will incorporate General Plan policies for appropriate mitigation.
- Santa Clara Valley Water District (SCVWD) – The SCVWD has no comments on the proposed amendment.
- Valley Transportation Agency (VTA) – VTA has no comments on the proposal.

GENERAL CORRESPONDENCE:

- None received.

ANALYSIS AND RECOMMENDATIONS:

PROJECT DESCRIPTION

This is a privately initiated General Plan amendment for a minor expansion of the Urban Growth Boundary and expansion of the Urban Service Area for a site located at the north side of Fleming Avenue, between Warner Drive and Impresario Way (1230 and 1238 Fleming Avenue). The applicant is requesting to amend the location of both the Urban Growth Boundary and Urban Service area to include an approximately one-acre portion of the two-acre site in order to allow connection to City services for the existing single-family residences. Because the current septic sewage disposal systems for the existing houses are failing, the applicant would like to connect the homes to the City's sanitary sewer system.

The property has a General Plan designation of Non-Urban Hillside. The Non-Urban Hillside designation is one that applies to most hillside areas above the fifteen percent slope line. These areas are comprised of hills that are typically subject to geologic conditions, such as landslides and earthquake faults, which create a need to limit uses to those having very little physical impact on the land. Very low intensity uses, such as grazing, tree farming or very large lot residential estates are potential uses under this category. The policies of the General Plan generally seek to preserve hillsides as an important visual and natural resource. Because of the potential for seismic, landslide, fire and other environmental hazards, the General Plan policies for hillside development also typically limit development to those hillsides that are below the fifteen percent slope line. However, this application does not propose a change to the Non-

Urban Hillside designation nor any new development. The applicant proposes only the expansion of the Urban Growth Boundary and the Urban Service Area to include the approximately one-acre portion of the two lots that is located below the fifteen percent slope line. Other than connection to the sanitary sewer, no change to the two existing residences is proposed.



Subject Site

The Urban Growth Boundary defines the ultimate limit of urbanization by setting limits to urban development both intended and anticipated in the General Plan. The Urban Service Area defines where services and facilities can be provided and directs development to those areas where services and facilities can be provided in an efficient and orderly manner. Per the General Plan, no expansion of the Urban Service Area is permitted outside the Urban Growth Boundary. These policies together govern the timing and location of future development and the extension of urban services. They ensure that development occurs in a logical manner and that the City can provide adequate services to its residents and businesses.

BACKGROUND

The applicant's proposed amendment site consists of two parcels. The westerly parcel is developed with two residences and several accessory structures. The easterly parcel is developed with one residence and several accessory structures. Only two of the residences, one on each parcel, are currently occupied. Although all three residences are within the area proposed for inclusion into the Urban Growth Boundary and Urban Service Area, the applicant is proposing to connect only the two occupied homes to the City's sanitary sewer system. No other improvements or changes are proposed for this project. The existing uses surrounding the site include single-family residential uses to the north, south and west. There is a vacant parcel directly to the east. The existing Urban Growth Boundary and Urban Service Area border the site's southern edge along Fleming Avenue. The parcel is currently an unincorporated pocket of the County of

Santa Clara. Prior to the connection to any City services, the parcel must be annexed and rezoned into the City of San Jose. The General Plan amendment represents one of the first steps in the complete process for this project. If annexed into the City, the site will likely require a Planned Development Zoning because in order to preserve and enhance the scenic and aesthetic quality of San Jose's hillsides, the General Plan Hillside Development policy requires that development on properties where the slope exceeds seven percent must be within a Planned Development Zoning District.



Residential Development To The South

ANALYSIS

The applicant's proposal is consistent with the Non-Urban Hillside Land Use/Transportation Diagram designation and with the principles of the San Jose 2020 General Plan policies on the Urban Growth Boundary and Urban Service Area. The expansion is proposed only for the portion of the site located below the fifteen percent slope line, which has been designated by the General Plan as more appropriate for more urban development.

Land Use Compatibility

The Non-Urban Hillside land use designation is reserved for most hillside areas that have pervasive geologic conditions and that would incur extraordinary public costs for development. Hillside areas that are located in geologically unstable areas, such as geohazard zones, and with slopes that typically exceed fifteen percent are usually designated as Non-Urban Hillside. Uses in this designation are typically limited to those having very little physical impact on the land because of geologic conditions that affect hillsides. However, the Non-Urban Hillside designation allows for higher intensity development in appropriate

areas, which typically are those areas below the fifteen percent slope line. The Land Use/Transportation Diagram does not show the exact location of the fifteen percent slope line. The fifteen percent slope line is intended as a general planning criterion to define the limit of urban land uses in the hillsides that border the valley floor. The General Plan states that the Non-Urban Hillside designation density should only be applied to areas above the fifteen percent slope line when the line is designated on site-specific proposals. The project is proposed for portions of the property that are below the fifteen percent slope line.



Residential Development to the North

Recognizing that the scale of the Land Use/Transportation Diagram is too large to identify smaller parcels that are two acres or less in size, the San Jose General Plan states that any developed parcels of two acres or less are deemed to be in conformance with the General Plan regardless how designated. For the purpose of the General Plan, a developed parcel is defined as one that has an existing urban land use. Because the subject parcels are each less than two acres in size and have already been developed with three residences and accessory structures in an unincorporated part of the County at a density of approximately 1.5 dwelling units per acre, the existing uses are deemed in conformance with the General Plan. Thus, the continued use of the existing residences and connection to City services do conform to the General Plan. The applicant does not propose to change the Non-Urban Hillside General Plan designation.

Title 18 Compliance

Section 18.30 of the San Jose Municipal Code establishes provisions for two types of modifications to the Urban Growth Boundary. A major modification to the Urban Growth Boundary can only be considered in the context of a major, comprehensive update of the General Plan, which fully considers all of the implications of expanding the limits of urbanization. Minor modifications to the Urban Growth Boundary

can be considered in the Annual review of the General Plan only if the proposal meets the criteria listed in Section 18.30.220. The proposal meets the requirements for a minor modification as explained below. The proposed modifications must:

1. *Be no larger than five acres in size, unless the proposal would further the goals of the Urban Growth Boundary by creating a permanent open space buffer or other clear limit to future urban development in the vicinity.*

The proposed one-acre expansion to the Urban Growth Boundary is less than the five-acre maximum allowable for a minor modification.

2. *Located below the fifteen percent slope line, as defined in the General Plan.*

The applicant proposes to expand the Urban Growth Boundary only to include the portion of the site that is located below the fifteen percent slope line. The applicant provided a topographic map that demonstrates that approximately half of the southern portion of the site is located below the fifteen percent slope line.

3. *Be contiguous to lands with an urban designation on the city's General Plan Land Use/Transportation Diagram.*

The site is contiguous to areas with an urban designation. The property on the opposite southerly side of Fleming Avenue is designated as Low Density Residential (5 DU/AC). The property directly to the east is also partially designated as Low Density Residential (5 DU/AC).

Urban Service Area Conformance

The expansion of the Urban Service Area is only permitted within areas within the Urban Growth Boundary. The Urban Service Area identifies the extent of services provided by the City and other public agencies, including sanitary sewer, storm drainage and other services. As stated above, the amendment site meets the requirements of the Municipal Code Title 18 for a minor expansion of the Urban Growth Boundary. Additionally, the City's Urban Growth Boundary Policy No. 2 states that lands located below the fifteen percent slope line and near or adjacent to urban development are deemed potentially suitable for urban development and urban services. The subject site is adjacent to existing City facilities for connection to City services. Therefore, extension of City services to the site would utilize existing public facilities.

ENVIRONMENTAL REVIEW

The proposed change in the General Plan land use designation on the subject site was analyzed in an initial study that resulted in a Mitigated Negative Declaration. The Initial Study determined that the change in land use would create a less than significant impact with mitigation measures in the following categories: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology, and Noise. The mitigation measures consist of implementation of existing General Plan policies.

PUBLIC OUTREACH

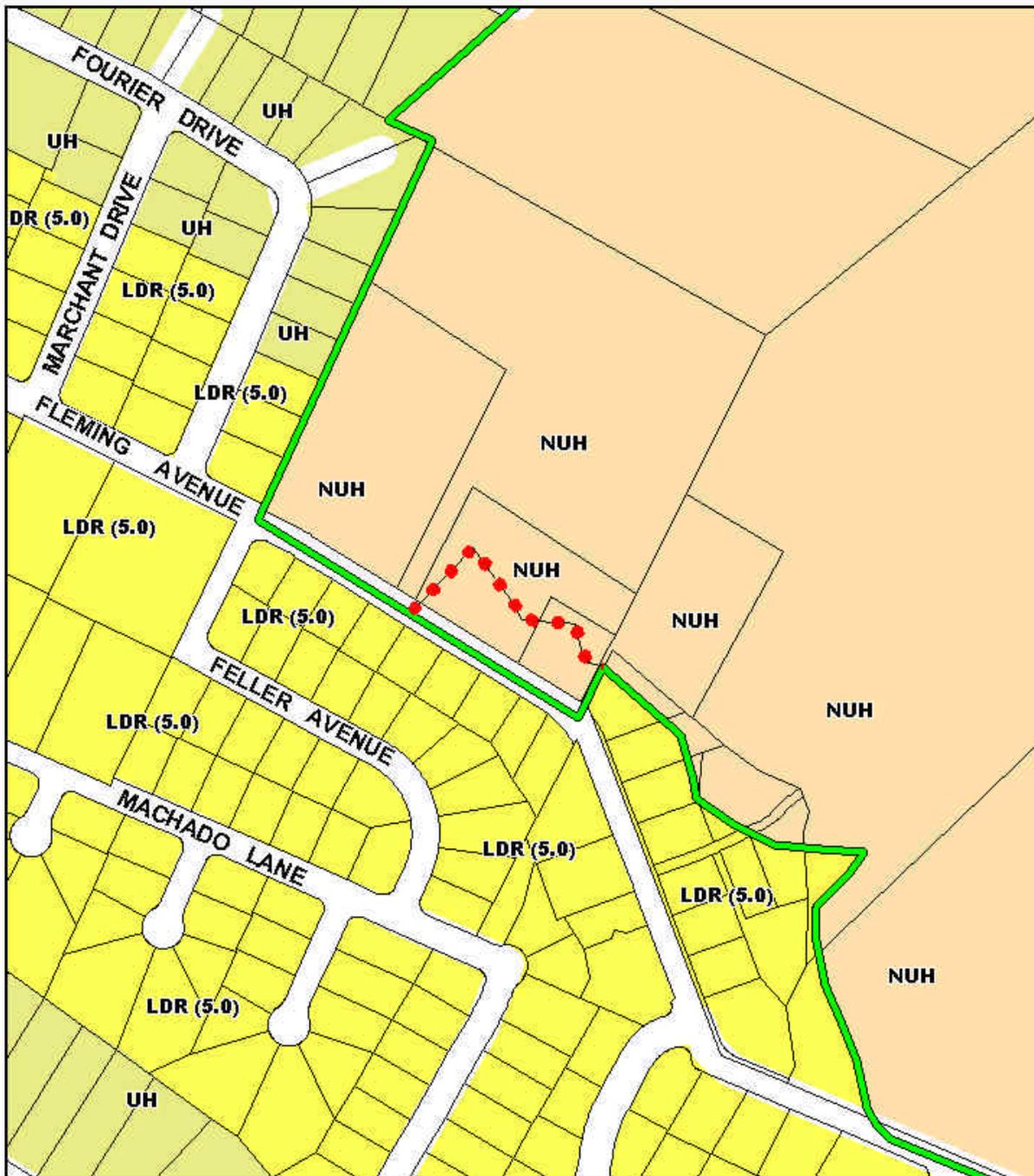
The property owners and occupants within a 1,000 foot radius were sent a newsletter regarding the two community meetings that were held on June 24th and 30th, 2004. They also received a notice of the Mitigated Negative Declaration and a notice of the public hearings to be held on the subject amendment before the Planning Commission on July 26th and City Council on September 7th, 2004. At the July 26th Planning Commission hearing, the Planning Commission agreed to defer the item to the August 11th Planning Commission hearing in order to allow adequate time to publish a notice of the proposed amendment in the San Jose Post Record, in accordance with City of San Jose Municipal Code Section 18.30. Information regarding this amendment, the General Plan process, staff reports and hearing schedules were also made available to the public on the Department's web site. Staff has also been available to answer questions from the public. Staff has not received any correspondences from the public on this amendment.

RECOMMENDATION

Planning staff recommends the approval of the proposed General Plan amendment for a minor expansion of the Urban Growth Boundary and expansion of the Urban Service Area for the inclusion of the approximately one-acre portion of the approximately two-acre site that is located below the fifteen percent slope line.

Attachments
PBCE002/GP_Team/2004Annual Review/Staff Reports/Spring Review/GP03-05-04.sr.doc

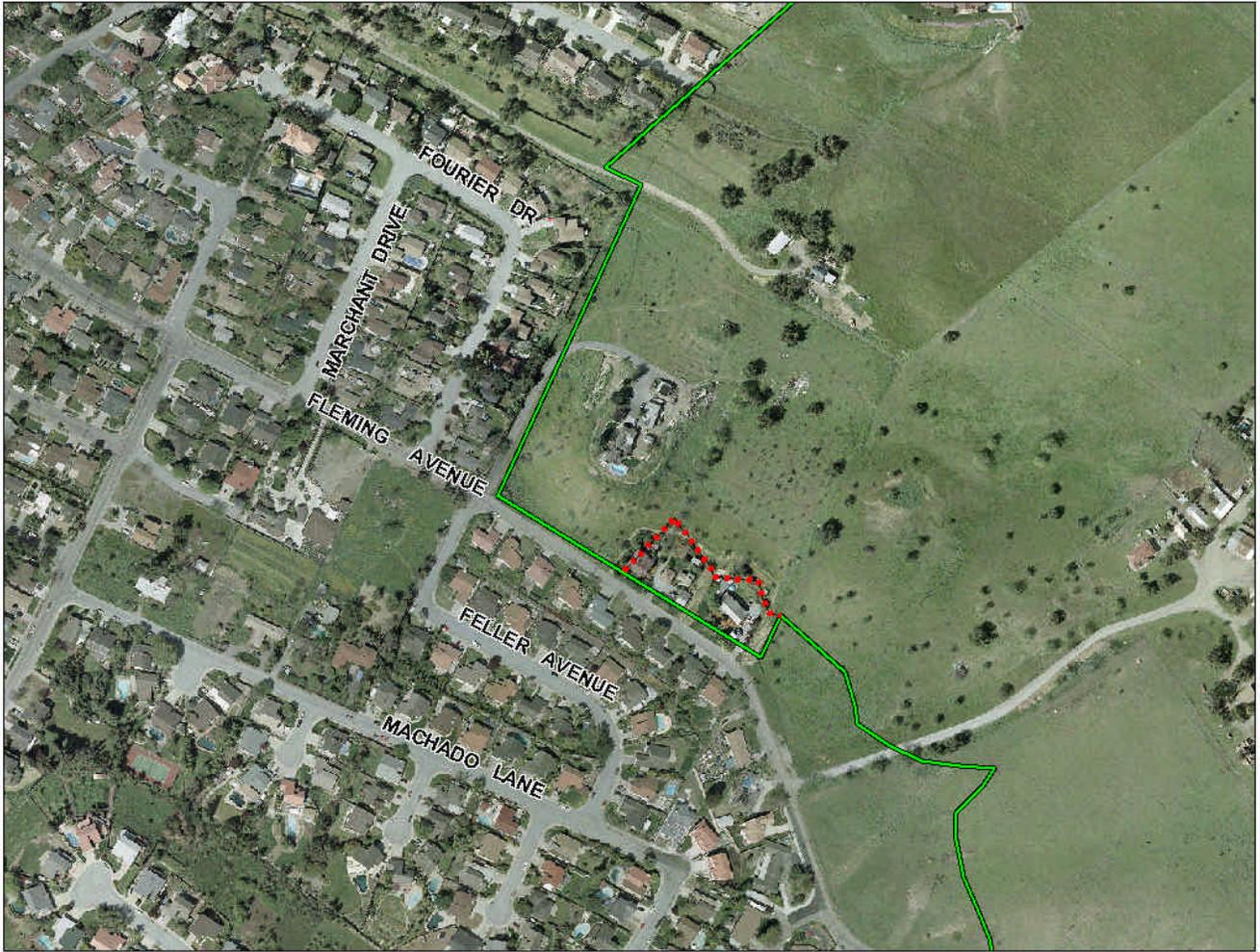
GP03-05-04




CITY OF SAN JOSE
CITY OF SILICON VALLEY
Department of Planning, Building
and Code Enforcement
Planning Services Division

-  Existing USA and UGB
-  Proposed USA and UGB Expansion


N
Scale 1" = 250'
Quad: 84





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

**DRAFT
MITIGATED NEGATIVE DECLARATION**

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

PROJECT FILE NUMBER: GP03-05-04 and UGB03-01

PROJECT DESCRIPTION: General Plan Amendment to change to allow for the expansion of the Urban Service Area and a minor expansion of the Urban Growth Boundary for property located at the north side of Fleming Avenue (1230 and 1238 Fleming Avenue) between Impresario Way and Warner Drive (see attached location map) on a two-acre site.

PROJECT LOCATION & ASSESSORS PARCEL #: the north side of Fleming Avenue (1230 and 1238 Fleming Avenue) between Impresario Way and Warner Drive. Assessor's Parcel # 612-29-002, -003.

COUNCIL DISTRICT: 5

NAME OF APPLICANT: Mark Thomas & Company

MAILING ADDRESS AND PHONE # OF APPLICANT CONTACT PERSON:

Attn: Sid Nash
90 Archer Street
San Jose, CA 95112
408-453-5373
FAX 408-453-5390

FINDING

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

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

1. Agricultural Lands and Prime Soils Policy # 3: Appropriate agricultural uses should be encouraged in hillside areas.
2. Agricultural Lands and Prime Soils Policy # 4: Preservation of agricultural lands and prime soils in non-urban areas should be fostered in order to retain the aquifer recharge capacity of these lands.
3. Air Quality Policy # 3: The City should urge effective regulation of those sources of air pollution, both inside and outside of San Jose, which affect air quality. In particular, the City should support Federal and State regulations to improve automobile emission controls.
4. Air Quality Policy # 6: The City should continue to actively enforce its ozone-depleting compound ordinance and supporting policy to ban the use of chlorofluorcarbon compounds (CFCs) in packaging and in building construction and remodeling to help reduce damage to the global atmospheric ozone layer. The City may consider adopting other policies or ordinances to reinforce this effort.
5. Woodlands, Grasslands, Chaparral and Scrub Policy # 4: Grading should be designed to minimize the removal of significant vegetation.
6. Woodlands, Grasslands, Chaparral and Scrub Policy # 5: The City should preserve and protect Oak woodlands, and individual oak trees, to the greatest extent feasible.
7. Woodlands, Grasslands, Chaparral and Scrub Policy # 6: The City should encourage appropriate reforestation and planting projects in hillside areas.
8. Species of Concern Policy # 1: Habitat areas that support Species of Concern should be retained to the greatest extent feasible.
9. Species of Concern Policy # 4: New development on undeveloped properties throughout the City contributes to the regional loss of Burrowing Owl Habitat. To offset this loss of habitat, the City should require either habitat preservation on or off site or other appropriate measures for habitat acquisition, habitat enhancement and maintenance of local habitat bank.
10. Urban Forest Policy #2: Development projects should include the preservation of ordinance-sized and other significant trees. Any adverse affect on the health and longevity of native oaks, ordinance sized or other significant trees should be avoided through appropriate design measures and construction practices. When tree preservation is not feasible, the project should include appropriate tree replacement.
11. Urban Forest Policy #3: The City encourages the maintenance of mature trees on public and private property as an integral part of the urban forest. Prior to allowing the removal of any mature tree, all reasonable measures that can effectively preserve the tree should be pursued.
12. Urban Forest Policy #8: Where urban development occurs adjacent to natural plant communities (e.g. oak woodland, riparian forest), landscape plantings should incorporate tree species native to the area to the greatest extent feasible.

13. Historic, Archeological, and Cultural Resources Policy #1: Because historically or archeologically significant sites, structures, and districts are irreplaceable resources, their preservation should be a key consideration in the development review process.
14. Historic, Archeological, and Cultural Resources Policy #9: Recognizing that Native American burials may be encountered at unexpected locations, the City should impose a requirement on all development permits and tentative subdivision maps that upon discovery of such burials during construction, development activity will cease until professional archaeological examination and reburial in an appropriate manner is accomplished.
15. Hillside Policy #2 Clustering of residential development in hillside areas should be encouraged to minimize the exposure of development to environmental hazards and maximize the preservation of natural resources in the hillsides.
16. Hillside Policy #3 Hillside residential development at urban densities (one dwelling unit per acre or greater) should be located only where adequate services and facilities can be feasibly provided and damage to such services and facilities, due to landslides, fire or other environmental hazards, can be reasonably avoided.
17. Hazards Policy #1 Development should only be permitted in hillside areas if potential danger to the health, safety, and welfare of the residents, due to landslides, fire, or other environmental hazards, can be mitigated to an acceptable level.
18. Hillside Policy #15 Hillside development within areas of potential geological hazards should be designed to avoid being endangered by, or contributing to, the hazardous conditions on the site or on adjoining properties.
19. Soils and Geologic Conditions Policy #1 The City should require soils and geologic review of development proposals to assess such hazards as potential seismic hazards, surface ruptures, liquefaction, landsliding, mudsliding, erosion and sedimentation in order to determine if these hazards can be adequately mitigated.
20. Soils and Geologic Conditions Policy #6 Development in areas subject to soils and geologic hazards should incorporate adequate mitigation measures.
21. Earthquakes Policy #1: The City should require that all new buildings be designed and constructed to resist stresses produced by earthquakes.
22. Water Resource Policy #12: For all new discretionary development permits for projects incorporating large paved areas or other hard surfaces (e.g. building roofs), or major expansion of a building or use, the City should require specific construction and post-construction measures to control the quantity and improve the water quality of urban runoff.
23. Noise Policy #1: The City's acceptable noise level objectives are 55 DNL as the long-range exterior noise quality level, 60 DNL as the short-range exterior noise quality level, 45 DNL as the interior noise quality level, and 76 DNL as the maximum exterior noise level necessary to avoid significant adverse health effects. These objectives are established for the City, recognizing that the attainment of exterior noise quality levels in the environs of the San José International Airport the Downtown Core Area, and along major roadways may not be achieved in the time frame of this Plan. To achieve the noise objectives, the City should require appropriate site and building design, building construction and noise attenuation techniques in new residential development.
24. Noise Policy #9: Construction operations should use available noise suppression devices and techniques.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **July 26, 2004**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

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

Circulated on: _____

Deputy

Adopted on: _____

Deputy