

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

Hearing Date/Agenda Number
P.C. 10/26/05 Item # 4.c.

File Number
PDA 94-016-02

Application Type
Planned Development Amendment Permit

Council District
4

Planning Area
North San Jose

Assessor's Parcel Number(s)
097-45-047

STAFF REPORT

PROJECT DESCRIPTION

Completed by: **Sanhita Mallick**

Location: **Southwest corner of Trimble Road and Orchard Parkway**

Gross Acreage: **84.3 acres**

Net Acreage: **84.3 acres**

Net Density: **n/a**

Existing Zoning: **IP(PD) Planned Development Zoning**

Existing Use: **Research, Development & Manufacturing, Office**

Proposed Zoning: **No Change**

Proposed Use: **No Change in Use**

GENERAL PLAN

Completed by: **SM**

Land Use/Transportation Diagram Designation
Industrial Park

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **SM**

North: **Office Use**

IP-Industrial Park

East: **Office Use**

IP-Industrial Park

South: **Office Use**

IP-Industrial Park

West: **Office Use**

IP-Industrial Park

ENVIRONMENTAL STATUS

Completed by: **SM**

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on June 27, 2005

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: **SM**

Annexation Title:

Date:

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

PROPERTY OWNER/APPLICANT/CONTACT PERSON

AGILENT TECHNOLOGIES INC
395 Page Mill Road
Palo Alto CA 94303

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: **Sanhita Mallick**

Department of Public Works

See attached memorandum

Other Departments and Agencies

See attached memorandum from Fire Department.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

This is an appeal of the Planning Director's decision to approve a Planned Development Permit Amendment to allow expansion of an existing ammonia gas vault to accommodate four 26,400 pound ammonia storage containers at an existing industrial manufacturing facility. As a result of the appeal of the Planning Director's decision, the Planning Commission becomes the decision-making body for this permit amendment. The Commission's decision will be final.

The permit amendment was originally scheduled for the Planning Director's public hearing on June 29, 2005. The item was deferred or continued three times during the next 6 weeks in response to requests from nearby property owners to allow more time for those property owners to review and comment on the project, and for the project applicant to provide responses to those comments. To further facilitate a better understanding of the proposed project, on August 26, 2005, staff coordinated a meeting with the applicant and the consultant team, neighboring property owners and City staff from Planning and the Fire Department, particularly to focus on technical information on hazardous materials systems design issues. The permit amendment for the project was approved by the Director of Planning on September 13, 2005. On September 23, 2005, CarrAmerica, and industrial property owner within 1000 feet of the project site, filed an appeal of the Planning Director's decision to approve the permit amendment. (see attached appeal form).

Reason for the Appeal

The reason for the appeal as stated on the attached appeal form is that:

1. "Proposed project will negatively impact use and enjoyment of adjacent properties"
2. "Land use and hazardous material impacts of project were not adequately addressed in light of recently approved North San Jose Development Policy Update".

Based on testimony received during the Director's Public Hearings, the main public concerns are with the potential hazards associated with the transportation, handling and use of the ammonia and that the proposed increase in ammonia storage is indicative of an unacceptable expansion in the proposed use in light of recent policy changes that encourage more intensive, mixed use development (including residential) in the adjacent North San Jose Industrial Core Area.

PROJECT DESCRIPTION

The proposed project consists of an expansion of the existing chemical (ammonia) storage facilities currently located at the 84.3-acre Agilent Technologies Trimble Road Campus located in the North San José Redevelopment Area on Trimble Road at Orchard Parkway. The subject site is located at the southwest corner of Trimble Road and Orchard Parkway and is across from the North San Jose Industrial Core Area as delineated in the North San Jose Policy update. The Core Area allows for up to 25 percent residential use on selected sites.

The project site is zoned IP(PD) Planned Development which allows the uses of Industrial Park Zoning district. The current primary use of the site is research, development and associated manufacturing, which is a permitted use both in this Planned Development zoning district and the surrounding IP Industrial Park Zoning District.

Surrounding land uses to the project site include business offices located in IP-Industrial Park zoning districts to the north, east and south of the project site and the Guadalupe River to the west of the site.

The site is presently developed with three buildings with a total of approximately 457,000 square feet in area, and 1260 parking spaces. The existing buildings are used for office, research and development (R&D), and industrial manufacturing. Development of the site was originally permitted through the Planned Development Zoning (File No. PDC93-05-017) and a Planned Development Permit for the facility (File No. PD 94-05-16) issued approximately 11 years ago.

The current manufacturing processes that have been occurring on the site require the use of ammonia for the production of light-emitting diodes (LEDs) and LED devices in Agilent Building 91 used for various applications, including in automobile lights (brake, signal, headlights, etc.), bicycle headlights, camera, phone and television displays, and specialized landscape and general lighting. The LEDs are manufactured by Lumileds Lighting, LLC, a joint venture of Agilent Technologies and Phillips Semiconductor. The facility currently uses and stores, and has been using and storing for approximately 27 years, a range of industrial gases (including nitrogen, hydrogen, and anhydrous ammonia) as part of their manufacturing processes. Four, 500-pound cylinders of anhydrous ammonia are currently used on the site, with an additional four, similar 500-pound cylinders stored within a fenced enclosure. Currently, one or more of these pre-filled cylinders, which are well-designed pressure vessels, are delivered to the site in open trucks in the same way standard gas cylinders are transported. Currently, 150,000 pounds of ammonia are used for production on the site annually, which use is projected to increase through full implementation of the manufacturing processes through 2009.

The gas storage and handling systems on the project site consist of the following five components:

1. A covered and fenced outside storage area for a gas vault to store up to four 26,400-pound anhydrous ammonia containers; and
2. The installation of up to four 26,400 pound anhydrous ammonia bulk containers built to ISO specifications; and
3. Associated gas distribution systems built to the satisfaction of Fire Chief of the City of San Jose, that include, among other elements, the following: an excess flow valve to stop outflow from the gas manifold when the flow exceeds a specified 100 pounds per square

- inch gauge pressure (psig) value; a reduced flow orifice, which would allow a “worst case” flow rate of 8.02 pounds per minute; and
4. Gas detection systems consisting of gas detection equipment connected to alarms and automatic shut-offs, to be installed at container valves, at the connections to the proposed high pressure control (gas) manifold, and the existing manual valve manifold box, which feeds to the process reactors in Building 91, all installed and maintained to the satisfaction of the Fire Chief of the City of San Jose; and
 5. Emergency dry scrubber abatement systems installed and maintained to the satisfaction of the Fire Chief of the City of San Jose using activated carbon/alumina media. The final treatment capacity of the emergency dry scrubber abatement system will be sized to handle the worst-case release flow of 8.02 pounds per minute (per Item 2c above) and shall be installed and maintained to the satisfaction of the Fire Chief of the City of San Jose.

Ammonia is a colorless gas with an extremely pungent odor, and is an irritant and corrosive to the skin, eyes, respiratory tract and mucous membranes. Ammonia may cause severe chemical burns to the eyes, lungs and skin, and skin and respiratory related diseases could be aggravated by exposure. Ammonia gas is considered moderately toxic, corrosive and flammable under the City’s Toxic Gas Ordinance. For ammonia, the lethal concentration to 50 percent of the human population (LC50) is 2,000 to 5,000 parts per million (ppm). The U.S. National Institute for Occupational Safety and Health has established 300 parts per million (ppm) as the concentration that is immediately dangerous to life and health (IDLH). At this concentration a person’s ability to escape exposure to the gas is impaired. Ammonia is not highly flammable, however, if ammonia is involved in a fire, a 16 to 25 percent ammonia mixture with air may explode.

The containers proposed to be used at the project site, are pre-filled and delivered by truck to the site. These bulk pre-filled ammonia containers are designed and constructed to meet International Organization for Standardization (ISO) standards for pressurized vessels used to transport hazardous materials. Standards include the use of steel plate with a minimum thickness, mounting of all valves on the top of the container, placement of operating valves inside a recessed valve box and fiberglass shields on each end of the container to protect the inner pressure vessel which provide rollover and impact protection for the tank. Bollards will be installed at intervals in the area around the bulk ammonia containers in the gas vault to protect them from impacts from vehicles. The figure below shows a picture of the container.



ISO bulk ammonia tank mounted on a low riding chassis

These pre-filled bulk ammonia containers would be transported to the site by truck on low chasis flatbed trailers directly from the manufacturer. Once delivered, the containers, still on the flatbed trailers, will be connected to the existing production system on the site. This proposed new system of handling ammonia in bulk pre-filled containers will eliminate the current practice of lifting both 500- and 55-pound tanks by forklifts, placing them in appropriate places and connecting them to the production system. Handling of tanks by forklifts increases the possibility of accidental release by droppage of the cylinders, or by impacts of a forklift. Additionally, the proposed larger tanks need to be replaced only 53-55 times a year, as opposed to the current tank replacement rate of approximately 2800 times a year in order to meet the same production capacity using 500- and 55-pound tanks.

The proposed gas storage facility will be constructed in place of an existing parking lot that accommodates 106 parking spaces. The parking space requirement for research and development uses according to the Zoning Code is one parking space per 350 square feet. The total building square footage on the site is approximately 457,000 square feet. Therefore 1,110 parking spaces will be required in order to meet the parking requirements of the Zoning Ordinance. The site currently provides 1280 parking spaces, and 1174 spaces will be remaining after the proposed gas vault is built. Therefore, the proposal will meet the parking requirements of the City's Zoning Ordinance.

The project also includes other minor site improvements such as landscaping and construction of an unpaved access road as part of Fire Department requirements for the proposal.

At anticipated full capacity in 2009, the facility would operate three shifts, with 800 persons working the day shift and 200 persons each working during swing and graveyard shifts.

ENVIRONMENTAL REVIEW

A mitigated Negative Declaration has been prepared for the project under the California Environmental Quality Act. Mitigations were required for the following impacts: Air Quality, Biological Resources, and Hydrology and water quality. The project has been proposed to include a variety of engineering and process controls and will conform to a variety of local, state and federal regulations, adherence to which will reduce the impacts related to hazardous materials to less than significant. The MND was circulated for a 30- day public review period and was adopted on June 27, 2005. Comments were received during the review period from Department of Toxic Substances Control and Santa Clara Valley Water District. Appropriate responses were communicated to the comments of these agencies. The MND is attached with the staff report.

An addendum has been prepared to accommodate a minor modification to the proposed project since the MND was adopted on June 27, 2005. The project was required to build a gravel driveway from the proposed ammonia trailer staging area to an existing fire hydrant, as requested by the City of San Jose. The addendum also provides additional analysis related to land use and hazardous materials impacts in the light of the North San Jose Area Development Policy update approved by the City Council on June 21, 2005.

Through the review of the initial study and adoption of the Mitigated Negative Declaration, the Director of Planning determined that the environmental impacts of the project will be mitigated to a less than significant level as the project will be required to conform to local, state and federal regulations pertaining to hazardous materials use and storage. These include the regulations of the City of San Jose Fire Department, the California Accidental Release Prevention Program (CalARP), Risk Management

and Prevention Program. Additionally, a variety of engineering and process control measures are in-built into the system that will minimize and mitigate any impact of the hazardous materials on environment. Adhering to these regulations and incorporating the control measures will reduce the impact on environment to less than significant, and therefore no additional mitigation beyond normal conformance with the regulations is required. The applicant has agreed in writing to implement all of the mitigations identified in and as a part of the Mitigated Negative Declaration.

GENERAL PLAN CONFORMANCE

The current research, development and manufacturing use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of IP Industrial Park. The General Plan amendments associated with the recent North San Jose Development policy update took into account the presence of industrial uses of this type in the surrounding Rincon De Los Esteros industrial redevelopment area as addressed in the Environmental Impact Report prepared for that project.

PUBLIC OUTREACH

The project was initially scheduled for Planning Director's public hearing for the 29th of June 2005. A notice of the Planning Director's public hearing, and circulation of the Mitigated Negative Declaration was mailed to all owners and tenants of property within a 500-foot radius of the project site. Comments were received from neighboring property owners in the form of emails, phone calls on the 29th of June, and as public testimony at the hearing. In response to requests for additional time for reviewing environmental documents, the project was continued to July 13th 2005. Comments were received from the neighboring property owners on July 12th, 2005, and the project was further continued to the public hearing of 13th of August, and subsequently continued to the 24th of August to accommodate a request from the applicant to allow time to prepare responses to the comments received. The responses were communicated to the commentators on the 24th of August 2005. Copies of the responses and the addendum to the Negative Declaration were made available at the Public Hearing of August 31st 2005.

A community meeting was held on the 26th of August 2005, to discuss the applicants' responses and answer questions that the commentators had. The meeting was attended by three neighboring property owners and their representatives, as well as project consultants including hazardous materials experts and City Planning and Fire Department staff. In response to discussions at the August 26th meeting, the Draft Amendment Permit was revised to add conditions that specify that the project shall be built including the previously mentioned components, and to include the project shall be built including the specifications of the components.

A notice of the Planning Commission public hearing regarding this permit appeal was mailed to all owners and tenants of property within a 1000-foot radius of the project site, an increase over the 500-foot noticing radius used for the original project hearing notice. No comments have been submitted by the neighborhood. Staff has been available to discuss the project with members of the public.

ANALYSIS

The appeal of the Permit Amendment was filed by Carr America who indicated in the appeal that land use and hazardous materials impacts of the project were not adequately addressed in light of

the NSJ policy update, and that the proposal could negatively impact use and enjoyment, particularly for residential development of adjacent properties, specifically those in the Industrial Core.

Staff acknowledges that the key issues analyzed for the proposed project are land use compatibility and intensification of hazardous materials storage and usage on the site. As noted above, an initial study was prepared and a Mitigated Negative Declaration adopted for the project as of June 27, 2005. No protest of the Mitigated Negative Declaration was filed.

Land Use Compatibility

The site is located within an industrial area of North San José. Adjacent properties to the north and east are used for industrial purposes. Vacant land separates the site from industrial uses along Guadalupe Parkway to the south. The Guadalupe River corridor and industrial uses are located to the west. San José International Airport and U.S. 101 are located to the southwest of the site, west of the Guadalupe River. All surrounding sites are zoned IP-Industrial Park which allows research and development uses. The proposed activities, i.e. construction and operation of expanded gas storage facilities for industrial manufacturing are appropriate industrial uses in this area.

A variety of sensitive population groups (such as children, the elderly, the acutely ill and the chronically ill) are located within an approximately two-mile radius of the subject property, including multi-family residential and elementary schools as shown on Figure 1 on the following page. The closest of these locations is approximately 0.8 miles away from the location of the project.

As described in the Mitigated Negative Declaration, the proposed project would not result in significant hazards to off-site properties or residents of those properties. The risk from an accidental release of ammonia under a “reasonably foreseeable release scenario” has been analyzed as discussed thoroughly in the environmental documents. A summary of the discussion has been provided under the Hazardous Materials section below. Because the proposed ammonia tanks are centrally located on a large campus (84.3 acres in area), even without any of the process and engineering controls included in the project, the above-mentioned release scenario would not create a hazard beyond the boundaries of the 84.3-acre industrial campus. (i.e., any toxic vapor cloud that could be produced would have dissipated by the time it reached the property border to the point that serious injuries from short-term exposures would no longer occur.)

The proposed project to increase on-site ammonia storage does not alter the existing manufacturing use of the site. The site is currently being used by Lumileds for manufacturing LEDs, with approximately 150,000 pounds of ammonia used yearly. With the proposed expansion of gas vault, by 2009, approximately 1,500,000 pounds of ammonia will be used annually on the site, which will result in a proportional increase of the production of LEDs.

The appeal references the North San Jose (NSJ) Area Development Policy update as a particular concern. The City Council adopted the North San José Area Development Policy Update on June 21, 2005. The related policies and modifications to the City’s General Plan allow for intensified development in this industrial part of the City. In the vicinity of the project site, the intensification envisioned in the Policy could add residential development within a newly designated Industrial Core Area proximate to the project site. The land use designation on the project site, Industrial

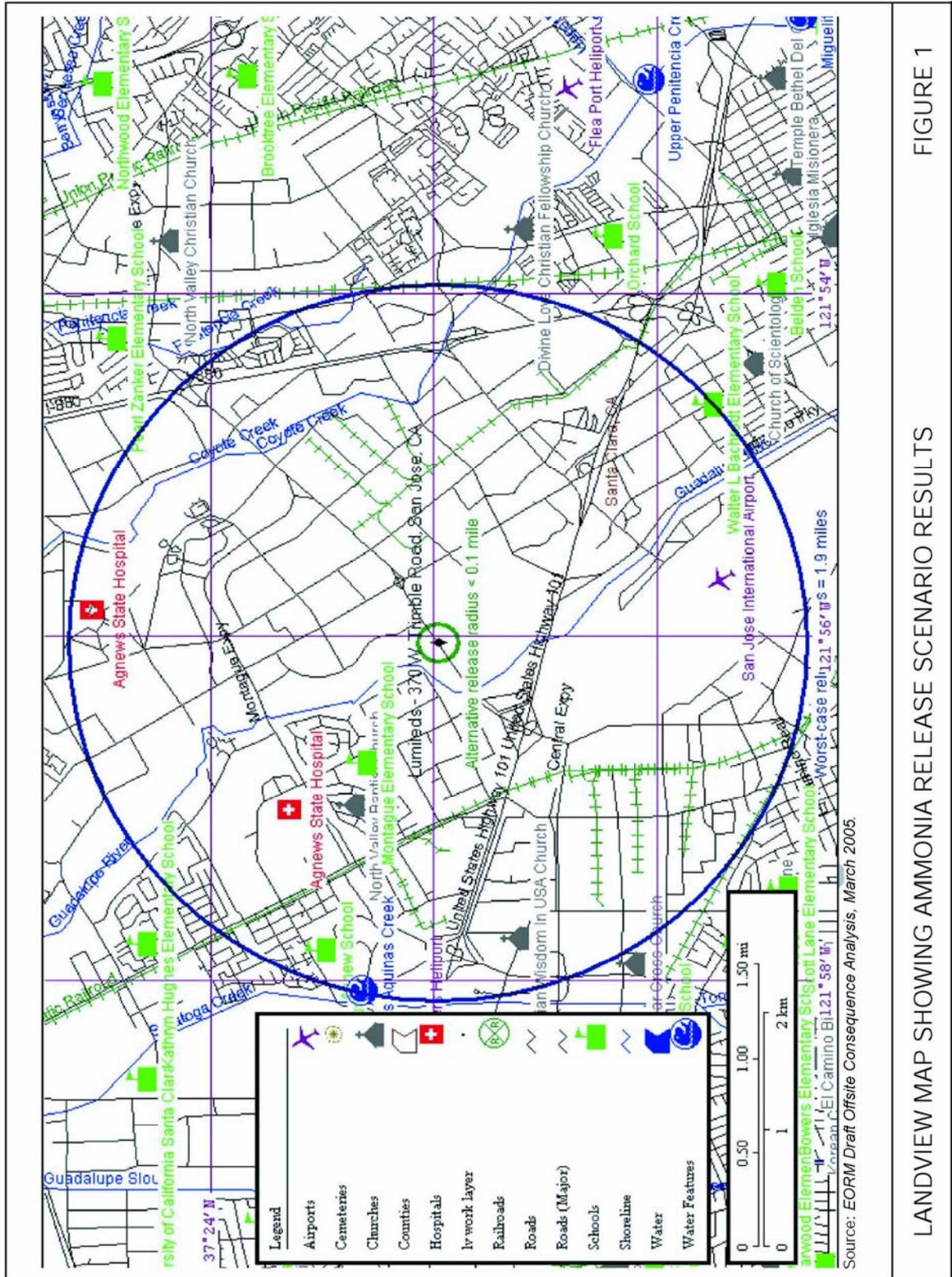


FIGURE 1

LANDVIEW MAP SHOWING AMMONIA RELEASE SCENARIO RESULTS

Park, was not changed under the North San José Policy Update and industrial, research and development, and office uses currently are allowed under that zoning designation.

The new Industrial Core land use designation covers approximately 592 acres of land and extends from Zanker Road to the east side of Orchard Parkway opposite the site and north of Guadalupe Parkway (refer to Figure 2 page 9). Mixed-use projects incorporating high-density residential development are permitted in the Industrial Core area provided that the residential development is integrated within and clearly subservient to an industrial project and would account for no more than 25 percent of the total developed site land area. The boundary of the Industrial Core land use designation is located approximately 900 feet east of the proposed bulk ammonia facility (refer to Figure 3 on page 11).

The Final EIR for the North San José Development Policies Update Program EIR (June 2005) evaluated the possible land use conflicts and hazardous materials impacts that could arise from the introduction of new residential in proximity to existing or future businesses, including those that use hazardous materials, at a programmatic level. The Final EIR listed local, State and Federal regulations for the prevention of accidental releases of chemicals that can affect human health as Program Mitigation Measures that would off-set future hazardous materials impacts. The Final EIR did not evaluate any specific projects with residential use within the area designated as Industrial Core.

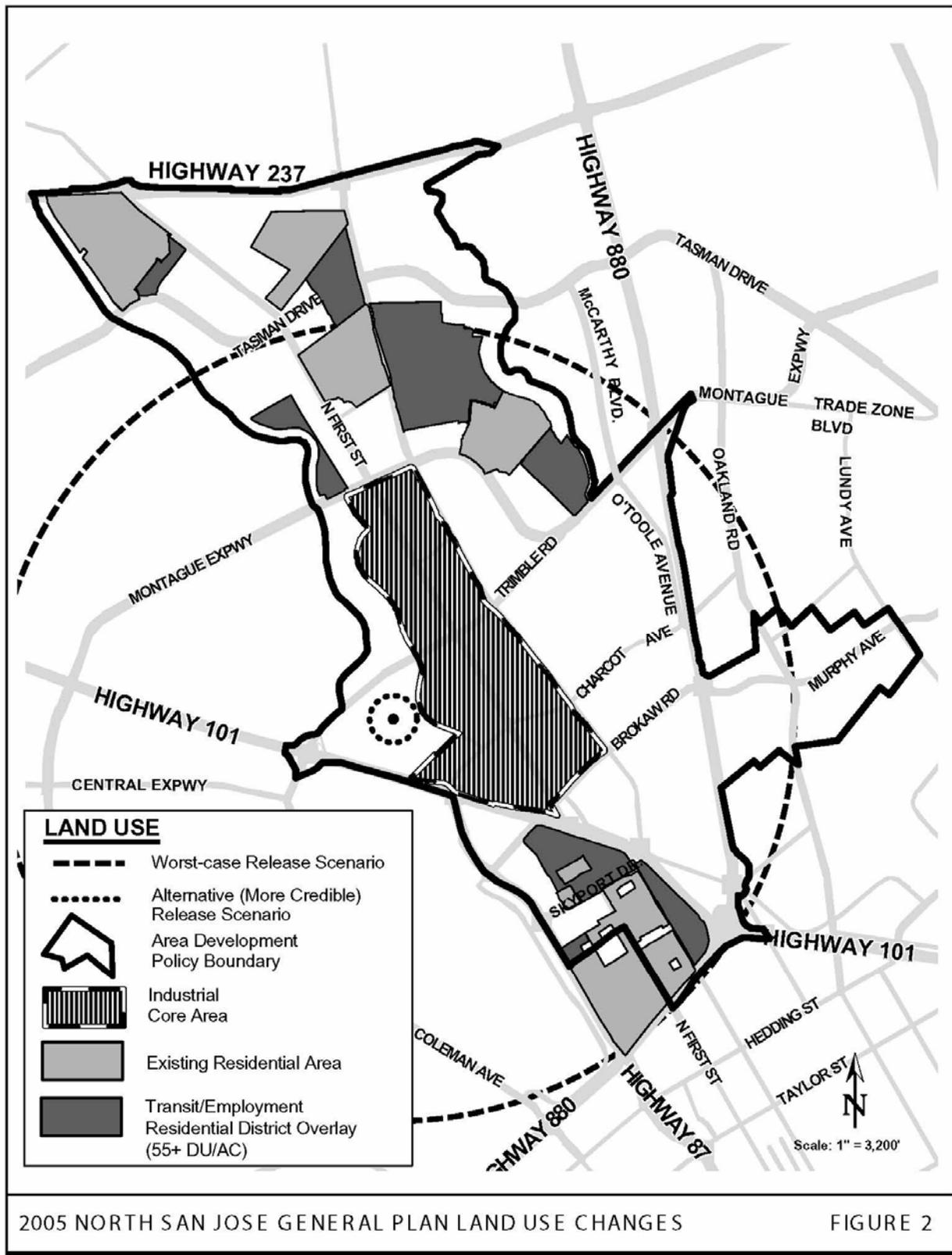
No future residential projects are currently proposed in the Industrial Core in the vicinity of the project site. Existing buildings, delivery areas and the proposed new ammonia storage area are some 900 feet or more from the closest Industrial Core properties that could potentially be developed with some residential uses at some time in the future. Mature landscaping provides a visual screen between the Orchard Parkway frontage and parking and activity areas. New landscape trees will also be planted on the east side of the proposed storage facility. The layout of the facilities and separation from nearby properties would avoid possible land use compatibility conflicts between industrial uses and residential uses associated with light, dust, noise, and odors.

As discussed above, the proposed project would not result in significant hazards to these off-site properties or residents of those properties, greater than 900 feet away since even without any of the process and engineering controls proposed to be included in the project, the edge of an alternative cloud release scenario would not extend beyond the boundaries of the industrial campus.

Intensification of Hazardous Materials Storage and Usage

The project site is an existing, operating industrial facility within an established industrial area of North San Jose. The existing facility currently uses and stores a range of industrial gases including nitrogen, hydrogen, chlorine, and ammonia for use in the manufacturing process. Hydrogen is a flammable gas, ammonia (which is stored as anhydrous ammonia, a pressurized liquid) is regulated as a moderately toxic gas, and chlorine is considered a toxic gas.

Storage of hazardous materials in the City of San Jose is regulated under a variety of local, state and federal regulations. The proposed bulk storage facility must also comply with San José Fire Code, Toxic Gas Ordinance and the Hazardous Materials Storage Ordinance. A Hazardous Materials Management Plan and Evacuation Plan for the site are on file at the site and with the City of San Jose Fire Department, Hazardous Materials Division. These plans are routinely updated by the project applicant. The threshold under the Federal Risk Management Plan requirements for ammonia storage (40 CFR Part 68) is 10,000 pounds, and the State of California threshold for



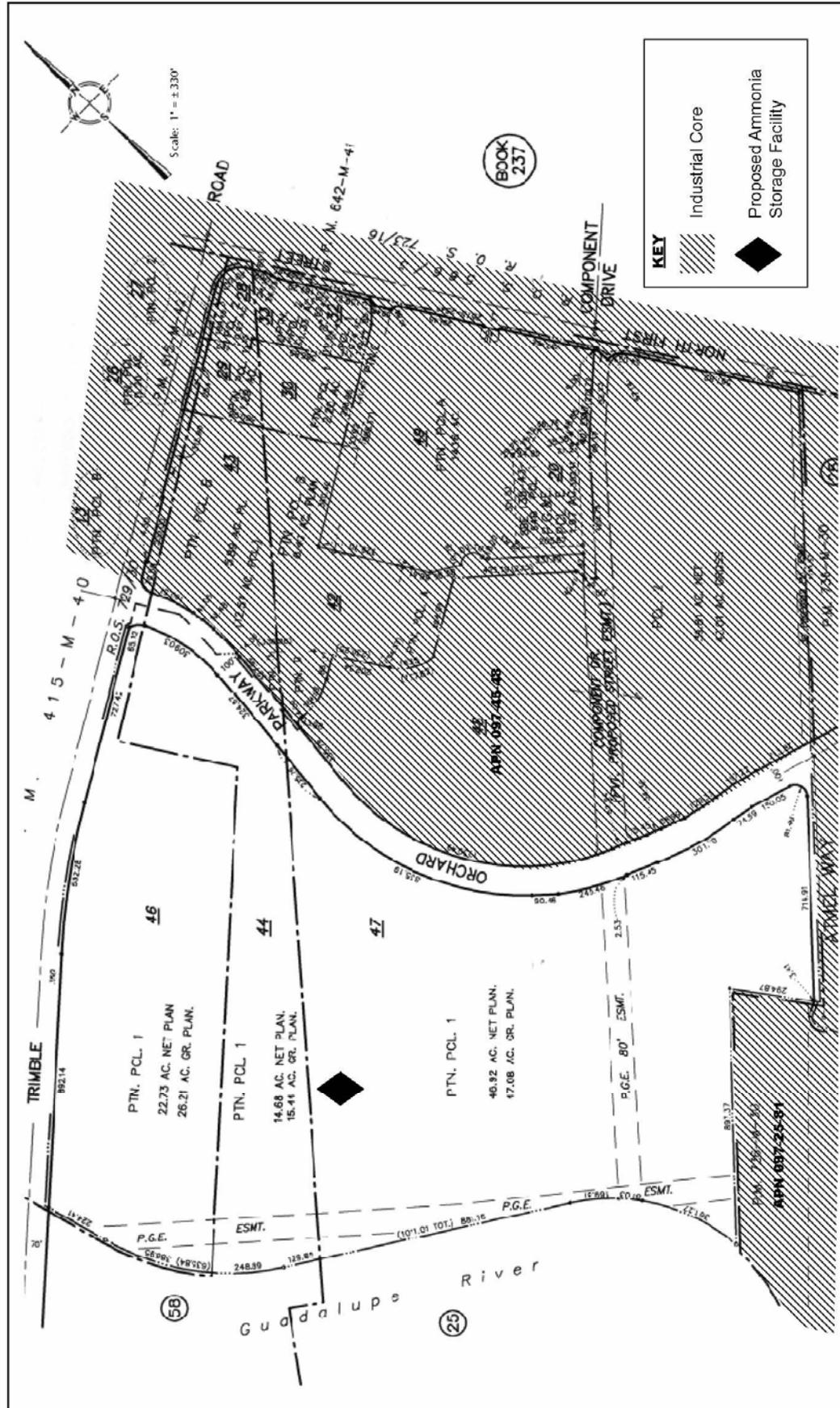


FIGURE 3

NEW INDUSTRIAL CORE-DESIGNATED AREA IN THE PROJECT VICINITY

accidental release prevention under CalARP (California Code of Regulations Title 19) is 500 pounds. The proposed project to accommodate four 26,400-pound ammonia storage containers on site, therefore, is subject to review and regulation under both the Federal Risk Management Plan and CalARP Program requirements.

The California Accidental Release Prevention (CalARP) Program¹⁴ is a merging of the federal and state programs for the prevention of accidental release of regulated toxic and flammable substances that represent a potential hazard beyond the boundaries of a property. Facilities that are required to participate in the CalARP program use or store specified quantities of toxic and flammable substances that can have off-site consequences if accidentally released. The County of Santa Clara Department of Environmental Health reviews CalARP risk management plans as the Certified Unified Program Agency (CUPA), and the City of San Jose is the local implementing agency for businesses within the City of San Jose. The Agilent/Lumileds facility is currently part of the CalARP Program, since quantities of currently stored ammonia and chlorine already exceed the regulatory thresholds for the CalARP Program. The legal authority for administering the CalARP Program is the California Health and Safety Code, (Division 20, Chapter 6.95, Article 2).

Additionally, a number of regulatory programs are currently in place at the project site that are designed to minimize the chance for unintended releases of hazardous material and/or their exposures to human beings. Some of these regulatory programs set forth standards and procedures for the handling and storage of hazardous materials. Other programs set forth standards for the containment and/or neutralization of any accidental releases of hazardous materials. Such regulations include the following: Hazardous Waste Operations and Emergency Response administered by Occupational Safety and Health Administration [OSHA], Hazardous Materials Storage Ordinance administered by the Fire Department of City of San José, Flammable and Combustible Liquids Code administered by National Fire Protection Association, Risk Management and Prevention Program.

Ammonia is regulated as a moderately toxic gas under the Toxic Gas Ordinance of the County of Santa Clara, also adopted by the City of San Jose. Regulatory controls on moderately toxic gases are different from the regulatory controls on gases considered as toxic and highly toxic under this ordinance. As proposed, the project incorporates a variety of measures that would ordinarily only be required for toxic gases – thereby making the proposed system even safer than it would be if it were to conform with applicable regulations only.

Potential off-site consequences during an accidental release of ammonia have been analyzed as part of the environmental review of the proposed project. Under state and federal regulations, the evaluation of potential offsite consequences for ammonia includes consideration of a worst-case release scenario and an alternative scenario that is more likely to occur than the worst-case release scenario. Under each scenario, the estimated distance to a defined “toxic endpoint” was determined. In broad terms, the distance to the endpoint is the distance a toxic vapor cloud will travel before dissipating to the point that serious injuries from short-term exposures will no longer occur. The toxic endpoint used for ammonia, per federal and state regulations, is 0.14 milligrams per liter (mg/L) or 200 ppm. The estimated distances to the toxic endpoint under the worst-case and alternative scenarios are shown on Figure 1. These distances were calculated using Environmental Protection Agency software for offsite consequence analysis (RMP*Comp, Version 1.07). It is important to note that in the event of a release, the entire area shown within each circle would not be impacted. The path of airborne vapor and droplets from an accidental release would be

determined by wind direction, temperature and other factors. The area within the circle shows areas that conceivably could be affected, considering that winds could blow from any direction.

The *worst-case* scenario modeled the concentration of ammonia gas if the total capacity of one of the containers (26,400 pounds of ammonia) was released within 10 minutes. The estimated distance to the toxic endpoint (where serious injuries from short-term exposures will no longer occur) for the worst-case scenario would be 1.9 miles from the Lumileds bulk ammonia storage facility. This scenario assumes that all administrative controls and/or mitigation measures would fail and since the proposed storage area would be surrounded by only perforated mesh/screen, the off-site consequence distance would not be limited. Sensitive receptors within 1.9 miles of the proposed bulk ammonia storage facility include residential areas in San José and Santa Clara, three elementary schools, the Agnews East Developmental Facility, and the Martinson Child Development Center.

However, likelihood of this worst-case scenario is extremely low, since an event such as a direct impact from an airplane crash would be required to release the entire contents of the bulk ammonia container in 10 minutes. An impact from a truck or forklift would not be able to cause the amount of damage to the tank to result in a similar release rate.

The release scenario more likely to occur (mentioned in the previous section as “reasonably foreseeable release scenario”, henceforth called the more likely scenario) is from a gas line break that would release approximately 5,100 liters (or eight pounds) of ammonia per minute for a period of up to approximately 55 hours (the time required to empty a 26,400 pound gas container). The calculated distance to the toxic endpoint (where serious injuries from short-term exposures will no longer occur) under this scenario is less than 0.1 mile (528 feet). The proposed gas vault would be located approximately 780 feet away from the westerly property line and approximately 900 feet away from Trimble Road to the north. Thus, the toxic endpoint under the alternative scenario does not extend beyond the property line of the 84.3 acre Agilent Technologies Campus and would therefore have no off-site consequences. There are no sensitive receptors, such as residences or schools, within or immediately adjacent to the radius of the toxic endpoint under this alternative release scenario. Additionally, calculation of this release scenario does not consider the existence and use of any mitigation such as planned engineering or process controls such as flow and pressure alarms, gas detection, exhaust ventilation or actions by an emergency response team for the facility. In practice, these measures will be used for mitigating or minimizing the effect of any accidental release of ammonia.

The transportation of hazardous materials is regulated under Federal Hazardous Materials Transportation Law (49 U.S.C. Section 5101 et seq.). The purpose of the law is to provide adequate protection against the risks to life and property associated with transporting hazardous materials. The U.S. Secretary of the Department of Transportation issues regulations for the safe transportation of hazardous materials. These regulations cover hazardous materials classification (i.e., flammable, toxic), communication of hazards, packaging requirements, operational rules and training of persons transporting hazardous materials. They apply to interstate, intrastate and foreign commerce and transportation by aircraft, railcars, vessels (ships) and motor vehicles. Federal Hazardous Materials Transportation Law is enforced by a number of agencies, including the Federal Highway Administration and Federal Aviation Administration (FAA).

Surface transportation of the ammonia to the site will be minimized because of several factors. Bulk ammonia containers would be transported to the site by truck on low chassis flatbed trailers directly

from the manufacturer. Risks associated with transportation of bulk ammonia to the site would be a function of both the accident frequency for truck transport and the probability that an accident would cause a hazardous materials release. Each trailer will have a large rear overhang to protect the bulk container from rear-end collisions. As discussed previously, the bulk ammonia containers are designed and constructed to meet International Organization for Standardization (ISO) standards for pressurized vessels used to transport hazardous materials. According to some studies¹, only approximately one percent of truck accidents involving pressurized containers, such as the proposed bulk ammonia containers, are estimated to result in an accidental release. As discussed above, a worst-case release of *all* of the ammonia in the container over a short period is highly unlikely. Thus, the type of release that would be anticipated to result from a transportation accident would be similar to the alternative release scenario (approximately eight pounds of ammonia per minute) or less.

Additionally, as discussed earlier, the proposed project will reduce the frequency of change of ammonia containers – which will also result in a reduced frequency of delivery. An estimated four to five truck deliveries of bulk ammonia containers per month would be made to the site with full implementation of the project by 2009. As previously discussed, anhydrous ammonia is currently transported to the site in 500-pound tanks (eight deliveries per month) and 55-pound tanks (four deliveries per month). While the size of the individual containers transported to the site would increase 50-fold, the number of truck trips to transport anhydrous ammonia to the site would decrease significantly. The 26,400 pound tanker containers remain at the flatbed trailers while in use, minimizing opportunities for droppage unlike smaller tanks which are loaded, unloaded and moved on-site by fork-lifts.

In summary, based upon all of the above information, the proposed project as conditioned will not negatively impact the use and enjoyment of adjacent properties. In addition, as indicated above, the land use and hazardous material impacts of project were adequately addressed in light of the recently approved North San Jose Development Policy Update. It was determined that the layout of the facilities and separation from nearby properties would avoid possible land use compatibility conflicts between industrial uses and future residential uses in North San Jose.

RECOMMENDATION

The Planning staff recommends that the Planning Commission uphold the Planning Director's decision to approve the requested Planned Development Permit Amendment and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The property is located in a A(PD) Planned Development Zoning District which allows the uses of IP-Industrial Park Zoning District and has a General Plan Land Use/Transportation Diagram designation of Industrial Park.
2. This Planned Development Permit Amendment allows for the construction of 7,885 square foot

¹ According to Dennis, A. et al (1977), only 11.42% of all truck accidents would be of a type that could potentially cause a release from the ammonia containers, and of those, only 10% would be of sufficient velocity to result in a release. This also correlates with a 1996 study by A.D. Little Consultant Company that published a rate of 1% of pressurized ISO container shipment accidents resulting in a product release.

expansion of existing ammonia gas vault and other minor site improvements for existing Research and Development uses on a 84.3 gross acres site.

3. The surrounding land uses include business offices located in IP-Industrial park Zoning District to the north, east and south, and the Guadalupe River to the west of the site.
4. The site is currently developed with three building with a total of approximately 457,000 square feet in area and 1260 parking spaces.
5. The proposed gas storage facility will be constructed in place of an existing parking lot that currently accommodates 106 parking spaces.
6. After the construction of the gas storage facility, a total of 1174 parking spaces will be available on the site.
7. According to the Zoning Ordinance, 1,110 parking spaces are required on the property
8. The current permit approves the construction of:
 - a. A covered and fenced outside storage area for a gas vault to store up to four approximately 26,400-pound anhydrous ammonia containers; and
 - b. The installation of up to four 26,400 pound anhydrous ammonia bulk containers built to ISO specifications; and
 - c. Associated gas distribution systems built to the satisfaction of Fire Chief of the City of San Jose, that include, among other elements, the following: an excess flow valve to stop outflow from the gas manifold when the flow exceeds a specified 100 pounds per square inch gauge pressure (psig) value; a reduced flow orifice, which would allow a “worst case” flow rate of 8.02 pounds per minute; and
 - d. Gas detection systems consisting of gas detection equipment connected to alarms and automatic shut-offs, to be installed at container valves, at the connections to the proposed high pressure control (gas) manifold, and the existing manual valve manifold box, which feeds to the process reactors in Building 91, all installed and maintained to the satisfaction of the Fire Chief of the City of San Jose; and
 - e. Emergency dry scrubber abatement systems installed and maintained to the satisfaction of the Fire Chief of the City of San Jose using activated carbon/alumina media. The final treatment capacity of the emergency dry scrubber abatement system will be sized to handle the worst-case release flow of 8.02 pounds per minute (per Item 2c above) and shall be installed and maintained to the satisfaction of the Fire Chief of the City of San Jose.
9. The existing bulk ammonia system on the site consists of four 500-pound Y-size cylinders with additional four 500-pound cylinders being in storage, totaling to a maximum of 4000 pounds of ammonia being associated with the system.
10. Currently, 150,000 pounds of ammonia is used on the site annually and the proposed Amendment Permit will allow for an approximately 10-fold increase in the use of ammonia on site.

11. The gas containers in which gaseous ammonia will be stored under pressure as liquid ammonia will meet or exceed specifications of ISO and Department of Transportation for pressurized containers.
12. Bulk ammonia-filled ISO containers will be transported to the site on special low chassis trailers and will be connected to the existing production system while they remain on the wheeled trailers.
13. Storage of hazardous materials such as ammonia is subject to a variety of local, state and federal regulations.
14. Subsequent permit to be obtained by the applicant from the City of San Jose's Fire Department will assure compliance with all local regulations.
15. The applicant will provide evidence of compliance with all other state and federal regulations to the satisfaction of the Director of Planning before the usage of first of the proposed containers begin.
16. A variety of sensitive population groups (such as children, the elderly, the acutely ill and the chronically ill) are located within an approximately two-mile radius of the subject property.
17. The closest of these locations is approximately 0.8 miles away from the location of the project.
18. Under an accidental release scenario from a gas line break that would release approximately 5,100 liters (or eight pounds) of ammonia per minute for a period of up to approximately 55 hours (the time required to empty a 26,400 pound gas container), the calculated distance to the toxic endpoint is less than 0.1 mile (528 feet) from the Lumileds bulk ammonia storage facility.
19. The proposed gas vault would be located approximately 780 feet away from the westerly property line and approximately 900 feet away from Trimble Road to the north.
20. This release scenario described in fact no. 18 above will have no off-site consequence.
21. Under a severe impact such as an aircraft crash, when the materials of the one containers (26,400 pounds of ammonia) is released within 10 minutes, the estimated distance to the toxic endpoint would be 1.9 miles from the Lumileds bulk ammonia storage facility.
22. The probability of this release scenario described in fact no. 21 above is extremely low.
23. A mitigated Negative Declaration has been prepared for this project, which was adopted on the 27th of June, 2005.
24. An Addendum to the Negative Declaration (ND) has been prepared to accommodate a minor modification of the project since the ND was signed, which was signed on August 31, 2005.
25. The Addendum also provides additional analysis of potential land use and hazardous material impacts in light of the North San Jose Area Development Policy update approved by the City Council on June 21, 2005.

26. The project was initially heard at the Director's public hearing for the 29th of June 2005, and was continued to July 13th 2005, in response to requests for additional time for reviewing environmental documents by neighboring property owners speaking at the June 29th hearing.
27. Written comments were received from several neighboring industrial property owners and representatives on July 12th, 2005, and the project was further continued to the public hearing of July 20th. At the Director's Hearing of July 20th, the project was continued to August 24th to accommodate the request by the applicant to allow time to prepare written responses to the comments received.
28. The applicant's responses to comments by area property owners were communicated to the commentators on the 23rd of August 2005.
29. At the Director's Hearing of August 24th 2005, the project was further continued to the hearing on the 31st of August, 2005.
30. A meeting between City Staff, the applicant and the interested parties was held on the 26th of August 2005, as an opportunity to discuss the applicant's responses, and provide more information to answer any questions by the commentators.
31. In response to discussions at the August 26th meeting, the Draft Planned Development Permit Amendment was revised to include conditions that specify that the project shall be built including the specifications of the components as described in the applicant's proposal and listed above.
32. The August 26th meeting was attended by three neighboring property owners and their representatives, staff from the City Planning and Fire Departments, the applicant and their representatives and the consultant team including technical experts in hazardous materials systems designs.
33. Copies of the responses and the Addendum to the Negative Declaration were made available at the public hearing of August 31st 2005.
34. The decision of the Director was appealed on September 23, 2005.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in

- the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
 3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Planned Development Amendment Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

1. **Biological Resources.** Prior to the issuance of building permits, the applicant shall submit copies of preconstruction surveys for nesting raptors (if construction will be done outside the October-December period)) and burrowing owls to the Director of Planning, to the satisfaction of Environmental Senior Planner of the City of San Jose. For details of survey procedures, see condition numbers 28 and 29 below, titled *Mitigation for Burrowing Owls and Mitigation for Raptors*.
2. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
3. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

CONDITIONS CONCURRENT

1. **Conformance with the Environmental Documents.** The project shall be constructed and operated in the following way:

- a. According to the conditions 2, 3 and 4 below, and
- b. As described in the environmental documents (Mitigated Negative Declaration (MND) adopted on June 27th, 2005, Addendum to the MND and the Initial Study) prepared for the environmental review of the project under the California Environmental Quality Act, that is on file at the Department of Planning.

Any change in the operation or construction of the system would require further review by the Director of Planning.

2. **Project Components.** The current permit allows for the construction of:

- a. *A covered and fenced outside storage area* for gas vault to store up to four 26,300 pound anhydrous ammonia containers,
- b. *The installation of up to four 26,400 pound anhydrous ammonia bulk containers* built to the specification described in Condition 3 below,
- c. *Associated gas distribution safety features* built to the satisfaction of the Fire Chief of the City of San Jose, that includes, among others, the following: excess flow protection to automatically stop the flow of process gas out of the pressure control module. In addition, a reduced flow orifice will limit the flow of gas directly out of the ISO container to 8.02 lbs per minute (or 5100 lpm) at 140 psi.
- d. *Gas detection systems* consisting of gas detection equipment connected to alarms and automatic shut offs, to be installed at container valves, at the connections to the proposed high pressure control (gas) manifold, the existing manual valve manifold box, which feeds to the process reactors in Building 91 to the satisfaction of the Fire Chief of the City of San Jose.
- e. *Emergency dry scrubber abatement system* to the satisfaction of the Fire Chief of the City of San Jose using activated carbon/alumina media. The final treatment capacity of the emergency dry scrubber abatement system will be sized to handle the worst case release flow of 8.02 pounds per minute (per Item 2c above) and to the satisfaction of the Fire Chief of the City of San Jose.

3. **Permissible Containers for Storage and Transportation.** The containers shall meet or exceed (ISO) International Standards Organization and U.S. Department of Transportation (DOT) standards specifications such as : 20 feet International Standards Organization approved framing, 316 stainless steel inner pressure vessel with ASME pressure rating of 285.7 psig, stainless steel

insulation outer jacket, 6 inches fiberglass insulation compressed to three inches, electric heaters on bottom, operating valves recessed inside a protected valve box to the satisfaction of the Fire Chief of the City of San Jose.

4. **Conformance with Plans.** Construction and development shall conform to approved Planned Development Amendment plans entitled, "Agilent Technologies, Building 91, ISO Bulk Ammonia," dated November 24, 2004, last revised on August 1, 2005, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04). Modification of the project plans prior to Final Inspection of the Building Permit shall require additional permits as deemed necessary by the Director of Planning. Following Final Inspection of the Building Permit, modification of the structure shall conform to the permit requirements of Section 20.100.910 of the San José Municipal Code.
5. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance, the Hazardous Materials Management Plan and all other applicable Ordinance and permits for the site, as required and approved by the San José Fire Prevention Bureau.
6. **Compliance with Local, State and Federal regulations.** The subject use shall be operated in full compliance with any and all Local, State, Federal and other regulations, as applicable. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code.
7. **Evidence of compliance.** The applicant will provide evidence of compliance with all state and federal regulations to the satisfaction of the Director of Planning, before the usage of first of the proposed containers begin.
8. **Ammonia storage.** The maximum amount of ammonia stored on site shall not exceed 105,500 pounds.
9. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
10. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
11. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
12. **Approved PD Permit.** This Planned Development Permit Amendment can only be implemented

in conjunction with the full and complete implementation of the previously approved Planned Development Permit, File No. PD 94-016.

13. **Previous Conditions.** All of the conditions of the previously approved Planned Development Permit shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Amendment.
14. **Nuisance.** As required by Title 20 of the San José Municipal Code, construction on this site shall be conducted in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
15. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval of the Director of Planning.
17. **Building Clearance for Issuing Permits.** Prior to the issuance of a building permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. **Construction Plans.** The permit file number, PDA94-016-02, shall be printed on all construction plans submitted to the Building Division.
 - b. **Emergency Address Card.** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. **American With Disabilities Act.** The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
 - d. **Demolition Permit.** Obtainment of a demolition permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a demolition permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
 - e. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
 - f. The project developer shall install inlet filters in all new on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures: Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintenance by the project

developer and subsequent property owner.

- 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
 - 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
18. **Storm Drain Protection**. No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain systems flows to the Bay.
19. **Recycling**. Scrap construction and demolition material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
20. **Construction Hours**. Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday.
21. **Industrial Waste**. If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.
22. **Fire Extinguisher System**. Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
23. **Fire Hydrants**. Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
24. **Fire Hydrants and Driveways**. All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.

25. **Fire Flow.** Required fire flow for the site will be as specified in writing from the Fire Department.
26. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided as required by the Fire Department.
27. **Air Quality During Construction** – The following construction practices required will be implemented during all phases of construction on the project site:
- a. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to windy periods;
 - b. active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
 - c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;
 - d. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved parking areas and staging areas at construction sites;

Sweep streets daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and

- e. Sweep streets daily (preferable with water sweepers) if visible soil material is carried onto adjacent public streets.
28. **Tree Protection Measures:** The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:
- a. **Pre-construction treatments**
 - 1) The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
 - 2) Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be six (6) foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
 - 3) Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.
 - b. **During construction**
 - 1) No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.

- 2) Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
 - 3) Supplemental irrigation shall be applied as determined by the consulting arborist.
 - 4) If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
 - 5) No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
 - 6) Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
 - 7) As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.
29. **Mitigation for Burrowing Owls:** In conformance with federal and state regulations regarding protection of raptors and the 2001 Mitigation Agreement between Agilent Technologies and the California Department of Fish and Game, appropriate preconstruction surveys for Burrowing Owls following California Department of Fish and Game protocols will be completed prior to any development to ensure that owls have not moved onto the work area or immediately surrounding areas. Preconstruction surveys will be conducted no more than 30 days prior to the start of site clearing. If no Burrowing Owls are located during these surveys, no additional action would be warranted.
- a. If breeding or resident owls are located on, or immediately adjacent to, the work area, a protected area will be established and/or resident owls will be relocated, as described in the 2001 Mitigation Agreement between Agilent Technologies and the California Department of Fish and Game.
 - b. Prior to the issuance of any building permits, the developer shall submit a biologist's report to the satisfaction of the City of San José's Environmental Principal Planner in the Department of Building, Planning, and Code Enforcement indicating that no owls were found on the site. If owls were present, a post construction survey by qualified biologists shall be done to indicate that mitigation has been implemented in conformance with the requirements of the California Department of Fish and Game. This report shall be forwarded to the satisfaction of the City of San José's Environmental Principal Planner in the Department of Building, Planning, and Code Enforcement. These pre-construction and post-construction survey reports shall be forwarded within two weeks from the date of survey.
30. **Mitigation for Raptors:** If possible, construction should be scheduled between October and December (inclusive) to avoid the nesting season of the raptor. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these

activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

31. **Mitigation for Flooding:** The proposed project will conform to the City of San José Floodplain Management Ordinance, and incorporate measures to the satisfaction of the Director of Public Works, including minimum finished floor elevations for new development above the estimated 100-year flood elevation.

32. **Mitigation for Water Quality during and after construction:**

a. **During Construction:** The project will comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José zoning ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific measures would be implemented to prevent storm water pollution and minimize potential sedimentation during construction:

b. Restricting grading to the dry season or meet other City requirements;

1) Use silt fencing to retain sediment on the project site;

2) Providing temporary cover of disturbed surfaces to help control erosion during construction;

3) Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

4) The Regional Water Quality Control Board (RWQCB) oversees the NPDES general permits for storm water discharges for construction/development projects greater than one acre in size. At the time of construction, the project would be required to submit a Notice of Intent (NOI) to comply with the NPDES General Construction Permit and a Storm Water Pollution Prevention Plan (SWPPP) to the RWQCB 30 days prior to any construction on the site. The SWPPP must specifically address mitigation for both the construction and post construction periods. The SWPPP would include erosion and sediment control measures, waste disposal controls, post construction sediment, maintenance responsibilities, and non-storm water management controls.

5) Copies of the Notice of Intent and the Storm Water Pollution Prevention Plan will be submitted to the City Project Engineer at the Department of Public Works and the Project Manager at the Department of Planning, Building, and Code Enforcement.

c. **Post Construction:**

1) The project will implement Best Management Practices (BMPs) for reducing contamination in storm water runoff as permanent features of the project. Post-construction BMPs

include directing runoff from the new roof area to a vegetated (grassy) swale and covers and drains for loading docks and maintenance bays.

- 2) Maintenance in parking and work areas will also include pavement sweeping, catch basin cleaning and other measures.
33. **Landscaping.** All areas to be graded during construction shall be landscaped. Landscaping should be drought tolerant species and will be as per submitted plan.
34. **Reclaimed Water Irrigation Systems.** Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.
35. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.100.910 of the San Jose Municipal Code.
36. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
37. **Bio Swales.** Swales shall be installed as shown on the approved plans.
 - a. **Maintenance.** The swales shall be maintained on a regular basis by a qualified individual to ensure that the swales are functioning properly.
 - b. **Maintenance Record.** The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the swales.
38. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Planned Development Permit Amendment shall automatically expire two years from and after the date of approval by the Director of Planning, or by the Planning Commission on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Planned Development Amendment Permit. The Director of Planning may approve a **Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20.** The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.

Attachment:

Planset

Attachment A: Location Map

Attachment B: Appeal Form

Attachment C: Memorandums from the Departments of Public Works and Fire

Attachment D: Mitigated Negative Declaration

Attachment E: Initial Study

Attachment F: Comments from Different Agencies and Responses

Attachment G: Addendum to the Mitigated Negative Declaration

Attachment H: Comments from Neighboring Property Owners

Attachment I: Response to the Comments from Neighboring Property Owners

Attachment J: Draft Risk Management Plan and Hazard Analysis

c: Dick Smith, CAS Architects, 1023 N. Shoreline Blvd, Mountain View, CA 94043

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