m | r | wolfe
& associates, p.c.
attorneys-at-law

January 22, 2018

By E-Mail
Acknowledgement of Receipt Requested

Honorable Mayor and City Council
City of San Jose
c/o City Clerk
200 E. Santa Clara Street
San Jose, CA 95113
Email: cityclerk@sanjoseca.gov

Re: America Center Phase III Project and Final SEIR;
File Nos.: PDC15-058 & PD15-053

Dear Mayor Liccardo and City Councilmembers:

On behalf of Organizacion Comunidad de Alviso ("OCA"), please consider the following concerns and objections to the Final SEIR for the America Center Phase III Project ("Project"). OCA submitted timely comments on the Draft SEIR for the Project by letter dated July 26, 2017, and objected to the Project in oral testimony before the Planning Commission. As discussed below, the Final SEIR does not adequately respond to OCA's comments, and does not adequately address or mitigate the environmental concerns OCA has raised. We therefore respectfully request the Council to decline to certify the Final SEIR and to deny approving the Project at this time.

As summarized below and in the attached comments by air quality expert Greg Gilbert, the SEIR remains fundamentally flawed. It fails to provide adequate analysis and mitigation of toxic air contaminant emissions that will adversely affect Project neighbors; fails to require feasible additional mitigation for admittedly significant air quality and traffic impacts; and it fails to provide adequate assessment and mitigation of greenhouse gas impacts. We address each of these points in turn.

A. The SEIR Omits a Legally Adequate Analysis of Cumulative Impacts from Toxic Air Contaminant Emissions.

Cumulative impact analysis under CEQA requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. Guidelines, § 15130(a); *see* Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* ("*CBE*") (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- "define the scope of the area affected by the cumulative effect,"
- explain "the geographic limitation used,"
- identify the past, present, and future projects "producing related or cumulative impacts" or provide projections of the conditions "contributing to the cumulative effect,"
- provide a "summary of the expected environmental effects to be produced by those projects." Guidelines, § 15130(b)(3), (4).

In step two, if there a significant cumulative effect, the agency must determine whether the project's contribution is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." *CBE v. CRA, supra*, 103 CalApp.4th at 119.Importantly, the analysis must consider <u>all</u> sources of "related impacts." Guidelines, § 15130(a)(1), (b); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024-1025. An arbitrary limit to the geographic scope of analysis is error. *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 431-432. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214.

1. The health risk assessment fails to consider all toxic air contaminant sources that affect the project site in a step-one determination whether there is a significant cumulative impact.

As explained in the attached technical comments from Greg Gilbert, the Health Risk Assessment ("HRA") adopt the thresholds of significance from the Bay Area Air Quality Management District ("BAAQMD") CEQA guidelines to concludes that there is no significant cumulative impact. The BAAQMD significance threshold for cumulative impacts calls for assessing only those sources of toxic air contaminants

("TACs") that are within a 1,000 foot radius of the Project.[1] Relying on BAAQMD's significance threshold, the HRA concludes that the cumulative TAC impact is less than significant because the cancer risk *from the identified sources within 1,000 feet* is less than the 100 in one million excess cancer threshold adopted by BAAQMD. The Initial Study and HRA give no consideration to the fact that the actual TAC cancer risk at the Project site, *considering all of the TAC sources that affect the site*, is almost double the 100 in one million excess cancer threshold. Accordingly, the BAAQMD significance threshold, and the assessment of cumulative impacts relying on it, are erroneous as a matter of law because they exclude consideration of sources beyond 1,000 feet even though CEQA requires consideration of *all* sources of TAC emissions affecting the site. The error is precisely analogous to the error in *Citizens to Preserve the Ojai* because the City relies on an arbitrary geographic limit to the scope of cumulative analysis that omits projects with related impacts.

The error is also clearly prejudicial. BAAQMD data based on regional TAC modeling and measurement demonstrate that the cancer risk from TAC at the Project site from all sources is well in excess of the 100 in one million threshold adopted by BAAQMD. BAAQMD adopted that 100 in one million threshold based on US EPA guidance for what constitutes the maximum acceptable cancer risk from cumulative sources. Based on the adopted standard for what constitutes the maximum acceptable cancer risk from cumulative sources, there is clearly a significant cumulative impact at the project site.

2. The health risk assessment fails to consider wither the Project's own incremental TAC risk is a "considerable contribution" to the significant cumulative impact.

As Mr. Gilbert explains, the HRA also fails to provide a coherent second step in the cumulative analysis, that is, a determination whether the Project's own TAC emissions constitute a "considerable contribution" to a significant cumulative impact. Instead of determining whether the Project itself makes a "considerable contribution" the HRA purports to determine whether the risk from the Project *and from "other nearby sources*," i.e., the sources within 1,000 feet, make a considerable contribution. The HRA assumes that there would be a considerable contribution only be the case if the risk from all of these sources exceeded 100 excess cancers.

In effect, the HRA erroneously combines the first and second steps of cumulative analysis. As discussed, the first step is supposed to consider whether the

[1] Please note that all public agency guidance, regulations, and other documentation referenced in this letter and its attachment are available online at the URL addresses indicated in corresponding footnotes. **We will gladly provide electronic and/or hard copies of any of the referenced materials upon request.**

cumulative effect of all sources is "significant" and the second step is supposed to consider whether the project's own contribution to this cumulative impact is "considerable." Under the HRA's approach, the City never actually considers whether the Project itself makes a considerable contribution because the only risk evaluated is the cumulative risk of the Project *and the other sources within 1,000 feet*. Furthermore, the HRA's approach erroneously applies the threshold for a significant cumulative impact, i.e., the 100-excess cancer threshold for what constitutes the maximum acceptable TAC risk at a community-scale, as the measures of "considerable contribution."

Had the SEIR correctly considered the second-step question, it would have had to find a considerable contribution based on the facts that: (1) the Project construction activities are projected to cause an incremental cancer risk of 1.8 excess cancers and (2) BAAQMD provides that if the cancer risk is over its cumulative significance threshold "any additional risk is significant." BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, page 34.[2]

It is not sufficient that the HRA conclude that the cancer risk is less than the 10 in one million threshold adopted by BAAQMD and the City to determine whether the Project, *by itself,* causes a significant impact. The point of cumulative analysis is to identify those situations in which impacts may be "individually minor but collectively significant." *CBE, supra,* 103 Cal.App.4th at 119-120. Cases are clear that an agency may not conclude that a project does not make a considerable contribution to a significant cumulative impact merely because the Project's individual contribution is not a significant impact or because it is, by itself, relatively small. In fact, CEQA requires that an agency determine what constitutes a "considerable contribution" to a significant cumulative impact with reference to the seriousness of the environmental problem: "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE,* 103 Cal.App.4th at 120. Here, the actual cumulative cancer risk from TACs at the Project site is almost twice as high as the adopted threshold for the maximum acceptable community-scale risk. In light of that, it is reasonable that any additional risk would be deemed to be a considerable contribution.

B. The FSEIR fails to evaluate or require feasible mitigation proposals for air quality and traffic impacts that remain significant despite other mitigation.

CEQA bars project approval unless an agency adopts feasible mitigation for significant impacts. Thus, an agency must find that either mitigation will avoid or

[2] Available at: http://www.gsweventcenter.com/GSW_RTC_References/2009_1001_BAAQMD.pdf

substantially lessen significant impacts or that mitigation is infeasible for specific reasons. An EIR must also respond to public proposals for additional mitigation with good faith and reasoned analysis. As Mr. Gilbert explains, the FSEIR fails to discuss or adopt feasible mitigation for air quality and traffic impacts, impacts that the City acknowledges will remain significant despite other mitigation proposed in the SEIR. Thus, the FSEIR fails to respond adequately to public comments and fails to provide a basis for rejecting feasible mitigation. Nor do the staff reports or proposed findings rectify the omission. The SEIR thus violates CEQA's fundamental mandate to adopt feasible mitigation to address significant impacts.

C. The SEIR fails to acknowledge that the Project makes a considerable contribution to post-2020 greenhouse gas impacts and thus fails to propose feasible mitigation.

The California Supreme Court has directed that where GHG significance is predicated on compliance with plans setting GHG reduction goals, the analysis must take into account the goal for the time frame in which the project will be operational:

> A qualification regarding the passage of time is in order here. Plaintiffs do not claim it was improper for this EIR, issued in 2010, to look forward only to 2020 for a guidepost on reductions in greenhouse gas emissions, and we therefore do not consider the question whether CEQA required the EIR to address the state's goals beyond 2020. Nevertheless, over time consistency with year 2020 goals will become a less definitive guide, especially for long-term projects that will not begin operations for several years. An EIR taking a goal-consistency approach to CEQA significance may in the near future need to consider the project's effects on meeting longer term emissions reduction targets.

Center for Biological Diversity v. California Dept. of Fish and Wildlife (2015) 62 Cal.4th 204, 223, *as modified on denial of rehearing.*

The Draft SEIR concluded that greenhouse gas impacts are less than significant, and that therefore no additional mitigation is required, based on the Project's compliance with measures in the City's GHG Reduction Strategy. Comments on the DSEIR objected that this conclusion is inconsistent with the City's finding that GHG impacts from its General Plan, including its GHG Reduction Strategy, to be significant and unavoidable for the 2035 timeframe.

The 2015 Supplemental GHG PEIR for the Envision San Jose 204 General Plan concludes that the City's GHG Reduction Strategy will not ensure that GHG emissions are rendered less than cumulatively considerable after 2020. The Supplemental GHG PEIR quantifies emissions for both the 2020 and 2035 time

frame. Supplemental GHG PEIR, p. 47. It identifies the increasingly stringent GHG reduction targets required to ensure that impacts from development under the General Plan are not cumulatively considerable. *Id.* at 58. It determines that "maintaining a trajectory to achieve 2050 target of 80% reduction below 1990 . . . will be used to assess whether communitywide emissions in 2035 will be cumulatively considerable." *Id.* at 67. Thus, it identifies as the threshold of significance for assessing "2035 long-term" impacts whether cumulative emission levels are consistent with "maintaining a statewide trajectory to achieve Executive Order S-3-05 emissions levels in 2050." *Id.* at 69-70.

The Supplemental GHG PEIR concluded that long term 2035 emissions would be a considerable contribution to GHG impacts because projected emissions in 2035 "could prevent the State of California from maintaining a statewide trajectory to achieve Executive Order S-3-05 emissions levels in 2050." *Id.* at 79-80. Mere compliance with the GHG Reduction Strategy contained in the General Plan is *not* sufficient mitigation to ensure that development under the General Plan will meet the 2035 GHG reduction goals. Accordingly, the Supplemental GHG PEIR found that 2035 emissions would remain cumulatively considerable:

> Citywide 2035 GHG emissions are projected to exceed efficiency standards necessary to maintain a trajectory to meet long-term 2050 state climate change reduction goals, even with the implementation of identified local actions and statewide actions and regulations adopted to date. Achieving the substantial communitywide GHG emissions reductions needed beyond 2020 cannot be done alone with the measures identified in this Supplemental PEIR and will require an aggressive multiple-pronged approach that includes policy decisions and additional emission controls at the federal and state level and new and substantially advanced technologies that cannot be anticipated or predicted with any accuracy at this time. Given the uncertainties about the feasibility of achieving the substantial 2035 emissions reductions, the City's contribution to climate change for the 2035 timeframe is conservatively determined to be cumulatively considerable.

Id. at 111-112.

Development consistent with the General Plan is included in the inventory of 2020 and 2035 emissions used in the Supplemental GHG PEIR, and the 2035 emissions levels are found to be cumulatively considerable. The Project will remain operational at least through 2035. Thus, the Project emissions in 2035 will make a consider contribution to significant cumulative GHG impacts. The Project as built will be required to comply only with the General Plan GHG Reduction Strategy, which is not sufficient to mitigate 2035 impacts to a less than considerable level. Thus, additional feasible GHG mitigation should be imposed. In particular, the

Project should be required to implement each of the additional mitigation measures proposed by OCA to address GHG impacts. Although the FSEIR states that there may be future updates to the GHG Reduction Strategy (FSEIR, p. 25), there is no evidence that the Project would be required to be retrofitted to attain additional GHG reductions. Furthermore, many of the mitigation measures proposed by OCA would require design commitments and implementation at the time the Project is built and may not be feasible in the future.

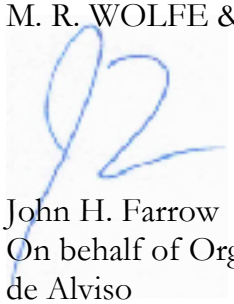
Responding to OCA's concerns about long term GHG impacts, the FSEIR claims that the Project would be constructed "prior to the end of 2020" and that its emissions "would be less than significant *in this timeframe*." FSEIR, p. 26, emphasis added. It is unreasonable to ignore the City's own determination that GHG impacts over the longer term will in fact be considerable and that additional mitigation is required.

For the foregoing reasons, the Final SEIR remains fundamentally flawed and inadequate under CEQA. OCA is willing to meet with City staff and the Project proponent to discuss measures that might be taken to ensure an adequate CEQA review and mitigation. Meanwhile, however, OCA asks that the City not certify the FSEIR or approve the Project.

Thank you for your consideration of OCA's concerns.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John H. Farrow
On behalf of Organizacion Comunidad de Alviso

JHF:sa

Attachment: Greg Gilbert, letter to John Farrow, January 18, 2018

Autumn Wind Associates
Air Quality CEQA Analysis and Consulting Services
916.719.5472 ▪ ggilbert@autumnwind.us

January 18, 2018

John Farrow, Esq.
M.R. Wolfe and Associates
1 Sutter St #300
San Francisco, CA 94104

RE: AWA Comments Regarding Air Quality Health Risk Analysis and Proposed Mitigations Within the American Center Phase III Project EIR Materials, City of San Jose

I. Introduction

At the request of M.R. Wolfe & Associates, Autumn Wind Associates has reviewed the Health Risk Assessment and air quality analysis and mitigation for America Center Phase III. The project would construct a 192,350-square foot office building and a 332,150-square foot parking structure in San Jose. This comment letter summarizes our concerns after assessing the adequacy of the air quality analysis and proposed mitigation for air quality and traffic impacts. As demonstrated in the attached statement of qualifications, Autumn Wind Associates is well qualified to prepare this evaluation based on our experience evaluating air quality issues for numerous public and private clients.

In summary,

1. The Health Risk Assessment fails to disclose the actual cumulative risk from toxic air contaminants (TACs) because it omits TAC sources beyond 1,000 feet. When those sources are included, the excess cancer risk at the project site exceeds the 100 in one million level identified as the acceptable cumulative risk. The HRA should have acknowledged that the additional TAC risk from the project itself would be a considerable contribution to this significant cumulative impact.

2. The FSEIR fails to discuss or consider feasible mitigation proposed to address admittedly significant air quality and traffic impacts. Additional mitigation measures proposed by Organizacion Comunidad de Alviso (OCA) to mitigate transportation and non-transportation related air quality impacts should be adopted since these impacts will not be reduced to a less than significant level by mitigation proposed in the DSEIR. Furthermore, the transportation-related mitigation measures proposed by Organizacion

Comunidad de Alviso should be adopted because they would also serve to mitigate admittedly significant traffic impacts.

II. The HRA fails to disclose the actual cumulative cancer risk at the site because it excludes TAC sources outside a 1,000-foot radius.

CEQA requires that an EIR consider impacts from a project by itself as well as its impacts in a cumulative context, i.e., its impacts when combined with all other projects with related impacts. CEQA's requirements for cumulative analysis are intended to identify situations in which a project's incremental contribution to an environmental impact is not by itself significant but is nonetheless a considerable contribution to a significant cumulative impact from all sources. Thus, a cumulative analysis requires two distinct steps. In step one, the analysis should determine whether there is a significant cumulative impact from all relevant sources. In step two, if there is a significant cumulative impact, then the analysis should determine whether the project's incremental contribution to that significant cumulative impact is "considerable." The step-two determination of what counts as a "considerable contribution" must be made in the context of the step-one determination of overall cumulative significance: the more serious the overall cumulative impact, the lower the threshold for what counts as a considerable contribution.

The Health Risk Assessment (HRA) for this project adopts the thresholds of significance in the Bay Area Air Quality Management District (BAAQMD) CEQA guidelines.[1] Under BAAQMD's CEQA guidelines, the health risk from a single source is significant if the excess cancer risk from that source is more than 10 in one million. The cumulative risk is significant if the excess cancer risk from all sources within 1,000 feet of the project site is greater than 100 in one million. As discussed below, BAAQMD's approach to cumulative analysis under CEQA improperly excludes TAC sources farther than 1,000 feet from a project even though those more distant sources contribute substantial TAC risk.

The HRA provides a "combined community risk impact" that purports to consider all toxic air contaminant (TAC) sources located within 1,000 feet of the site. The results are summarized in Table 3, Combined Construction Cancer Risks, PM2.5 Concentrations, and Hazard Index. The table determines that the combined cancer risks from 5 identified sources within 1,000 feet of the project site is 26 cancers per one million. The table compares that risk to the BAAQMD threshold for cumulative sources of 100 additional cancers, and concludes that there is no significant cumulative impact.

The BAAQMD significance thresholds for TAC's were explained in Appendix D to the BAAQMD CEQA guidelines, which is a June 2, 2010 report captioned "Thresholds of Significance Justification." BAAQMD's Thresholds of Significance Justification explains that the selection of significant excess cancer thresholds for both single projects and cumulative risk was based on

---

[1] America Center Phase III Rezone Project construction TAC Assessment, page 5, citing BAAQMD, California Environmental Quality Act Air Quality Guidelines, June 2010, updated May 2011 (available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en.).

the United States EPA guidance for "acceptable" cancer risk levels, which ranges from 1 in one million to 100 in one million.

> ". . . a range of what constitutes a significant increment of cancer risk from any compound has been established by the U.S. EPA. EPA's guidance for conducting air toxics analyses and making risk management decisions at the facility- and community-scale level considers a range of acceptable cancer risks from one in a million to one in ten thousand (100 in a million). The guidance considers an acceptable range of cancer risk increments to be from one in a million to one in ten thousand. In protecting public health with an ample margin of safety, EPA strives to provide maximum feasible protection against risks to health from HAPs by limiting additional risk to a level no higher than the one in ten thousand estimated risk that a person living near a source would be exposed to at the maximum pollutant concentrations for 70 years. This goal is described in the preamble to the benzene National Emissions Standards for Hazardous Air Pollutants (NESHAP) rulemaking (54 Federal Register 38044, September 14, 1989) and is incorporated by Congress for EPA's residual risk program under Clean Air Act section 112(f).[2]"

BAAQMD's cumulative threshold of 100 excess cancers was based on the high end of the EPA acceptable risk range:

> "Emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 100.0 in one million.
>
> The significance threshold of 100 in a million increased excess cancer risk would be applied to the cumulative emissions. The 100 in a million threshold is based on EPA guidance for conducting air toxics analyses and making risk management decisions at the facility and community-scale level. In protecting public health with an ample margin of safety, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants (HAPs) by limiting risk to a level no higher than the one in ten thousand (100 in a million) estimated risk that a person living near a source would be exposed to at the maximum pollutant concentrations for 70 years (NESHAP 54 Federal Register 38044, September 14, 1989; CAA section 112(f)). One hundred in a million excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on the District's recent regional modeling analysis.[3]"

BAAQMD's approach to cumulative analysis considers only the excess cancers caused by TAC sources within the so-called "Zone of Influence," which includes only the area within a 1,000-foot radius of the project site.[4] The stated rationale for this 1,000-foot limitation is that the

---

[2] BAAQMD, Thresholds of Significance Justification, June 2010, page D-35.

[3] Id., page D-43.

[4] BAAQMD, CEQA Guidelines, June 2010, updated May 2011, page 2-2. BAAQMD permits an agency to consider sources farther than 1,000 feet under the unusual circumstance that a particularly

effects of a particular TAC source tend to attenuate with distance. Thus, BAAQMD explains that "concentrations of particulate matter tend to be reduced substantially at a distance of 1,000 feet downwind from sources such as freeway or large distribution centers."[5] BAAQMD also argues that ARB recommends that new receptors not be sited within 1,000 feet of major sources.[6]

Although the effects of a particular source do attenuate with distance, and although it is obviously inadvisable to site a new receptor adjacent to a major source, cumulative cancer risk at a site is determined by the total TAC concentration from all sources that contribute any TAC concentration to the site, not just the TAC from sources within 1,000 feet. And, in fact, BAAQMD acknowledges that TAC sources more distant than 1,000 feet do cause increased cancer risk:

> . . . the larger the radius, the greater the number of sources considered that may contribute to the risk and the greater the expected modeled risk increment.[7]

Thus, if an agency seeks to assess the cumulative risk from all sources that affect receptors adjacent to a project site, it is improper to exclude TAC sources that are farther than 1,000 feet if they contribute to the TAC concentration at that location.

In the Bay Area and other urban locations, ambient TAC concentrations are due to many individual TAC sources at varying distances. BAAQMD data establish that the cancer risk from all of the TAC sources that affect the project site substantially exceeds 100 excess cancers in one million, the level identified by BAAQMD as the acceptable cumulative risk.

For example, BAAQMD's 2009 justification report for its CEQA thresholds of significance explains that most of the Bay Area population suffers TAC risks well in excess of the 100 in one million excess cancer threshold identified as the acceptable cumulative risk.[8] The 2009 justification report establishes:

- only 2 percent of the population is exposed to background risk less than 200 in one million, and
- 50 percent of the population suffer an exposure risk over 500 cancers in one million.[9]

In its March, 2014 report, *Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2*, BAAQMD updated its methodology for identifying the

---

large source of TACs is located beyond the recommend 1,000 foot range. (Thresholds of Significance Justification, page D-40.) However, this was not done for the project here.

[5] BAAQMD, Thresholds of Significance Justification, June 2010, page D-40.

[6] Id. at page D-38.

[7] Id.

[8] BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, available at http://www.gsweventcenter.com/GSW_RTC_References/2009_1001_BAAQMD.pdf. The document contains various options for significance thresholds, including the thresholds eventually adopted in 2010.

[9] Id, pages 55, 58.

impacted communities based on current emissions data and population characteristics.[10] BAAQMD describes its methodology as a health impact study, not just a screening tool, because it quantifies impacts based on up-to-date pollution concentrations and epidemiologic data that correlates health impacts to pollutants.[11] The study uses pollutant concentrations for TAC from all sources, together with cancer-risk factors for TAC developed by CalEPA, to estimate an increase in cancer risk from air pollution.[12] Air pollution concentrations were derived from a combination of modeling and measurements for TACs, PM2.5, and other pollutants present within each gridded area. The analysis is performed at the zip code level as the spatial unit of analysis.[13] The analysis reveals that the excess cancer risk due to TAC exposure in the 95002 zip code in which the project is located is 179.2 in one million.[14]

Thus, current BAAQMD data from its *Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2* indicate that the actual cumulative cancer risk from TAC exposure from all sources at the project site substantially exceeds the 100 excess cancer threshold identified as the maximum "acceptable" community risk level under EPA guidance for community-scale risk assessments. In light of this data, there is no justification for limiting the cumulative analysis to just those sources that happen to be within 1,000 feet of the project site.

The HRA's arbitrary limitation of the geographic scope of the cumulative impact analysis to just the TAC sources within 1,000 feet results in a failure to disclose the actual cumulative risk. Because the 100 excess cancer threshold for what counts as a significant cumulative risk is based on the EPA's guidance for maximum acceptable community-scale risk, the actual cumulative risk of 179.2 excess cancers at the project site should have been identified as a significant cumulative impact.

III. The HRA fails to evaluate the project's own contribution in light of the severity of the overall cumulative risk or to disclose that BAAQMD states that any additional risk is significant when the cumulative risk exceeds 100 excess cancers.

As discussed, cumulative analysis requires two distinct determinations. In step one the agency must determine whether the combined impact from all sources is a significant cumulative impact. In step two, if there is a significant cumulative impact, the agency must determine

---

10 BAAQMD, Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, March 2014, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CARE%20Program/Documents/ImpactCommunities_2_Methodology.ashx?la=en.

11 Id., page 9.

12 Id., page 11.

13 Id., page 13.

14 BAAQMD, Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, March 2014, attached spreadsheet identified as ImpactCommunities_2_ScoresbyZipCode.xlsx, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CARE%20Program/Documents/ImpactCommunities_2_ScoresbyZipCode.ashx?la=en ; see also BAAQMD, Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, March 2014, page 17, Figure 3 (Cancer Risk map).

whether the project itself makes a considerable contribution. Following the BAAQMD CEQA guidelines, the HRA confuses these distinct questions.

> "This analysis measures the effect of the project on incrementally increasing community risk levels. Community risk levels that exceed the thresholds for single sources or combined sources listed in ***Table 1*** would be considered to have a cumulatively considerable contribution to cumulatively significant community risk levels. That is, if cancer risk from the project exceeds 10 chances per million by itself or 100 chances per million when combined with other nearby sources, then the project would be considered to have a cumulatively considerable increase in overall cancer risk. The premise here is that overall cancer risk is significant anywhere in the Bay Area."

HRA, p. 5, emphasis added.

There are several problems with this explanation. First, if a project exceeds the single source risk of 10 excess cancers, then its impact is indeed significant, but this is not part of the cumulative analysis and so it is improper to call this a determination as to whether the project makes a "cumulatively considerable contribution."

Second, the determination whether a project makes a considerable contribution must assess the project's contribution to the overall cumulative impact. It makes no sense to include both the project and "other nearby sources" in this step-two determination. The HRA improperly conflates steps one and two by including non-project sources in the determination whether the project makes a considerable contribution.

Third, the determination whether the project's contribution is considerable must be made in the context of the severity of the cumulative impact. Here, the HRA does not disclose the severity of the cumulative impact, i.e., the fact that the actual cumulative risk of 179.2 excess cancers is well in excess of the 100 excess cancer threshold for acceptable community-scale risk. It is not sufficient to report that the "overall cancer risk is significant anywhere in the Bay Area" without relating the actual risk at the site to the project's contribution to that risk. The HRA fails to acknowledge and discuss the actual cumulative risk at the project site and it fails to relate the project's own contribution to that cumulative risk to determine if it is "considerable."

Had the HRA properly made a step-two determination, it would have had to acknowledge that the project does make a considerable contribution, particularly in light of the fact that cumulative risk of 179.2 excess cancers is well above the 100-excess cancer threshold identified as the acceptable community-scale risk. Indeed, BAAQMD explains that its cumulative impact threshold "sets a level beyond which any additional risk is significant."[15] Here, the Health Risk Assessment should have identified a significant cumulative impact because 1) sensitive receptors adjacent to the project will be exposed to more than the 100 in one million excess cancers identified by BAAQMD as the maximum acceptable cumulative risk, and 2) the project will generate additional cancer risk. For example, the health risk assessment indicates that project construction would cause at least 1.8 in one million cancers at the location of sensitive receptors proximate to the project site.

---

[15] BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, page 34, emphasis added.

IV. The FSEIR fails to address feasible proposed additional mitigation for transportation-related air quality impacts and traffic impacts even though these impacts remain significant and unmitigated.

Comments by OCA proposed additional mitigation to address air quality and traffic impacts that remain significant and unavoidable even after the mitigation proposed in the DSEIR. In response, the FSEIR updates MM AIR-1.1 to require attaining a 10 percent reduction in weekday mobile emissions through a TDM plan. FSEIR, p. 47. However, the FSEIR admits that even a 10% reduction would not render the air quality and traffic impacts less than significant. FSEIR, pp. 29, 48.

OCA proposed that the 16 "possible" TDM measures discussed in the Project description be identified as mandatory mitigation. OCA also identified 17 additional specific TDM measures identified in the BAAQMD CEQA Guidelines and the 2010 California Air Pollution Control Officers Association ("CAPCOA") publication *Quantifying Greenhouse Gas Mitigation Measures*.[16] These 33 proposals are well documented, effective, and feasible mitigation measures. There is no question that such measures as electric vehicle parking with charging, limiting the parking supply, charging for parking, cashing out parking, preferential parking, employer-sponsored vanpools, carpool matching, transit subsidies, ride-sharing programs, and end-of-trip facilities would be effective and feasible mitigation. Despite this, the FSEIR does not discuss the specific mitigation proposals made by OCA, other than to state that unspecified "appropriate measures" from the list in the DSEIR "will be incorporated into the TDM program as determined by the City's Department of Public Works and Department of Planning, Building and Code Enforcement staff." FSEIR, p. 34. However, as long as the traffic and air quality impacts remain significant, the project should be required to implement *all* feasible mitigation measures, not just any of those measures that staff later decide are "appropriate." We note, as well, that the FSEIR provides no explanation for how staff will determine what measures are appropriate.

Elsewhere, the FSEIR states that "car sharing, limits on parking places or price parking [sic] are tools that could be included in a TDM program for the site," but then the FSEIR states that "they are not currently proposed by the applicant as options in the TDM program for the site." FSEIR, p. 34. Thus, it remains unclear whether these measures will be included by staff as "appropriate" measures in an eventual TDM program. Again, as long as these measures are feasible – and they are – they must be required as mitigation if the air quality and traffic impacts cannot be reduced to a less than significant level without them.

While the FSEIR mentions the CAPCOA 2010 publication *Quantifying Greenhouse Gas Mitigation Measures*, it does so only to assert that a voluntary Commute Trip Reduction program could result in emissions reductions of 1 to 6.2 percent. FSEIR, p. 48. The FSEIR also reports that the original Legacy EIR estimated emission reductions of from 5 to 10% from a TDM program and the measures in AIR-1.1. FSEIR, pp. 47-48. In fact, much greater reductions in emissions are possible through a more rigorous TDM program and other measures. For example, whereas

---

[16] See BAAQMD, CEQA Air Quality Guidelines, May, 2017, pp. 4-13 to 4-14 (available at http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en); CAPCOA, 2010, Quantifying Greenhouse Gas Mitigation Measures (available at http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf).

CAPCOA establishes that a *voluntary* commute trip reduction program (i.e., a transportation demand program for commuters) may reduce emissions from 1-6.2%, CAPCOA demonstrates that a *mandatory* commute trip reduction program may reduce emissions from 4.2 to 21.0%.[17] There is no reason that this project should not implement a mandatory commute trip reduction program in order to attain higher emissions reductions. Nor is there any reason that the project should not be required to implement the other specific mitigation proposals recommended by OCA.

The FSEIR proposes that the TDM program attain at least a 10% reduction in emissions. However, there is no evident basis to conclude that a 10% reduction in emissions represents the maximum feasible emission reductions for the project. CAPCOA reports that emission reductions approaching 75% for urban locations and 40% for compact infill can be realized by a combination of transportation-related mitigation measures.[18] Again, regardless of the expected percent reduction in emissions, as long as the impacts remain significant the project should be required to implement feasible mitigation measures.

V. The FSEIR fails to address feasible proposed additional mitigation for non-transportation-related air quality impacts even though these impacts remain significant and unmitigated.

Comments by OCA proposed 19 specific mitigation measures to address both GHG impacts and air quality impacts unrelated to transportation. See OCA comments, pp. 8-10. The FSEIR takes the position that no additional mitigation is required for *GHG* impacts, arguing that GHG impacts are not identified as significant. However, even if that were true, OCA proposed the additional measures (items 35 through 53) to address both GHG and *air quality* impacts. Accordingly, the FSEIR should have discussed and considered the additional measures number 35 through 53 proposed by OCA as mitigation for non-transportation air quality impacts.

The CalEEMod air emissions modeling demonstrates that a substantial portion of the NOx impacts that remain significant and unmitigated are due to non-transportation sources such as energy and area sources. Furthermore, non-transportation mitigation measures that reduce NOx emissions would serve to mitigate NOx from both transportation and non-transportation sources.

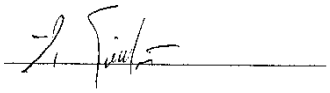
OCA's proposed mitigation measures include exceeding Title 24 energy standards; programmable thermostat timers; third party HVAC commissioning and verification of energy savings; energy efficient appliances and lighting; limiting outdoor lighting; on-site renewable power generation; solar water heating; tankless water heating; combined heat and power systems; low-flow water fixtures; a ban on water for outdoor cleaning; a ban on gas-powered landscaping equipment; alternative construction-equipment fuels; electric or hybrid construction equipment; limited construction-equipment idling beyond regulations; and cool-roof materials. These measures would clearly reduce NOx emissions associated with energy sources, construction, water use, and area sources. As long as NOx emissions remain significant, the City should require these measures because they are feasible mitigation.

---

17 CAPCOA, 2010, Quantifying Greenhouse Gas Mitigation Measures, pp. 66, 223-226

18 CAPCOA, 2010, Quantifying Greenhouse Gas Mitigation Measures, pp. 55, 61.

Sincerely,



Greg Gilbert
Autumn Wind Associates

Qualifications

Greg Gilbert has provided air quality project analysis and strategic services to land use-related clients since forming Autumn Wind Associates in 2001. Prior to 2001 he worked at 2 CA air districts for 11 years with management responsibilities in stationary source enforcement; compliance; public education and outreach; rule development; air emissions inventory analysis; development and implementation of low-emission mobile source incentive programs; development and implementation of CEQA guidance, thresholds of significance, and mitigations; and analysis, review, modeling, written commentary and oral testimony involving many EIRs and MNDs. Since 2001 he has provided air quality analysis of CEQA and NEPA documents for private- and public-sector clients. Mr. Gilbert received his undergraduate degree in Environmental Studies from UCSB, and has since completed professional and graduate-level courses in transportation, planning, law, and air quality.

ALVISO PROJECT
CARGILL/COLLISHAW PROPERTIES

LINCOLN
PROPERTY
COMPANY

LINCOLN
PROPERTY
COMPANY

October 28, 1998

Mr. Brian Grayson, Chair
City of San Jose Planning Commission
801 North First Street
San Jose, CA 95110

Re: Lincoln Property Company N.C., Inc.: Cargill/Collishaw Properties
1998 General Plan Amendments: GP98-4-2 and GP98-T-3

Dear Mr. Grayson and Planning Commissioners,

In March 1998, we applied for (2) two amendments to the City of San Jose 2020 General Plan: The first requested amendment (GP98-4-2) changes the land use designation of the Cargill/Collishaw site from Private Open Space and Private Recreation to Combined Industrial/Commercial. The second requested amendment (GP98-T-3) is a text change to Urban Design Policy #11 allowing a height limit in excess of forty-five (45') feet on the property.

With respect to our GP 98-4-2, *Lincoln Property Company* supports the Planning staff recommendation to the Planning Commission to approve the Industrial Park with Mixed Industrial Overlay designation for the Cargill/Collishaw properties.

Our General Plan amendment (GP 98-T-3) is a request that gives us permission to propose building heights in excess of forty-five (45) feet. We are simply asking that this area of Alviso, on the edge of the community, adjacent to Highway 237, and outside of the Alviso Village, be given the same opportunity as the rest of North San Jose, to step outside of the standard building envelope, and propose City consideration of an exemplary project.

Since March, we have been refining our initial development concept. Our working principle provides for concentrating development on the southern plateau of the property in a multi-story configuration. Our planning focuses development on approximately forty (40) acres, radiating from the center of the property towards Gold Street and Highway 237, and reserving the balance of the property totaling approximately thirty (30) acres for public community uses.

Our concept of clustering buildings near Highway 237 allows for the freeing up of the remainder of the property and the establishment of a permanent transitional buffer between any project that we might propose and the Guadalupe River corridor leading into the Village.

The San Jose General Plan 2020 provides that increased building height is appropriate in many places in the City of San Jose. The City has agreed that height is a valuable tool at certain key locations to support transportation goals, to establish urban landmarks, for economic development, and to achieve exemplary architecture and urban design in the North San Jose area. The Alviso Master Plan also acknowledges that building height may be a valuable tool and permits building height in excess of forty-five (45') feet in the North First Street/Nortech Parkway industrial area.

Gaining some measure of increased height is a tool that enables us to design an exemplary project at a reasonable scale and massing, to free up substantial acreage for use as a community resource, and to improve key community features that the community and City have advanced as important to the Alviso Village character.

101 LINCOLN CENTRE DRIVE, FOSTER CITY, CA 9[illegible] (650) 571-2200 FAX/SIMILE (650) 571-22[illegible]

LINCOLN
PROPERTY
COMPANY

Lincoln Property Company N.C., Inc.: Cargill/Collishaw Properties
1998 General Plan Amendments: GP98-4-2 and GP98-T-3 *continued*

We think that an exemplary project proposed for this site would include, at a minimum, the following characteristics:

- Buildings in excess of forty-five (45) feet would be limited to the area within 1,000 feet of Highway 237.
- Provide community facilities, thereby enhancing the overall character of Alviso.
- Demonstrate exemplary architecture or project design.
- Contribute positively to the Alviso community by improving infrastructure.
- The proposed development will result in significant public benefit to the local Alviso community and to the City, such as the creation of the Alviso/San Jose Foundation and local economic spin-off.
- A comprehensive Master Plan and a Planned Development Zone, approved by the City, and consistent with the goals and policies of the Alviso Master Plan will be in place. The Master Plan should demonstrate a reasonable project scale, appropriate intensity, and massing, and enhancement of the Alviso Village character through preservation of Alviso's natural amenities, beautification improvements, gateway treatments and/or other appropriate measures.
- The maximum intensity of development permitted on the property will not be increased by reason of building heights in excess of (45) forty-five feet.
- Improvements on properties adjacent to the Guadalupe River will be restricted to community facilities or river-oriented uses, and will provide an appropriate transition to the Alviso Village.

We are requesting that the Planning Commission approve our GP98-T-3 amendment, as drafted by the Planning Department, to permit buildings in excess of forty-five (45) feet in height.

With the approval of our proposed General Plan amendments, we gain the opportunity to bring a comprehensive project plan before the City. We find the challenge exciting and welcome the opportunity.

Respectfully,

Ed Thrift, Jr
Executive Vice President
Lincoln Property Company

101 LINCOLN CENTRE DRIVE FOSTER CITY, CA 94404-1167 (650) 571-2200 FACSIMILE (650) 571-2211

L I N C O L N

Alviso Project
Cargill / Collishaw Property

Table of Contents

LINCOLN
PROPERTY
COMPANY

ALVISO TECHNOLOGY PARK AND COMMUNITY CENTER

Lincoln Property Company is excited and enthusiastic about the possibilities... We are committed to creating a quality, beneficial and enduring statement and project for the village of Alviso, the City of San Jose and others, now and into the future. We join with you today, as we collectively, embark upon this remarkable vision...

An Introduction: A More Typical North San Jose Scenario

Lincoln Property Company has ownership interest in 70+/- acres located in Alviso, along Freeway 237, the San Tomas Aquino Creek and the Guadalupe River. Should the City of San Jose approve the Alviso Master plan and EIR, it is important to note that this property could accommodate 1.1 million square feet of typical R & D (Research and Development) and Office product in three (3) story building configurations, throughout the site.

A More Unique and Creative Vision...

In an attempt to generate sufficient economies and create a truly unique community experience, Lincoln Property Company proposes to provide:

- The creation of an exemplary, architecturally significant signature site fronting Freeway 237.
- Dedication of an infrastructure-improved and entitled site, approximately 30 acres, to a revenue-generating local Community Foundation.
- Development of a less intensified use than potentially allowable.

More Info:

Lincoln Property Company's 70+/- acreage would be divided into two (2) campus areas:

1. A 40± acre "South Campus" site fronting Freeway 237
   - Which concentrates development on the southern plateau in a multi-story configuration.
   - Will complement existing, similar mid-rise buildings within the immediate area.
   - Shall remove the unsightly, unproductive and unsafe area currently existing.
   - Would provide an attractive "Gateway" into Alviso, San Jose and the R & D marketplace.
   - Concentrates the clean, safe and attractive high technology park away from the Alviso historic village's view.

2. The remaining 30+/- acreage "North Campus" area, fronting the Guadalupe River, San Thomas Aquino Creek and the tidelands, which has significant property value,
   - Would be gifted and deeded to a Community Foundation to benefit Youth, Education and Environmental programs.
   - Would not only dedicate the land, but it would provide entitlements and appropriate infrastructure to service the site.
   - Benefits include Foundation-owned facilities for youth facilities, multi-purpose community center, recreational, environmental and education programs, etc.
   - Would provide income-producing opportunities that would directly support youth programs in the Alviso community as well as in San Jose.
   - Would provide opportunities for local, prominent high technology companies to participate as Sponsors and Partners in highly visible Community activities.
   - Serves to preserve and enhance public access to the Guadalupe River, San Tomas Aquino Creek and tidelands.
   - This concept is consistent with the proposed, and perhaps, soon to be adopted, Alviso Master Plan, which targets large-scale development along Freeway 237 and preserves the small town character at the heart of Alviso.

What Steps Are Necessary:

- Approval of the City of San Jose's General Plan Amendment designating this property as combined industrial-commercial, with the provision that under special circumstances and approvals, new buildings can be developed in excess of 45 feet in height on the South Campus area only.
- A finalization of the Alviso Master Plan and subsequent entitlements.
- Structure a Foundation, with a Board of Directors, to own and manage the North Campus area.
- Solicit Sponsors and Partners for site amenities, facilities and activities.
- Work with the Alviso Community, the City to identify the most beneficial uses for the North Campus area.

LINCOLN
PROPERTY
COMPANY

Alviso-San Jose Foundation

A Community Proposal

- The Alviso-San Jose Foundation will be created as a public benefit non-profit corporation.
- The Alviso-San Jose Foundation will raise and distribute funds to other non-profit organizations and activities in Alviso and San Jose that provide community services focused on youth.
- The Alviso-San Jose Foundation will be founded with a Board of Directors drawn from Alviso and San Jose appointed by the Mayor, the District Four Councilmember and *Lincoln Property Company*.
- At least (3) three of the members of the Board of Directors of the Alviso-San Jose Foundation must be residents of Alviso.
- An Advisory Board composed of Alviso community members shall advise the Alviso-San Jose Foundation.
- The Alviso-San Jose Foundation will raise money through commercial activities on approximately 30 acres of land provided to the Foundation by *Lincoln Property Company*.
- At least half of the funds raised from the Foundation's net income, will be distributed to community organizations for services to youth programs in Alviso.
- Approximately 30 acres of land will be deeded to the Alviso-San Jose Foundation as part of the *Lincoln Property Company* proposed development of the Cargill/Collishaw landfill.
- The 30 acres will include about eight (8) acres for Riverfront Commercial uses and a multi-purpose community center.
- The Alviso-San Jose Foundation will own, set the policies and manage of the 30 acres and amenities, such as the 10,000 square foot multi-purpose community center.
- The multi-purpose community center will be built at no cost to Alviso as part of the *Lincoln Property Company* proposed development of the Cargill/Collishaw landfill site.
- Alviso residents will be allowed to use the multi-purpose center building at no charge for their use.
- *Lincoln Property Company* will pay for the building maintenance and assist in the management of the multi-purpose community center and the rest of the 30 acres for five (5) years to allow the Foundation to distribute more of its funds to community service groups.

LINCOLN
PROPERTY
COMPANY

Lincoln Property Company
Cargill/Collishaw 1998 General Plan Amendments

Frequently Asked Questions

What specifically is *Lincoln Property Company* proposing on the Cargill landfill site?
A unique concept that puts development on the edge of the Alviso community along Highway 237, improves the Guadalupe River frontage, builds an Alviso Community Center, dedicates (30) thirty acres to an Alviso/San Jose Community Foundation for the purpose of supporting youth-oriented social service efforts.

Lincoln Property Company is proposing two (2) amendments to the City of San Jose General Plan for the Cargill/Collishaw property, not a development project. The first amendment proposes changing the existing land use designation to Combined Commercial/Industrial. The second amendment proposes an exception to City of San Jose height standards to enable the design and development of buildings in excess of forty-five feet in height to achieve an exemplary architectural project. The reason for asking permission for additional height is to enable concentration of buildings along Highway 237 so that nearly (30) thirty acres can be dedicated to the Alviso-San Jose Community foundation.

These amendments give *Lincoln Property Company* the opportunity to propose a creative and unique project for community and City of San Jose consideration.

Is building on the property safe?
Yes. *Lincoln Property Company* has performed an enormous amount of geo-technical, environmental, and seismic safety research on the property. What we have learned is that conventional, well-established engineering techniques used on landfill developments are appropriate and safe for use on the Cargill property.

What is the purpose of the Alviso/San Jose Community Foundation?
The Alviso-San Jose Foundation will raise and distribute funds to other non-profit organizations and activities in Alviso and San Jose that provide community services focused on youth.

How will the Foundation be operated?
The Alviso-San Jose Foundation will be created as a public benefit non-profit corporation. *Lincoln Property Company* will dedicate approximately thirty (30) acres of fully improved land to the Foundation as a principal asset. The Foundation will make money through the commercial leasing activities.

Lincoln Property Company has promised the Alviso community a Community Center?
Lincoln Property Company will build the community center at no cost to the community. The Alviso/San Jose Foundation will own and set the policies for operation of the Community Center. *Lincoln Property Company* will pay for the maintenance of the deeded property and the community center for five (5) years. This will enable the Foundation to distribute more of its funds to community social service groups. *Lincoln Property Company* will assist the Alviso-San Jose Foundation in the management of the multi-purpose community center at no charge for five (5) years.

If these General Plan amendments are approved, does the Alviso community, and the City of San Jose have any further review?
Yes. *Lincoln Property Company* is not proposing a project. Any project proposal requires exhaustive community and city review.

TEXT AMENDMENT IF THE ALVISO MASTER PLAN IS ADOPTED AND THE PROPERTY IS DESIGNATED COMBINED INDUSTRIAL COMMERCIAL

(additions are double underlined, ~~deletions are struck through~~)

If the Alviso Master Plan is adopted, modify the Alviso Master Plan as follows:

If the Property is designated "Combined Industrial/Commercial", on Page 20, 1st column, add at the end of the section on *Combined Industrial/Commercial*, the following paragraph:

[The following paragraph is the same as the last paragraph on page 20, under the heading "*Industrial Park with Mixed Industrial Overlay*," with additions as noted.]

"Development under this designation on the Cargill Salt property within 1,000 feet of Route 237, is limited to two story buildings, unless it can be demonstrated that buildings in excess of forty-five (45) feet (i) can be safely built on the Cargill Salt property, and (ii) further the goals of the Alviso Master Plan by (a) contributing positively to the Alviso community through improvements to infrastructure, (b) beautification of the Cargill Salt property, (c) the provision of community facilities, thereby enhancing the overall character of the Alviso, and (d) have exemplary architecture or project design, as described in the Lands Outside the Village Area, Guidelines for Industrial Development. The Cargill Salt property consists of an unengineered landfill with a tall mound. Structures should be placed in areas on this property where it can be demonstrated that appropriate construction techniques can be utilized to minimize any and all adverse geotechnical impacts. It is expected that development on this site would include significant amounts of open space and appropriate landscaping, given the configuration of the mound and its steep slopes. Development adjacent to the Summerset Mobilehome Park needs to provide a positive interface so as not to negatively impact the residential quality of life of the mobilehome park."

TEXT AMENDMENT IF THE ALVISO MASTER PLAN IS ADOPTED AND THE PROPERTY IS DESIGNATED INDUSTRIAL PARK

(additions are double underlined, ~~deletions are struck through~~)

If the Property is designated "Industrial Park", add the following to the last paragraph on Page 20:

"Development under this designation on the Cargill Salt property within 1,000 feet of Route 237, is limited to two story buildings, unless it can be demonstrated that buildings in excess of forty-five (45) feet (i) can be safely built on the Cargill Salt property, and (ii) further the goals of the Alviso Master Plan by (a) contributing positively to the Alviso community through improvements to infrastructure, (b) beautification of the Cargill Salt property, (c) the provision of community facilities, thereby enhancing the overall character of the Alviso Village, and (d) have exemplary architecture or project design, as described in the Lands Outside the Village Area, Guidelines for Industrial Development. The Cargill Salt property consists of an unengineered landfill with a tall mound. Structures should be placed in areas on this property where it can be demonstrated that appropriate construction techniques can be utilized to minimize any and all adverse geotechnical impacts. It is expected that development on this Property would include significant amounts of open space and appropriate landscaping, given the configuration of the mound and its steep slopes. Development adjacent to the Summerset Mobilehome Park needs to provide a positive interface so as not to negatively impact the residential quality of life of the mobilehome park."

TEXT AMENDMENT IF THE ALVISO MASTER PLAN IS ADOPTED

AMENDMENTS TO "LANDS OUTSIDE OF THE VILLAGE AREA – GUIDELINES FOR INDUSTRIAL DEVELOPMENT"

(additions are double underlined, ~~deletions are struck through~~)

Whether the Property is designated "Combined Industrial/Commercial" or "Industrial Park," the following development guidelines should apply: on Page 42, left hand column, modify the Development Standards as follows:

~~3.~~2. Development Standards

A. **Height**

(1) In most locations, a maximum of 45 feet, two stories above flood elevation.

(2) Nortech Parkway Industrial Area. [Then add existing language on Page 42 dealing with the Nortech Parkway Industrial Area.]

(3) Cargill/Collishaw Property.

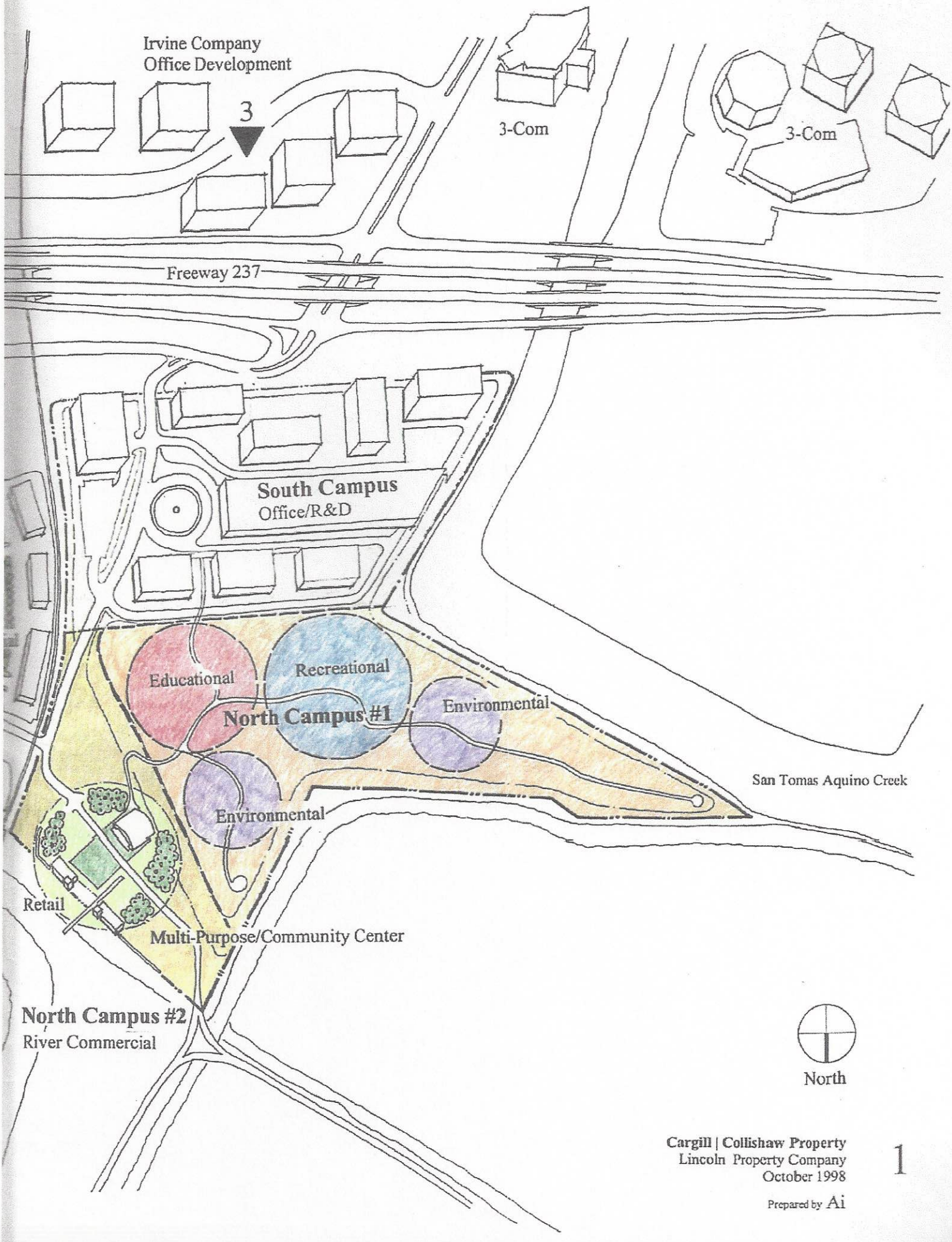
"On the north side of Route 237, west of the Union Pacific railroad tracks, buildings may exceed 45 feet if they meet the following conditions:

In the Alviso Specific Plan area, within 1,000 feet of Route 237, on properties with a Combined Industrial/Commercial or Industrial Park designation, if it can be demonstrated that such buildings can be safely built, buildings may exceed forty five (45) feet, provided that: (i) a comprehensive Master Plan and Planned Development Zone have been prepared and approved consistent with the Alviso Master Plan that demonstrate a reasonable project scale, appropriate intensity, and massing, and enhancement of the Alviso Village character through preservation of Alviso's natural amenities, beautification improvements, gateway treatments and/or other appropriate measures (ii) the maximum intensity of development that is permitted on the property is not increased by reason of building heights in excess of 45 feet, (iii) the development exhibits exemplary architecture or project design, (iv) development of the project will result in significant public benefit to the City, and (v) improvements on properties adjacent to the Guadalupe River or San Tomas Creek are restricted to community facilities or river oriented uses, and shall provide an appropriate transition to the Alviso Village."

TEXT AMENDMENT IF THE ALVISO MASTER PLAN IS NOT ADOPTED

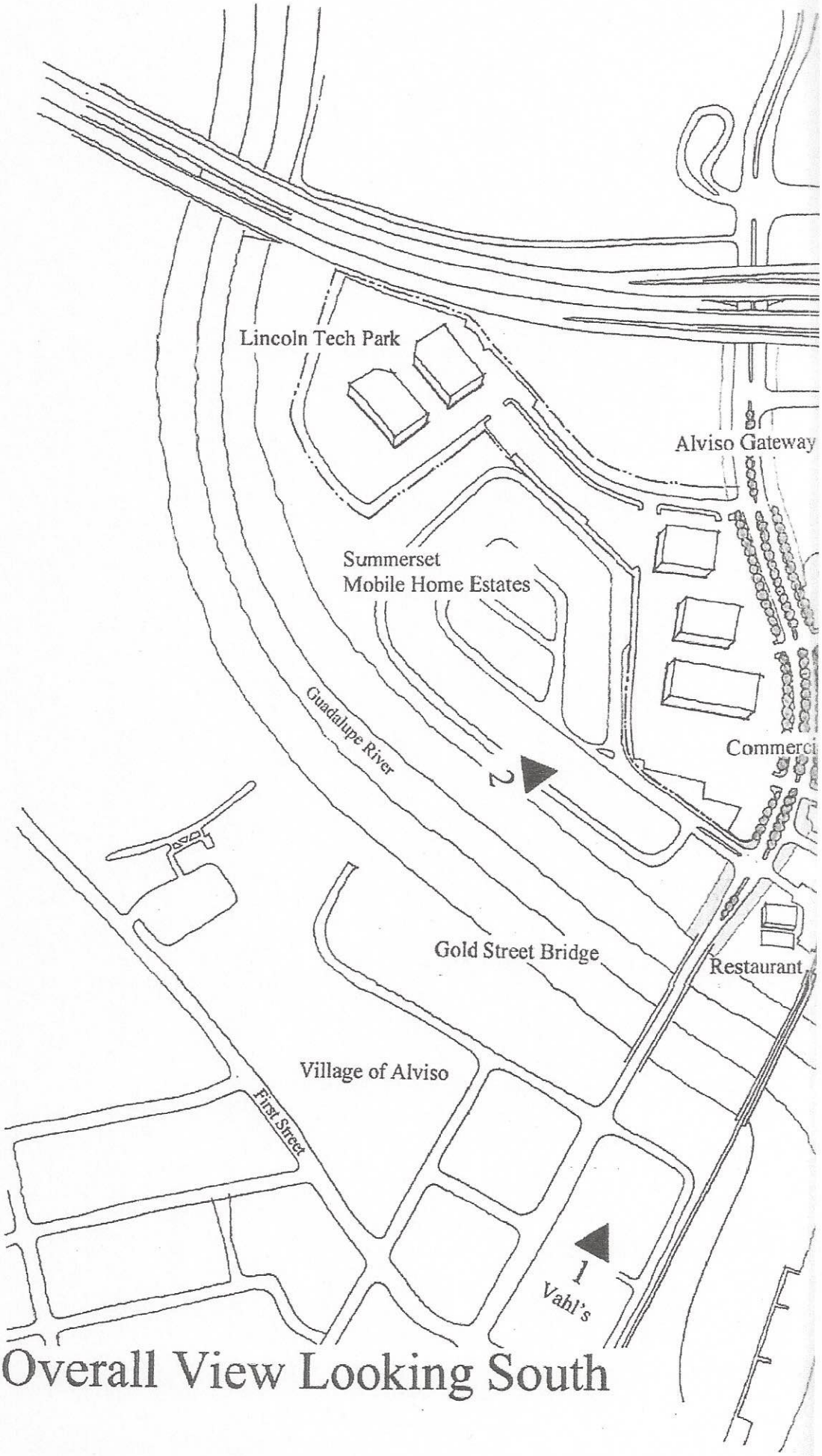
If the Alviso Master Plan is not adopted, we seek a GPA modifying Urban Design Policy No. 11 to add an exception to the directive that non-residential building height should not exceed 45 feet, as follows:

> "In the North San Jose/Rincon de los Esteros Redevelopment Area and in the Alviso Master Plan area, the maximum building height is 45 feet except that for buildings designed to accommodate uses that support the industrial base either located within 2,000 feet of a rail transit station or with exemplary architecture or project design the maximum height is 90 feet."

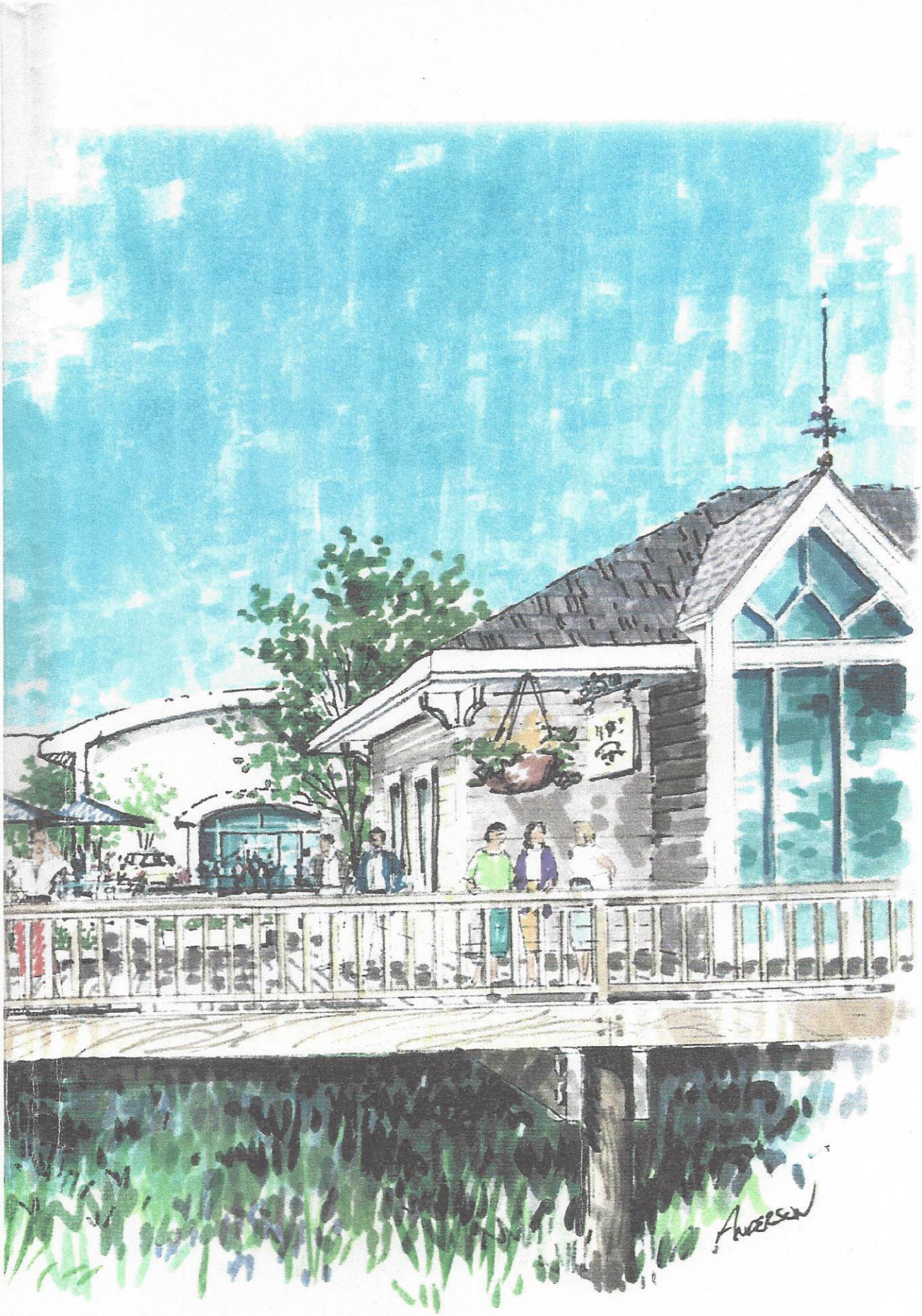


Cargill | Collishaw Property
Lincoln Property Company
October 1998

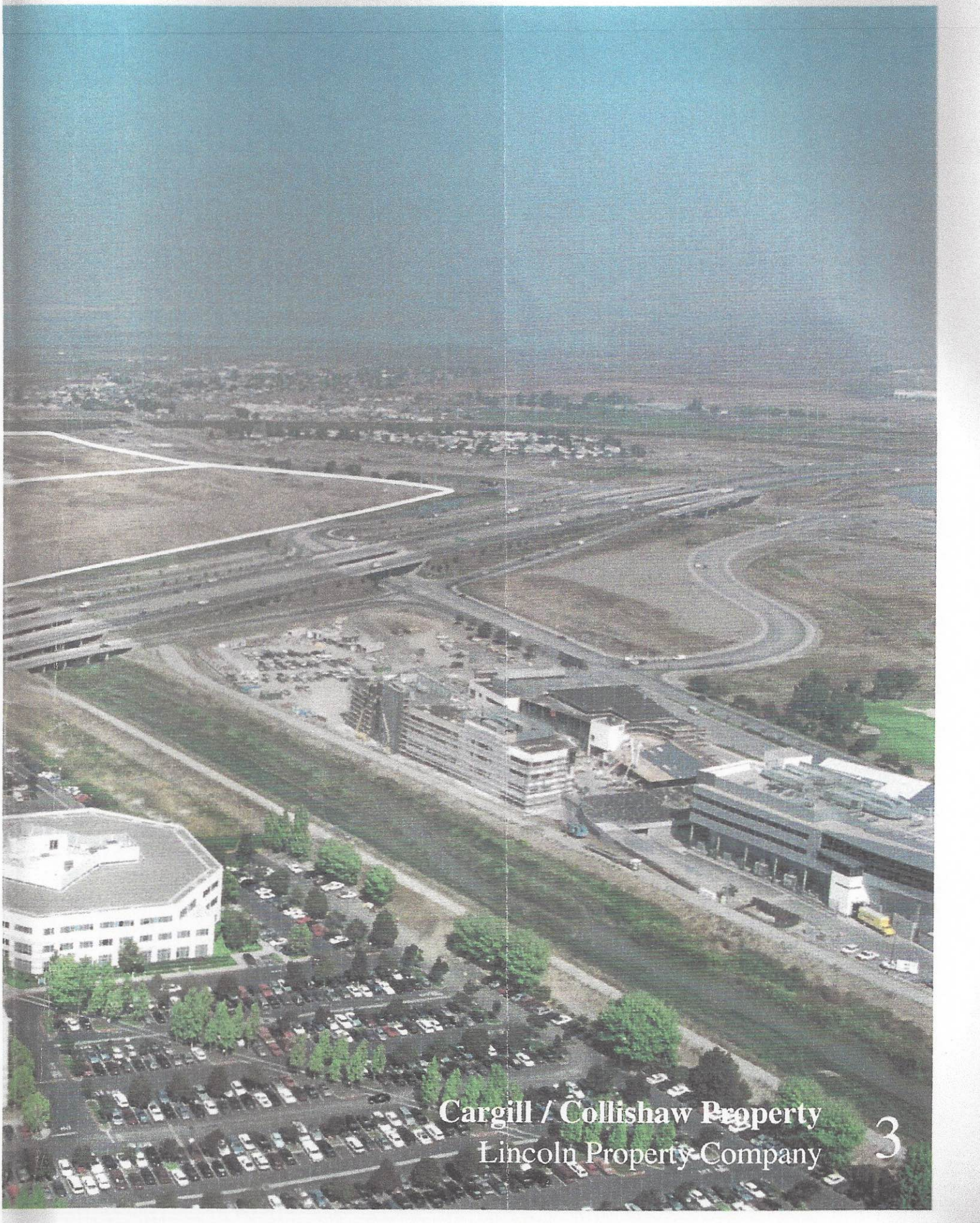
Prepared by Ai



Overall View Looking South



Cargill / Collishaw Property
Lincoln Property Company



Cargill / Collishaw Property
Lincoln Property Company

Cargill / Collishaw Property
Lincoln Property Company

Project Vision for Lincoln-Alviso

Vision for Lincoln-Alviso Project

- Forge a public policy/private development agenda that generates market returns, spins off capital to support social service activities and endow a foundation to benefit San Jose youth.

- Create a signature commercial development for the 21st Century.

- Realize a project that reflects an Alviso community as well as a Lincoln Property Company venture.

Project Feasibility and Technical Issues

- Lincoln has analyzed the geotechnical, structural and civil engineering urban design characteristics and development economics of the site.

- Commonly used conventional techniques applicable to landfill closure and building and development are feasible.

The Opportunity

- Create a productive income producing, job generating project.

- Provide a significant public/non-profit site for recreational, educational and environmental uses.

- Create a non-profit foundation that will endow youth programs for San Jose.

- Create a unique workplace, campus environment to attract and retain important employers and employees in San Jose.

- Develop a signature urban design on one of the few remaining well located large sites with direct freeway access to residential and commercial communities.

- Preserve and enhance public access to spectacular panoramic views: San Jose to the south and the Tidelands and the Bay to the north.

Prepared by:
Edgar M. Thrift, Jr.
Lincoln Property Company

Proposed General Plan Amendment
Fact Sheet

Proposed General Plan Amendment

- Lincoln Property Company is requesting that the City re-designate the combined Cargill/Collishaw properties from Private Recreation and Private Open Space to the combined Commercial/Industrial category. The General Plan Amendment also proposes the application of the General Plan Urban Design Policy on Building Height for exemplary architecture or project design to property North of Highway 237.

The Opportunity

- The North San Jose Highway 237 corridor market for campus corporate office/research and development facilities has created a unique opportunity to pioneer a new workplace product in San Jose, to create a signature site characterized by innovative architecture and urban design and to establish an economic engine to support social service activities in San Jose.

The Market

- The market for corporate campus facilities has changed. The economics of real estate values and the corporate workplace has generated interest in higher intensity facilities. New multi-story corporate facilities have been introduced and well-received along the Highway 101 and 237 corridor, from Redwood City to Santa Clara.

Project Character

- Lincoln Property Company is proposing to concentrate development of an office/R & D business park on the plateau elevation of the property in an urban style complex of two (2), four (4) and six (6) story buildings located sensitively in the landscape. The project character is envisioned as a City on a Hill, including an architecture and urban design of pedestrian scale walking proximity, and with parking consolidated in structures. The development potential of this site is approximately 900,000 square feet.

Infrastructure Requirements

- Approximately $50 million is required for access improvements, streets, utilities, traffic improvements, landfill closure procedures, pilings and related construction costs.

Prepared by:
Walter Cohen
The Enterprise Group

Key Architectural Issues and Goals

- The site can be developed in a compact arrangement of two (2) to six (6) story buildings, preserving a large percentage of the site for public benefit.

- The sense of place and identity will be produced through the inter-relationship of buildings and open space. Buildings should share some relationship to a common defined open space or plaza space.

- A clear front door to the site will be established with an appropriate sense of arrival and clear circulation within the site and between buildings.

- Taller buildings should be positioned along Highway 237 with decreasing building height toward the river to maximize views north to the bay and to enhance the public access to the Guadalupe River, San Tomas Aquino Creek and to open spaces surrounding the site.

- Parking structures should be positioned at the lower elevations on the site to minimize their impact on the site and increase open space.

- Public uses on the site should embrace the opportunities presented by the site's natural position at the confluence of San Tomas Aquino Creek, Guadalupe River and the San Francisco Bay.

Prepared by:
Allison Williams, FAIA
Design Architect

Summary of Geotechnical Factors

Landfill Settlement

- Conventional standardized techniques are commonly used in landfill sites composed of compressible soils as are contemplated on this project.

- No new refuse has been placed since 1982, approximately 16 years of settlement has already occurred. Taking this into account, we estimate the remaining refuse settlement to be on the order of 2 ½ feet total. This settlement analysis is within typical ranges throughout the Bay Area.

Building Foundations

- Buildings will be supported on pile foundations extending below the landfill. Pre-drilling will be performed through the landfill material as is conventional practice. Vertical and lateral capacities will account for the total settlement in a manner consistent with other developments on compressible materials.

Underground Utilities

- All underground utilities will be designed to account for the long-term settlement. Utility design will include such measures as flexible piping materials, rubber gasketed joints, flexible connections at building entry points contained within an inspection and leak detection vault, structurally supported utilities beneath building floors and regular periodic maintenance of the flexible connections.

Pavements

- Roadways and paved areas should consist of flexible paving systems such as asphaltic concrete.

Prepared by:
Mark Gilbert, P.E.
Lowney Associates

Summary of Structural Engineering Factors

- Buildings and structures will require pile support with structural first floor slabs.

- Settlement and differential settlement are the major landfill-related structural factors. However, the settlements anticipated are comparable to those typically experienced on Bay Mud sites throughout the Bay Area; conventional methods have been developed for these factors and will be used on this site.

- Underground and under-slab utilities require special treatment. Utilities under areas that will settle will be built with flexible lines; utilities under pile supported slabs will be suspended from the slabs. These are standard methods at sites where settlements are expected.

- Building entrances require extensive, commonly used, "hinge" slabs to allow the surrounding area to settle while the building remains fixed. Most pile supported buildings have such features.

- Transfer of seismic loads to the landfill will be a major structural consideration. This may be done by shear in the piles, construction of deep grade beams, other types of "keys" built in such a manner that predicted settlements will be accommodated. The methods used will be conventional procedures and practices used on Bay Mud sites.

Prepared by:
Mike Cabak, P.E.
Cabak, Rooney & Jordan Assoc.

Summary of Civil Engineering Factors

Site Access

- Project access and egress – Alternatives have been evaluated, including a primary Great America Parkway entrance and Gold Street access points including:

    - Mid Block on existing alignment
    - Mid Block on straightened alignment
    - On Prolongation of Great America
    - At Gold Street existing Railroad Crossing

Off-Site Utilities

- Utility capacity to serve the site has been evaluated:

    - ***Water*** – A 12" water supply main exists in Gold Street.
    - ***Sanitary Sewers*** – A new 12" sanitary sewer will be constructed to accommodate discharge from the site.
    - ***Storm*** – Drainage will be collected and released according to local and regional approvals.
    - ***Gas*** – Pacific Gas and Electric will be installing gas service to the site.
    - ***Electric*** – Pacific Gas and Electric will be installing electric facilities to accommodate service to the site.
    - ***Telephone*** – Pacific Bell will be installing telephone facilities to accommodate service to the site.

Prepared by:
Gene Golobic, P.E.
Kier & Wright

Key Hazardous Materials Factors

Ground Water and Leachate

- Perimeter testing of the ground water adjacent to the landfill has determined that the ground water is not affected by potentially hazardous compounds leaching from the landfill. Perimeter ground water monitoring of the landfill will continue for at least 30 years.

Landfill Gases and Odor

- The materials comprising the landfill are primarily construction debris with low amounts of organic materials. In addition, most of the landfill is above the ground water table. The generation rate for landfill gases is therefore low. Health and safety practices will be closely followed during construction activities to minimize potential exposure.

Asbestos

- Asbestos has been identified in subsurface soil samples at concentrations up to two (2) percent. The landfill closure will reduce the potential for future exposure by capping of asbestos-containing soils. Health and Safety practices will be implemented during closure and development activities to minimize airborne concentrations of asbestos. Air monitoring controls will also be performed as established by local and State and Federal agencies.

Refuse Excavation

- Some landfill excavation will be required during the landfill closure and development activities. Appropriate Health and Safety practices will be implemented during closure and development activities, as established by local and Federal agencies to minimize the potential for on-site worker exposure.

Prepared by:
Tom McCloskey, C.E.G
Lowney Associates

Status of Landfill Closure

Landfill History

- Class III non-hazardous landfill undergoing final closure construction on land owned by Cargill Salt. Operated for public and private use from 1962 to 1982.

Landfill Materials

- Primarily demolition debris (wood and concrete) and soil with a relatively minor amount of mixed refuse (domestic and commercial trash: metal, paper, plastic, wood, yard cuttings); ratio of approximately 60/30/10.

Landfill Closure

- Closure and a Post-Closure Maintenance Plan, approved by Regional Water Quality Control Board in 1990.

Landfill Monitoring Program

- Groundwater, leachate and gas characterized and monitored as part of several state-mandated programs and end-use development investigations since the mid-1980's. A quarterly landfill monitoring program under Regional Water Quality Control Board review has been performed at the site since 1988. A Solid Waste Assessment Test report, approved by the Regional Board, demonstrated characteristics below Department of Health Services action levels.

Closure Plan for End Use Development

- Revisions to Closure Plan would be required for an end-use development on the site. California landfill regulations require that post-closure land uses must be designed and maintained to:

  1. Protect public health and safety and prevent damage to structures, roads and utilities.
  2. Maintain the integrity of the final cover, drainage and erosion control systems.
  3. Provide protection from landfill gas for structures on-site and within 1,000 feet of the site.

  A revised closure plan and end-use designs would likely incorporate the types of design solutions successfully employed at other Bay Area landfill end-use projects.

Prepared by:
Mark Wheeler, R.G.
Groundworks Environmental

Lincoln Property Company
Project Team

Edgar M. Thrift, Jr.
Developer/Owner
Lincoln Property Company
101 Lincoln Centre Drive, 4th Floor
Foster City, CA 94404-1167
(650) 571-2200

Walter Cohen
The Enterprise Group
651 12th Avenue
San Francisco, CA 94118
(415) 221-2534

Mark Gilbert, P.E.
Geotechnical Engineer
Anderson Consulting Group
631 Commerce Drive, Suite 100
Roseville, CA 95678-6431
(916) 786-8883

Mike Cabak, P.E.
Structural Engineer
Cabak, Rooney & Jordan Associates
1080 O'Brien Drive
Menlo Park, CA 94025
(650) 324-0691

Allison Williams, FAIA
Design Architect
Ai Architects
250 Sutter Street, Suite 600
San Francisco, CA 94108
(415) 955-1900

Gene Golobic, P.E.
Civil Engineer
Kier & Wright
3350 Scott Boulevard, Building 22
Santa Clara, CA 95054
(408) 727-6665

Tom McCloskey, C.E.G
Environmental Scientist
Lowney Associates
405 Clyde Avenue
Mountain View, CA 94043-2209
(650) 967-2365

Mark Wheeler, R.G.
Landfill Closure
Groundworks Environmental
1900 Lafayette Street, Suite 209
Santa Clara, CA 95050-3946
(408) 327-0110