



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** January 7, 2021

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**COUNCIL DISTRICT:** 10

**SUBJECT: FILE NO. GP20-001& C20-007: GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM TRANSPORTATION UTILITIES TO RESIDENTIAL NEIGHBORHOOD AND A CONFORMING REZONING FROM THE A AGRICULTURAL ZONING DISTRICT, AND PROPERTIES THAT DO NOT HAVE AN ESTABLISHED ZONING DISTRICT TO THE R-1-5 SINGLE FAMILY RESIDENCE ZONING DISTRICT ON AN APPROXIMATELY 8.6-GROSS ACRE SITE LOCATED ON A PORTION GENERALLY BOUNDED BY BROOKTREE WAY, BRET HART DRIVE, QUEENSWOOD WAY, AND HAMPSWOOD WAY; A PORTION SOUTH OF HAMPSWOOD WAY, APPROXIMATELY 260 FEET EASTERLY OF HAMPSWOOD COURT; A PORTION NORTHERLY OF PORTSWOOD DRIVE, APPROXIMATELY 380 FEET EASTERLY OF BELDER DRIVE; A PORTION GENERALLY BOUNDED BY THE SOUTH OF PORTSWOOD DRIVE AND ALONG THE NORTH SIDE OF RAICH DRIVE INTO THE NORTH TERMINUS OF CAHEN DRIVE; A PORTION GENERALLY BOUNDED BY THE SOUTH OF RAICH DRIVE, WEST OF CAHEN DRIVE AND NORTH OF MCKEAN ROAD (790 PORTSWOOD DRIVE AND 0 BRET HART DRIVE) (SUMMERHILL HOMES, APPLICANT).**

## **RECOMMENDATION**

The Planning Commission voted (6-0-1; Commissioner Bonilla absent) to recommend that the City Council take the following actions:

1. Consider the Negative Declaration in accordance with CEQA, as amended.
2. Adopt a resolution approving the Envision San José 2040 General Plan Land Use/Transportation Diagram Amendment to change the land use designation from Transportation Utilities to Residential Neighborhood for 790 Portswood Drive and 0 Bret Hart Drive on an 8.6-gross acre site (File No. GP20-001).

3. Approve an ordinance rezoning certain real property located on a portion generally bounded by Brooktree Way, Bret Harte Drive, Queenswood Way, and Hampswood Way; a portion south of Hampswood Way, approximately 260-feet easterly of Hampswood Court; a portion northerly of Portswood Drive, approximately 380-feet easterly of Belder Drive; a portion generally bounded south of Portswood Drive and along the north of Raich Drive into the north terminus of Cahen Drive; a portion generally bounded south of Raich Drive, west of Cahen Drive and north of McKean Road from the A Agricultural Zoning District and properties that do not have an established Zoning District to the R-1-5 Single Family Residence Zoning District on approximately 8.6-gross acres.

### **OUTCOME**

If the City Council adopts a resolution approving the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation changes from Transportation Utilities to Residential Neighborhood; and if the rezoning ordinance is approved, the subject 8.6-gross acre site would be rezoned from A Agricultural Zoning District and properties that do not have an established zoning district to R-1-5 Single-Family Residence Zoning District.

### **BACKGROUND**

The Planning Commission held a public hearing on December 9, 2020, to consider the proposed General Plan Amendment and Rezoning. Planning staff recommended approval to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Transportation Utilities to Residential Neighborhood and change the Zoning District from A Agriculture and for properties that do not have an established Zoning District to the R-1-5 Single Family Residence Zoning District on an 8.6-gross acre site. The Planning Commission voted to recommend that the City Council consider the Negative Declaration in accordance with CEQA and adopt a resolution and ordinance to approve the applicant's proposed General Plan Amendment and Rezoning requests.

#### **Staff Presentation**

Staff presented a summary of the applicant's General Plan Amendment and Rezoning requests, including a description of the proposed project and details of the public engagement process. Project details are explained in the attached Staff Report to the Planning Commission.

#### **Application Presentation and Public Testimony**

The applicant presented an overview of the project and stated that the objective is to provide an opportunity for future single-family residential infill development. The applicant shared that they would continue to engage the community throughout the development stages to address concerns.

Two members of the public spoke in opposition to the proposed project. The first public commenter expressed concern that the project may develop or change the R-1-5 Single-Family Zoning District to allow multi-family residential development. The second public commenter spoke about their preference for no development along the small corridor at the rear of existing single-family homes. The public commenter expressed their disagreement with the CEQA document and shared that development would impact the steep slope, many trees, animals and natural habitat.

The applicant responded that it is their intent to develop single-family homes on the property and to not develop single-family homes along the small portion of land behind existing single-family homes.

#### Planning Commission Discussion

Commissioner Oliverio shared that the proposed project was ultimately a change in land use designation to develop like structures on a property that was never intended to be developed because of the PG&E easement. Staff confirmed Commissioner Oliverio's statement and shared that the R-1-5 Zoning District would allow similar uses and structures to be developed.

Commissioner Torrens expressed her concerns about rolling blackouts and the need for electrical infrastructure in the City. She asked staff why PG&E did not build the planned substation. While staff stated they did not have the specific reasoning for PG&E's decision, staff noted that the density of the surrounding residential uses is lower than the average density within the City. Staff indicated that perhaps service levels and needs may have shifted to more dense areas of the City.

Commissioner Lardinois made a motion to consider the Negative Declaration in accordance with CEQA and adopt a recommendation that the City Council approve the applicant's General Plan Amendment and Rezoning requests. Lastly, Commissioner Oliverio asked staff if another discretionary permit would be needed to develop additional housing units on the site. Staff confirmed that by-right with approval of the proposed General Plan Amendment and Rezoning, the applicant would be able to develop four single-family homes, but they would need a Major Subdivision in order to develop the intended number of single-family homes.

The Planning Commission voted 6-0-1 (Commissioners Bonilla absent) to recommend that the City Council approve the General Plan Amendment and Zoning requests.

#### ANALYSIS

A complete analysis of the General Plan Amendment and Rezoning requests is included the attached Planning Commission Staff Report.

## **CONCLUSION**

The proposed General Plan Amendment is consistent with the goals and policies of the General Plan, which promote infill residential development of similar size and character. The Planning Commission recommended approval of the proposed General Plan Amendment from Transportation Utilities to Residential Neighborhood and the Rezoning to the R-1-5 Single-Family Residence Zoning District on the subject site.

## **EVALUATION AND FOLLOW UP**

If the application for General Plan Amendment is approved as recommended by the Planning Commission, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation change from Transportation Utilities to Residential Neighborhood; if the Zoning request is approved, the property would be changed from A Agriculture and properties that do not have an established Zoning District to the R-1-5 Single-Family Residence Zoning District on an 8.6-gross acre site located at 790 Portswood Drive and 0 Bret Hart Drive.

## **CLIMATE SMART SAN JOSE**

The proposed General Plan Amendment aligns with one or more Climate Smart San José energy, water, or mobility goals by allowing new infill development within an urbanized area, thereby reducing the impact from expanding any public services or infrastructure.

## **PUBLIC OUTREACH/INTEREST**

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. On August 25, 2020, staff conducted a virtual community meeting where approximately 52 community members attended. Residents and stakeholders asked questions related to procedural processes and project timeline. The property owners and occupants within a 1,000-foot radius and all members of the public who requested to be placed on the application's contact list were sent public hearing notices for the Planning Commission and City Council hearings. A notice of the public hearings was also published in the San Jose Post Record and on the City's website. Staff has been available to discuss the project with members of the public.

## **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

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## **CEQA**

An Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between October 30, 2020 and November 19, 2020. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. Three comments were received with the main concerns being existing hazardous materials on site. The ND, Initial Study, public comments, and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under File Nos. GP20-001 and C20-007.

/s/

ROSALYNN HUGHEY, Secretary  
Planning Commission

For questions please contact Michael Brilliot, Division Manager, at  
[michael.brilliot@sanjoseca.gov](mailto:michael.brilliot@sanjoseca.gov).

Attachment: [Planning Commission Staff Report](#)



# Memorandum

**TO:** PLANNING COMMISSION  
**SUBJECT:** GP20-001 and C20-007

**FROM:** Rosalynn Hughey  
**DATE:** December 09, 2020

**COUNCIL DISTRICT:** 10

<b>Type of Permit</b>	Privately-Initiated General Plan Amendment and Conforming Rezoning
<b>Project Planner</b>	Robert Rivera
<b>Location</b>	790 Portswood Drive and 0 Bret Hart Drive
<b>Council District</b>	10
<b>CEQA Clearance</b>	Initial Study/Negative Declaration Portswood Drive General Plan Amendment and Rezoning

## RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council to take all of the following actions:

1. Adopt a resolution adopting the Portswood Drive General Plan Amendment and Rezoning Negative Declaration, for which an Initial Study was prepared, all in accordance with the California Environmental Quality Act, as amended.
2. Adopt a resolution amending the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Transportation Utilities to Residential Neighborhood for 790 Portswood Drive and 0 Bret Hart Drive on an 8.6-gross acre site (File No. GP20-001).
3. Approve an ordinance rezoning certain real property located on a portion generally bounded by Brooktree Way, Bret Harte Drive, Queenswood Way, and Hampswood Way; a portion south of Hampswood Way, approximately 260-feet easterly of Hampswood Court; a portion northerly of Portswood Drive, approximately 380-feet easterly of Belder Drive; a portion generally bounded south of Portswood Drive and along the north of Raich Drive into the north terminus of Cahen Drive; a portion generally bounded south of Raich Drive, west of Cahen Drive and north of McKean Road from the A Agricultural Zoning District and properties that do not have an established Zoning District to the R-1-5 Single Family Residence Zoning District on approximately 8.6-gross acres.

**PROPERTY INFORMATION**

<b>Location</b>	790 Portswood Drive and 0 Bret Hart Drive
<b>Assessor Parcel Nos.</b>	701-48-057, 701-58-048
<b>General Plan</b>	Transportation Utilities
<b>Growth Area</b>	None
<b>Zoning</b>	A Agriculture and no zoning district established
<b>Historic Resource</b>	No
<b>Annexation Date</b>	12/19/1974
<b>Council District</b>	10
<b>Acreage</b>	8.6-gross acre
<b>Proposed Density</b>	8 DU/AC

**PROJECT BACKGROUND**

As shown on the attached [vicinity map \(Figure 1\)](#), the project site is approximately 8.6-gross acres and does not contain any existing building. The site is generally undeveloped except for PG&E electrical utility structures. The portion of the site south of Almaden was formerly reserved for a PG&E substation however the project was not developed. The portion of property located north of Almaden contains existing utilities that may be undergrounded in the future as part of any future development.

The subject site is entirely bounded by single-family residential homes with an average lot size of approximately 8,000 square feet (0.20 acre).

On February 26, 2020, the applicant applied for a General Plan Amendment to change the Envision San Jose 2040 General Plan land use designation from Transportation Utilities to Residential Neighborhood and a Conforming Rezoning from the A Agricultural Zoning District, and properties that do not have an established Zoning District to the R-1-5 Single Family Residence Zoning District on an approximately 8.6-gross acre site. If the General Plan Amendment and Rezoning is approved by the City Council, the applicant will be able to pursue future projects that are consistent with the General Plan Land Use/Transportation Diagram designation of Residential Neighborhood and the Single-Family Residence Zoning District. Currently, there is no planning application on file with the City for any specific development of the site.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
<b>North</b>	Residential Neighborhood	Planned Development Zoning (PDC73-130)	Single-family residential homes
<b>South</b>	Residential Neighborhood	Planned Development Zoning (PDC73-130)	Single-family residential homes
<b>East</b>	Residential Neighborhood	Planned Development Zoning (PDC77-102)	Single-family residential homes
<b>West</b>	Residential Neighborhood and Rural Residential	R-1-5 and R-1-2 Single Family Residence and Planned Development	Single-family residential homes

## ANALYSIS

The proposed General Plan Amendment is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Title 20 of the Municipal Code (Zoning Ordinance)
3. Senate Bill 330
4. California Environmental Quality Act (CEQA)

### [Envision San José 2040 General Plan Conformance](#)

#### *Existing Land Use Designations*

As shown in the attached **Existing General Plan land use designation map (Figure 2)**, the site has a land use designation of Transportation Utilities.

#### **Transportation and Utilities (Existing Designation)**

Density: FAR N/A

Lands with this designation are in primary use as transportation or utility corridors. This designation is mostly applied to active or inactive railroad line and high-voltage power line corridors, but also is appropriate for other similar infrastructure corridors that are not either in the public right-of-way or on lands designated as Public/Quasi-Public. Trails are also an appropriate use for this designation provided that the corridor is not currently in use as an active railroad line or other use that would potentially result in a land use conflict or hazardous situation.



### *Proposed Land Use Designation*

The proposed amendment to the Envision San José 2040 General Plan Land Use/Transportation Diagram Designation Map is shown in the attached **Proposed General Plan land use designation map (Figure 3)**.

### **Residential Neighborhood (Proposed Designation)**

#### Residential Neighborhood

Density: typically 8 DU/AC (Match existing neighborhood character); FAR up to 0.7 (1 to 2.5 stories)

This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Existing development within this designation will typically have a density of approximately 8 DU/AC, but in some cases this designation may be applied to areas already developed at slightly higher or slightly lower densities. New infill development should conform to the Envision General Plan design guidelines for Residential Neighborhoods and be limited to a density of 8 DU/AC or the prevailing neighborhood density, whichever is lower.

An alternative density may be appropriate if it would result in an infill development that matches existing development along the same street from which the new houses take direct access.

### *General Plan Goals and Policies*

The proposal to change the land use designations on the subject site from Transportation Utilities to Residential Neighborhood is consistent with the following key General Plan policies.

1. Compatibility Policy CD-4.4: In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.
2. Residential Neighborhoods Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.
3. Vibrant Neighborhood Goal VN-1: Develop new and preserve and enhance existing neighborhoods to be vibrant, attractive and complete.
4. Vibrant Neighborhood Policy VN-1.11: Protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the residential living environment.

*Analysis: The site is completely surrounded by the Residential Neighborhood land use designation. Single-family residential homes are the predominant use in the area and any new residential homes would be required to develop at the prevailing neighborhood density of approximately 5 DU/AC. Furthermore, any future development would need to comply with the existing Title 19- Subdivision Ordinance in the City's Municipal Code which would also limit the maximum number of residential homes. The existing over-head utilities would be required to be undergrounded prior to any future residential development. Therefore, the proposed project is consistent with General Plan and consistent with its infill development policies.*

The proposed General Plan Amendment and Conforming Rezoning is inconsistent with the following Envision San José 2040 General Plan policies.

1. Major Strategy #3: Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified "Growth Areas" (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of

established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City's Urban Growth Boundary.

2. Growth Areas Policy LU-2.3: To support the intensification of identified Growth Areas, and to achieve various goals related to their development throughout the City, restrict new development on properties in non-Growth Areas.
3. High Quality Living Environments Policy LU-9.17: Limit residential development in established neighborhoods that are not identified growth areas to projects that conform to the site's Land Use / Transportation Diagram designation and meet Urban Design policies in this Plan.

*Analysis: The proposed project would possibly allow housing growth outside of a Growth Area; however the site would not convert any industrial, commercial, or open space lands. The existing site is largely undeveloped and the proposed amendment would only allow infill residential development compatible with the surrounding neighborhood density and character. Furthermore, existing development standards in the Municipal code would only promote infill development consistent with the Residential Neighborhood land use designation.*

### **Zoning Ordinance Conformance**

The project is proposing a Conforming Rezoning from the A Agricultural Zoning District, and properties that do not have an established Zoning District to the R-1-5 Single Family Residence Zoning District on an approximately 8.6-gross acre site. **Existing and Proposed Zoning District Map (Figures 4 and 5).**

<b>R-1-5 Single-Family Residence Zoning District Development Standards</b>	
Front Setback	20 feet minimum
Side Setback	5 feet minimum
Side Corner Setback	12.5 feet minimum
Rear Setback	20 feet minimum
Minimum Lot Area	8,000 square feet minimum
Maximum Height	35 feet maximum

*Analysis: The Conforming Rezoning would allow the site to be developed at a density that is consistent with the proposed General Plan Land Use/Transportation Diagram designation of Residential Neighborhood. Currently, there is no Site Development Permit application on file with the City, and additional design review would occur through the Site Development permit application process. The R-1-5 Single-Family Residence Zoning District would be the most consistent with the surrounding neighborhood character allowing for similar development regulations with regards to height, setbacks and minimum lot acreage.*

### Senate Bill 330 Compliance

Governor Gavin Newsom signed Senate Bill 330, Housing Crisis Act of 2019, on October 9, 2019 to catalyze housing that would offset the high rents and home ownership costs leading to increasing homelessness. The bill is intended to speed up housing construction in California by decreasing the time it takes to obtain building permits and limiting fee increases on housing applications. The bill also prohibits local agencies from reducing the number of homes that can be built on properties that allow housing, including downzoning, changing general or specific plan land use designations to a less intensive use, reductions in height, density or floor area ratio, or other types of increased requirements. The exception to this is that a property may be allowed to reduce intensity of residential uses if changes in land use designations or zoning elsewhere ensure no net loss in residential capacity within the jurisdiction.

The proposed General Plan Amendment (GP20-001) does not reduce the intensity of residential uses because the Transportation Utilities land use designation does not support residential development. GP20-001 would increase the residential capacity by 69 units and the proposed General Plan amendment is therefore in compliance with SB330. Further, the proposed amendment, if approved concurrently with GP20-002 (net 74 units) and GP19-012 (net 248 units) would offset reduced intensity of residential capacity for proposed project file no. GP20-003 (loss of 248 units) resulting in no net loss of residential capacity."

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between October 30, 2020 and November 19, 2020. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. Three comments were received with the main concerns being existing hazardous materials on site. The entire ND and Initial Study, public comments and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under file nos. GP20-001 and C20-007.

### PUBLIC OUTREACH

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy, as described above. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the subject sites. The Staff Report is also posted on the City's website, and staff has been available to respond to questions from the public. Staff held one community meeting for the proposed General Plan Amendment and Rezoning, further staff attended a community meeting held by the project applicant to answer additional questions.

On August 25, 2020 Planning staff hosted a virtual community meeting to provide information and receive input on the proposed General Plan Amendment to the subject site (File Nos. GP20-001 and C20-007; 790 Portswood Drive and 0 Bret Hart Drive. Approximately 52

community members attended the community meeting. Residents and stakeholders expressed their opinions and concerns. Community members asked questions about the future feasible development and asked if the applicant would be able to build multi-family housing if the proposed General Plan Amendment and Rezoning were approved. Staff responded that multi-family housing is not permitted within the R-1-5 Single-Family Residence Zoning District and no application for development has been submitted to the City. Other residents asked questions related to the undergrounding of utilities and if all the utilities would be undergrounded. The applicant responded that the utilities of any future developed properties would be undergrounded and some utilities surrounding future developed properties would remain above ground depending on the future site design of the subject properties; however, the utilities would need to be undergrounded on any proposed future home sites. Some residents expressed concern about existing trees being trimmed or removed. The applicant responded that the corridor is currently maintained by PG&E and offered to coordinate and contact PG&E to determine if they were trimming or removing trees. Staff responded that the proposed project did not include any tree removal from the property. See Attachment D for a record of public correspondence.

**Project Manager:** Robert Rivera

**Approved by:** /s/ , Deputy Director for Rosalynn Hughey, Planning Director

<b>ATTACHMENTS:</b>
<p>Figures 1 through 5</p> <ul style="list-style-type: none"> <li>Figure 1 – Vicinity Map</li> <li>Figure 2 – Existing General Plan Land Use Designation</li> <li>Figure 3 – Proposed General Plan Land Use Designation</li> <li>Figure 4 – Existing Zoning District</li> <li>Figure 5 – Proposed Zoning District</li> </ul>
A: Legal Description
B: Draft Resolution
C: Draft Ordinance
D: Public Correspondences
E: CEQA Resolution
F: Initial Study Negative Declaration

## **GP20-001 & C20-001 List of Attachments**

[Figure 1- Vicinity Map](#)

[Figure 2- Existing General Plan Land Use Designation](#)

[Figure 3-Proposed General Plan Land Use Designation](#)

[Figure 4- Existing Zoning District](#)

[Figure 5- Proposed Zoning District](#)

[Attachment A- Legal Description](#)

[Attachment B- Draft Resolution](#)

[Attachment C- Draft Ordinance](#)

[Attachment D- Public Correspondence](#)

[Attachment E- CEQA Resolution](#)

[Attachment F- Initial Study Negative Declaration](#)