

MINUTE ITEM

This Calendar Item No. C21 was approved as Minute Item No. 21 by the California State Lands Commission by a vote of 3 to 0 at its 1-30-02 meeting.

**CALENDAR ITEM
C21**

A 20
S 10

01/30/02
PRC 8370 W 25206
N. Quesada

GENERAL LEASE- RIGHT OF WAY USE

APPLICANT:

King and Lyons, a partnership
47775 Fremont Boulevard
Fremont, California 94358

AREA, LAND TYPE, AND LOCATION:

.07 acres, more or less, of submerged lands in Coyote Creek, city of Fremont, Alameda County.

AUTHORIZED USE:

Proposed placement of four flap/slide-gate culverts. Each culvert will be a 36-inch diameter, reinforced concrete pipe (RCP) with a Waterman Model FC-10 Combination Drainage, and a Canal Gate.

LEASE TERM:

30 years, beginning January 31, 2002.

CONSIDERATION:

Annual rent in the amount of \$2,154 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Combined single limit coverage of \$500,000.

Bond:

\$5,000.

CALENDAR PAGE	000137
MINUTE PAGE	000155

CALENDAR ITEM NO. C21 (CONT'D)

OTHER PERTINENT INFORMATION:

1. In April 1982, the State Lands Commission entered into a Compromise Title Settlement and Exchange Agreement with Fremont International Partners (FIP) (SLL 85). As part of the settlement, among other things, FIP granted to the State the existing beds of Coyote and Scott Creek (aka Penetencia Creek). In 1983 King and Lyons succeeded to the interests of Fremont International Partners.
2. King and Lyons is currently proposing to develop Bayside Business Park II, Phase I. The first phase of the project consists of the business park development and associated wetland preservation and mitigation on a 148- acre site in the city of Fremont. As part of the mitigation program, King and Lyons is proposing to install four culverts in the levee between the pond and Coyote Creek, and will facilitate the reintroduction of tidal flows to the site to restore the project area to natural salt marsh conditions. By providing better conditions for pickleweed and other salt marsh plants, the regular tidal flows should improve conditions for the salt marsh harvest mouse (SMHM). Additionally, increased open water and regular tidal inundation of shallower area should increase use of the site by water birds and shorebirds. The created wetland habitat should also result in increased value to fish and other aquatic wildlife and reestablishment of microtides (with associated food web, water quality, and habitat functions).
3. An EIR was prepared and certified for this project by the city of Fremont. The California State Lands Commission staff has reviewed such document and Mitigation Monitoring Program adopted by the lead agency.
4. Findings made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, sections 15091 and 15096) are contained in Exhibit C, attached hereto.
5. A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15093) is contained in Exhibit C, attached hereto.
6. Relative to the Statement of Overriding Considerations, the environmental impacts which could not be mitigated to a less than-significant level were as to the issue areas of air quality and transportation. These impacts do not relate to the project components of this wetland restoration project.

CALENDAR ITEM NO. C21 (CONT'D)

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U. S. Army Corps of Engineers, California Department of Fish and Game, and the city of Fremont.

FURTHER APPROVALS REQUIRED:

San Francisco Bay Conservation and Development Commission, and Alameda County.

EXHIBITS:

- A. Site Map and Vicinity Map
- B. Land Descriptions (Pages 1 of 4)
- C. CEQA Findings and Statement of Overriding Considerations
- D. Notice of Determination
- E. Mitigation Monitoring Program

PERMIT STREAMLINING ACT DEADLINE:

May 20, 2002

RECOMMENDED ACTION:

CEQA FINDING:

FIND THAT AN EIR WAS PREPARED AND CERTIFIED FOR THIS PROJECT BY THE CITY OF FREMONT AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

ADOPT THE FINDINGS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15091 AND 15096(h), AS CONTAINED IN EXHIBIT C, ATTACHED HERETO.

ADOPT THE MITIGATION MONITORING PROGRAM, AS CONTAINED IN EXHIBIT E, ATTACHED HERETO.

CALENDAR ITEM NO. C21 (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

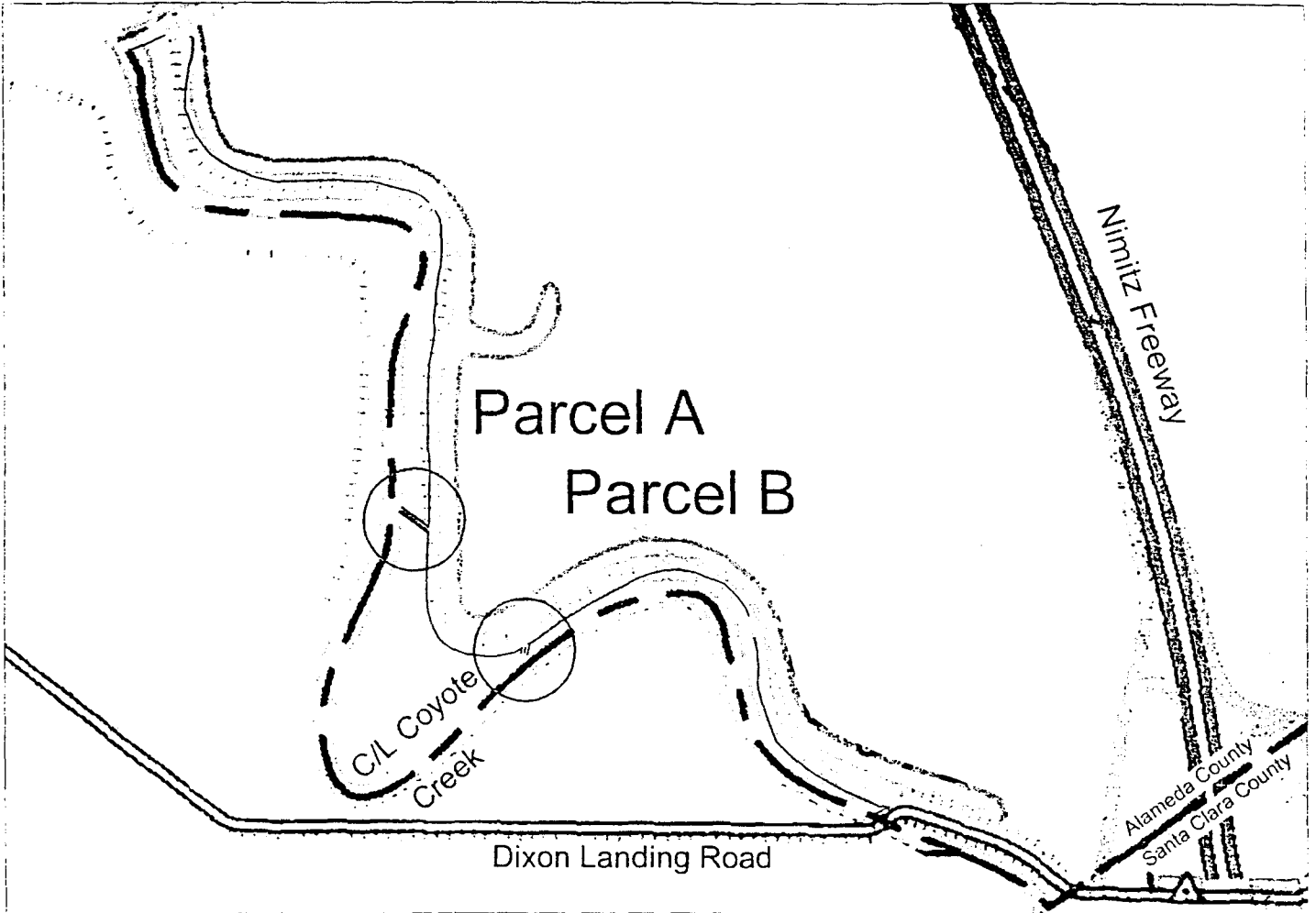
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE ISSUANCE TO KING AND LYONS, A PARTNERSHIP, OF A GENERAL LEASE-RIGHT OF WAY USE, BEGINNING JANUARY 31, 2001, FOR A TERM OF THIRTY YEARS, FOR THE PLACEMENT OF FOUR FLAP/SLIDE-GATE CULVERTS, EACH CULVERT WILL BE A 36 INCH DIAMETER, REINFORCED CONCRETE PIPE (RCP) WITH A WATERMAN MODEL FC-10 COMBINATION DRAINAGE, AND CANAL GATE ON THE LAND DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$2,154, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE FOR A COMBINED LIMIT COVERAGE OF NO LESS THAN \$500,000. SURETY IN THE AMOUNT OF \$5,000.

NO SCALE

SITE MAP



Bayside Business Park II, Fremont, CA

NO SCALE

LOCATION MAP

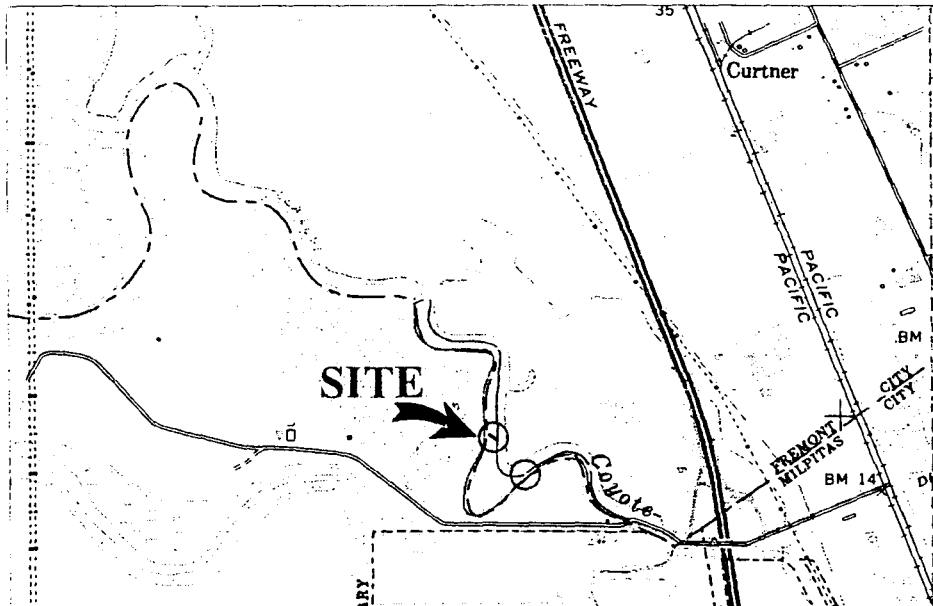


EXHIBIT A

W25206

APN 519-0820-002-16

King & Lyons

Culvert Right of Way

Alameda County



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by Lessee or other parties, and is not intended to be, nor shall it be construed as a waiver or limitation of any state interest in the subject or any other property.

CALENDAR PAGE **000141**
 MINUTE PAGE **000141**

State of California
County of Alameda
APN: 519-0820-002-16

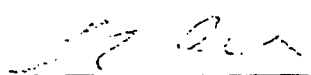
Exhibit B (Page 1 of 4 pages)
Parcel A Description
Stonn Drain Lease Area

A parcel of sovereign land situate in Coyote Creek in the City of Fremont, County of Alameda, State of California

Being a portion of Parcel 5, as said parcel is described in the deed to the State of California, recorded in Series No. 83-225688, Alameda County Records

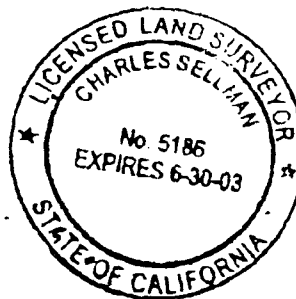
Commencing at the northerly terminus of the line having a bearing and distance of "S.03°40'40"W., 82.24 feet" as said line is described in said deed; thence along said line and the general northeasterly line of said parcel S.03°40'40"W., 5.89 feet to the **Point of Beginning**; thence continuing along said line S.03°40'40"W., 23.53 feet; thence leaving said general northeasterly line N.54°32'56"W., 123.85 feet; thence N.35°27'04"E., 20.00 feet; thence S.54°32'56"E., 111.46 feet to the **Point of Beginning**.

Containing: 2,353 sq. ft. +/-

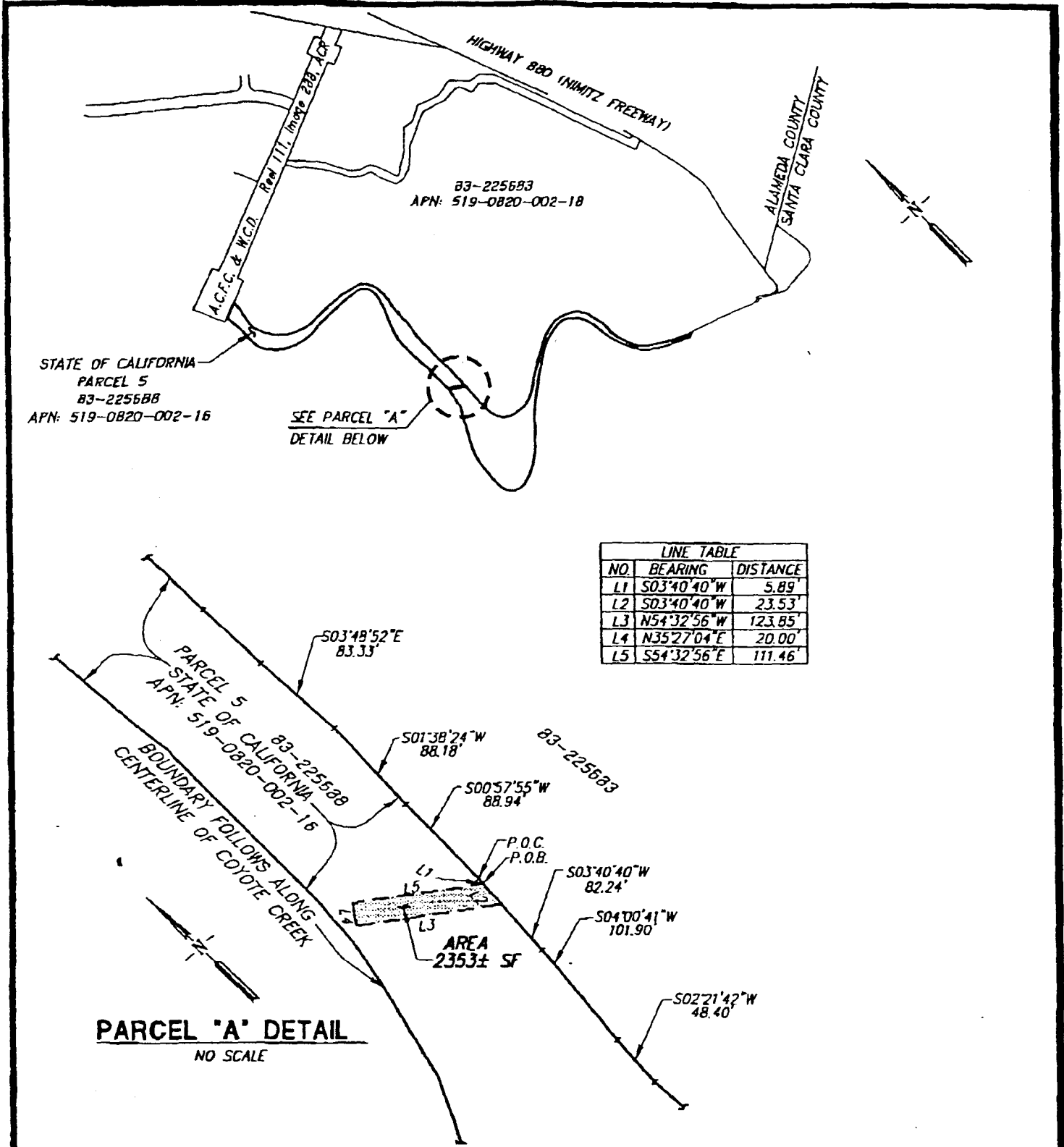


Charles F. Sellman L.S. 5186
License expires 6/30/2003
6-30-03

Date



000142
CALENDAR PAGE _____
MINUTE PAGE 000160



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S03°40'40"W	5.89'
L2	S03°40'40"W	23.53'
L3	N54°32'56"W	123.85'
L4	N35°27'04"E	20.00'
L5	S54°32'56"E	111.46'

PARCEL 'A' DETAIL
NO SCALE

EXHIBIT "B"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
STORM DRAIN LEASE AREA

PAGE 2 OF 4 PAGES

CITY OF FREMONT, ALAMEDA COUNTY, STATE OF CALIFORNIA

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Ruggeri - Jensen - Azar & Associates

4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
 PHONE: (925) 227-9100 • FAX: (925) 227-9300

SCALE: NO SCALE DATE: 09-18-01 JOB NO.: 8768443

CALENDAR PAGE
 MINUTE PAGE **000181**

State of California
County of Alameda
APN: 519-0820-002-16

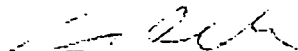
Exhibit B (Page 3 of 4 pages)
Parcel B Description
Storm Drain Lease Area

A parcel of sovereign land situate in Coyote Creek in the City of Fremont, County of Alameda, State of California

Said parcel being a portion of Parcel 5, as said parcel is described in the deed to the State of California, recorded in Series No. 83-225688, Alameda County Records

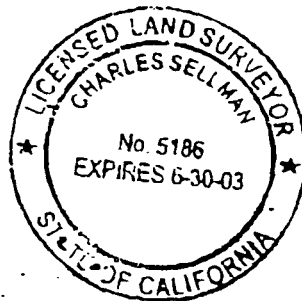
Commencing at the southwesterly terminus of the line having a bearing and distance of "N.59°33'21"E., 36.05 feet" as said line is described in said deed; thence along said line and the general northeasterly line of said parcel N.59°33'21"E., 1.56 feet to the **Point of Beginning**; thence continuing along said line N.59°33'21"E., 26.05 feet; thence leaving said general northeasterly line S.09°24'25"W., 36.84 feet; thence N.80°35'35"W., 20.00 feet; thence N.09°24'25"E., 20.15 feet to the **Point of Beginning**.

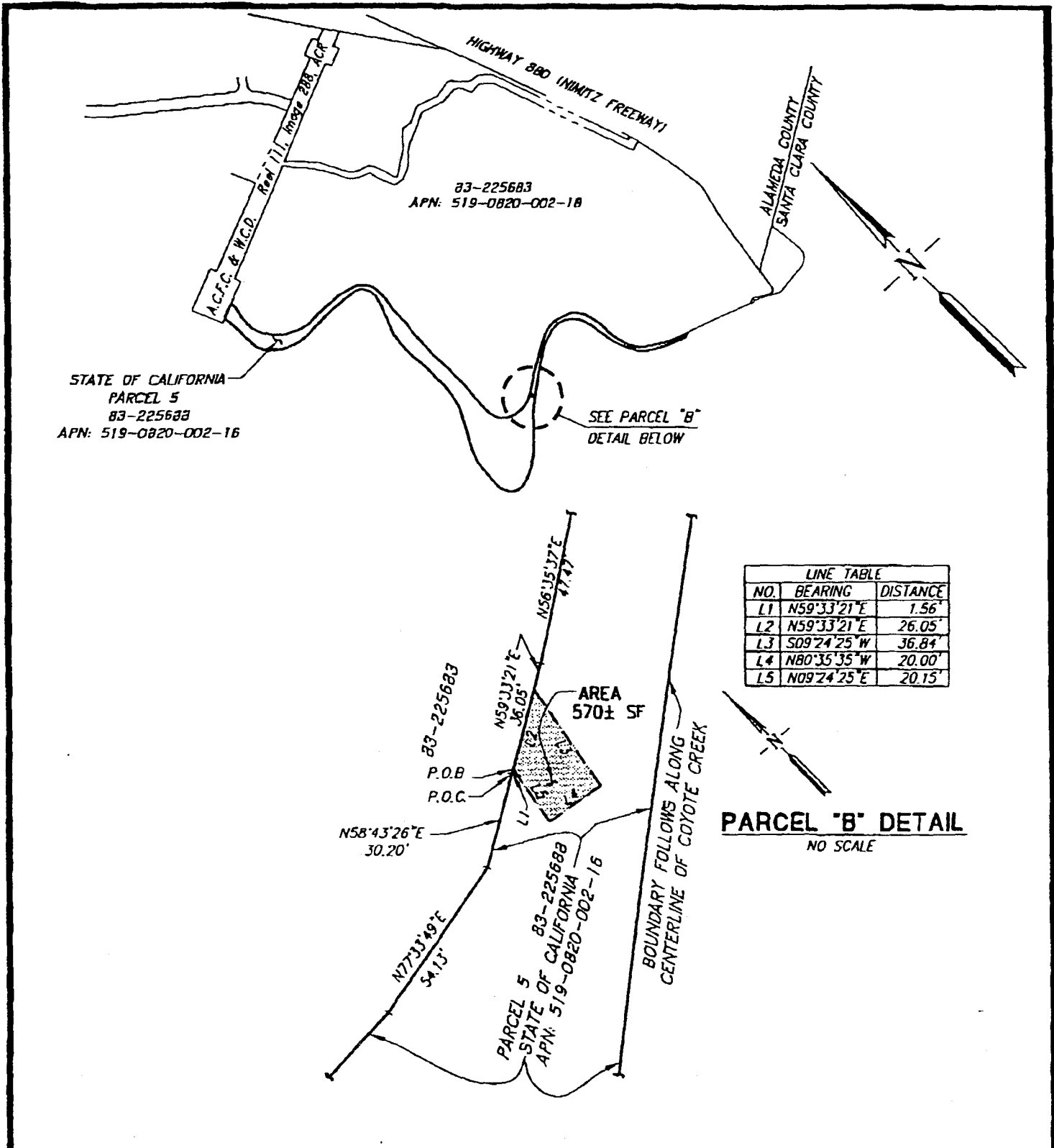
Containing: 570 sq. ft. +/-



Charles F. Sellman L.S. 5186
License expires 6/30/2003
6-1-03

Date





LINE TABLE		
NO.	BEARING	DISTANCE
L1	N59°33'21" E	1.56'
L2	N59°33'21" E	26.05'
L3	S09°24'25" W	36.84'
L4	N80°35'35" W	20.00'
L5	N09°24'25" E	20.15'

PARCEL "B" DETAIL
NO SCALE

EXHIBIT "B"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
STORM DRAIN LEASE AREA

PAGE 4 OF 4 PAGES
CITY OF FREMONT, ALAMEDA COUNTY, STATE OF CALIFORNIA

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4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
PHONE: (925) 227-9100 • FAX: (925) 227-9300

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SCALE:
NO SCALE

DATE:
09-18-01

08/06/05
971035

CALENDAR PAGE
MINUTE PAGE 000183

CSLC EXHIBIT C

EXHIBIT "F"

EIR FINDINGS, FACTS IN SUPPORT OF FINDINGS AND
STATEMENT OF OVERRIDING CONSIDERATIONSKING AND LYONS, INCORPORATED - FREMONT BOULEVARD
(TR-6591, Z-89-8, GP-92-11, EIR-89-56)

This Statement of Findings and Statement of Overriding Considerations, regarding the proposed rezoning and tentative tract map for the approximately 68 acre Bayside Business Park (Phase II) and its associated 91 acre open space area, sets forth the findings of the Planning Commission, City Council and the City of Fremont relating to the potential significant environmental effects of the proposed rezoning and tract map and implementing actions (i.e., "Project Approvals"). Wherever the word "project" is used within this exhibit, it refers to the Project Approvals.

SECTION I. PLANNING AND ENVIRONMENTAL FRAMEWORK AND PROCESSA. PROPOSED ACTION

Applications were filed with the City of Fremont by the owner of the Bayside Business Park for a development of Phase II of Bayside Business Park. The project area encompasses approximately 68 acres which will be developed with industrial land uses, and approximately 91 acres which will be zoned open space and enhanced and preserved as a wetland and wildlife habitat area. The property owner also applied for a Vesting Tentative Tract Map (TR-6591), a permit for grading on the project site (GP-92-11), and a Development Agreement (DA-92-1). An Initial Study, pursuant to the California Environmental Quality Act (CEQA), was prepared which determined the proposed project may create significant environmental effects, and that an EIR would be required for the project. The City processed an Environmental Impact Report pursuant to CEQA (EIR-89-56).

B. STATE LAW

Sections 15091(a) and (b) of the California Environmental Quality Act (CEQA) requires the following:

- (a) "No public agency shall approve or carry out a project for which an Environmental Impact Report has been completed which identifies one or more significant effects of the project unless the public agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding."
1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 3. Specific economic, social or other considerations make infeasible the mitigation measures or project alterations identified in the Final EIR.
- (b) The findings required by subsection (a) shall be supported by substantial evidence in the record."

C. ALTERNATIVES TO THE PROPOSED PROJECT

As set forth in Section 15126 of the CEQA Guidelines, an EIR is required to "describe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and evaluate the comparative merits of the alternatives". Subsection (2) of Section 15126 requires that the "No Project" alternative be evaluated and, if it is found to be the environmentally superior alternative, the EIR shall also identify an environmentally superior alternative among the remaining alternatives.

The term "environmentally superior" is not defined with the CEQA Guidelines, and as a result, may be subject to different interpretations. In an effort to identify an alternative from among the three presented in the EIR as environmentally superior to the proposed project or other alternatives, the ability of each of the alternatives to reduce impacts associated with the proposed project, which have been identified as significant, was evaluated. No alternative was judged capable of mitigating all of the identified impacts to a non-significant level. The balancing of the relative importance of one impact in comparison with another will vary from one person to the next, but for the purposes of this evaluation, those alternatives which would reduce the impacts on existing wildlife habitat and which would reduce the demand for resources generally were regarded as environmentally superior to those alternative which did not meet these objectives as well.

The EIR examined the potential for on- and off-site alternatives as described below. Also described below are findings made by the City with respect to these alternatives.

1. No Project: Under this alternative, the project site would remain as it is today, with the idle land zoned A (Agricultural Zoning District) and A(F) (Agricultural Zoning District, Flood Combining District). No efforts would be made to build new structures on the property, to remove existing pavement and structures, or to reconstitute any of the project site as wetlands for potential wildlife habitat areas. This would mean that improvements to the deteriorating levees would not take place. As a result, in the event of a major flood, the failure of these levees could put the Salt Marsh Harvest Mouse and its habitat in jeopardy. Additionally, implementation of the "No Project" alternative could result in flooding of the adjacent portions of Interstate 880, with attendant adverse public health, safety and welfare consequences. On this basis, the City finds the "No Project" alternative would not be the environmentally superior alternative.

Additionally, this alternative provides little or no potential for increased revenue generation for the City. This alternative would not implement the project site's existing General Plan land use designation.

2. Limited Development with Additional Wetlands Preserved: This alternative would rezone the project site to permit Restricted Industrial development, but the area to be developed would be reduced in an effort to further limit the filling of wetlands identified on the project site. Under this alternative, development on the Lot 1 would be limited to approximately six acres. This alternative would reduce the amount of wetlands which would need to be filled to permit the development of nine lots at the project site by approximately 6.5 acres (a ten percent reduction from the proposed project), but would still enable the wetland mitigation plan and levee improvements proposed by the applicant to be implemented. The relative cost of these improvements would probably be more expensive for the applicant, since the developable area of the site would be reduced by approximately ten percent. The remainder of the project site would be rezoned O-S (Open Space Zoning District) to preserve the existing and reconstitute wetland habitat areas.

This alternative could be considered to be environmentally superior to the proposed project with respect to issues other than wetlands and biological resources. However, the difference is slight. This alternative would provide less potential for increased tax revenue generation for the City, as well as less job creation than the

tr6591-mj
January 27, 1994
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Exhibit "F"
[EIR FINDINGS]
Page 2

CALENDAR PAGE	000147
MINUTE PAGE	000165

proposed project. On balance, the City determines that this alternative is not preferable to the proposed project.

3. **Off-Site Alternative:** As an alternative to the proposed project, an off-site alternative location was identified where the proposed project could be built. This identified alternative site is a 74-acre tract located east of the New United Motors Manufacturing, Incorporated factory along Warm Springs Boulevard in the Industrial Planning Area. This alternative site, known as the Shapell/Lopes property, would be near the proposed Bay Area Rapid Transit District station which may be built if the system is extended to Warm Springs in the future. There are no known wetlands identified on this alternate site, eliminating the need for special mitigation to compensate for any possible wetlands loss.

Because this off-site location is already zoned for Restricted Industrial land uses, implementation of this off-site alternative would result in a net loss of developable industrial lands, thereby impacting the City's revenues as well as jobs/housing balance.

D. OVERVIEW OF REMAINING SECTIONS

The EIR identifies certain significant effects on the environment which may occur as a result of this Project. Section II restates the significant environmental effects identified in the EIR which cannot be reduced to a non-significant level. Section III includes findings regarding other effects which have been mitigated to a level of non-significance. Section IV states specific reasons supporting the City's determination the identified unavoidable environmental risks are acceptable because the benefits of the proposed project outweigh the unavoidable adverse environmental effects.

SECTION II FINDINGS REGARDING SIGNIFICANT EFFECTS WHICH CANNOT FEASIBLY BE MITIGATED TO A NON-SIGNIFICANT LEVEL

Effect: Sections of Interstate 880 north and south of Dixon Landing Road are expected to operate at Level of Service F during the AM and PM peak hours.

Findings: The required improvements to Interstate 880 are not the responsibility of this project, and would not be sufficient to reduce the identified cumulative regional traffic impact on Interstate 880 north and south of Dixon Landing Road to a non-significant level.

Facts in Support of Findings: The City finds that traffic congestion at the intersections and roadways identified in EIR-89-56 is a cumulative and regional problem. The cost of constructing the identified roadway improvements to the Dixon Landing Road interchange and widening Interstate 880 to ten lanes is infeasible for this project. Even if the Dixon Landing Road interchange improvements and/or the Interstate 880 widening have not been commenced or completed by such time development commences on this project site, the City finds that the traffic, circulation, and access impacts of this project which remain unmitigated are acceptable because the expected project benefits outweigh any unmitigated adverse environmental effects as set forth in Section IV of this Statement.

Effect: The project's impact on regional emissions, together with that of cumulative development in the South Bay area, would contribute to the continuing ozone problems in the region.

Findings: The identified mitigation measures in EIR-89-56 would not be sufficient to reduce the cumulative impact on regional air quality to a non-significant level.

Facts in Support of Findings: Incorporation into the project of the mitigation measures identified by the conditions of approval for this project results in changes and alterations in the project which will lessen certain of the significant impact. However, the projected increases in regional emissions attributable to traffic generated by the operation of the project, when taken together with the cumulative development in the South Bay area, cannot be reduced to a level below that specified as the level of significance by the Bay Area Air Quality Management District. It would not be possible for this project to further reduce these impacts to any significant extent, or to reduce the impacts to a level which is non-significant. However, to the extent that these air quality impacts remain unmitigated, such impacts are acceptable because of the overriding considerations that project benefits outweigh any unavoidable adverse environmental effects as set forth in Section IV of this Statement.

SECTION III OTHER EFFECTS WHICH HAVE BEEN MITIGATED TO A NON-SIGNIFICANT LEVEL

A. TRAFFIC, CIRCULATION AND ACCESS

Effect: For the short-range condition, the following intersections exceed the Level of Service established by Policy T 1.2.1 of the Fremont General Plan:

- Dixon Landing Road/California Circle
- Dixon Landing Road/Southbound Interstate 880 ramps
- Dixon Landing Road/Fremont Boulevard
- Sections of Interstate 880 north and south of Dixon Landing Road are also expected to operate at poor Levels of Service during the AM and PM peak hours.

Findings: The proposed improvement of the Interstate 880/Dixon Landing Road interchange would improve intersection operations to Level of Service D conditions or better. Improvement of Interstate 880 to six lanes would improve freeway operations to Level of Service D conditions or better for the short-range condition. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Additionally, some of the changes or alterations required are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

28. Should approval of the first Final Map precede the award of contract for the construction of the interchange improvements for the Dixon Landing Road/Interstate 880 interchange, the applicant/developer shall be required to dedicate one-half of the right-of-way required for the future Dixon Landing Road (i.e., equivalent to 64 feet of the 128-foot right-of-way) with the approval of the first Final Map for this project. To the extent that such right-of-way has already been acquired by the State of California for the Dixon Landing Road interchange project, this requirement shall be waived.

29. Should approval of any Final Map precede the award of contract for construction of interchange improvements for Dixon Landing Road, and should such Final Map either create any lots number 6 through 9 on the Tentative Tract Map 6591, or should such Final Map provide for the completion of Fremont Boulevard within the boundaries of this tentative tract map, the applicant shall:
- a. Dedicate any necessary right-of-way for and guarantee improvement of the Dixon Landing Road Interim Connection. The Dixon Landing Road Interim Connection shall consist of two 12-foot wide lanes divided by a dirt median (or two 15-foot wide lanes where the traffic lanes are contiguous), constructed to connect to the Fremont Boulevard extension, plus turn lanes from Dixon Landing Road. The interim connection shall transition to a two-lane, 30-foot wide roadway as it connects to the existing Dixon Landing Road off-ramp and overpass to Interstate 880.
 - b. Provide a cash in-lieu deposit for the installation of complete roadway improvements and utilities up to the centerline of Dixon Landing Road. The applicant/developer shall be given credit for the cost incurred for the construction of the Dixon Landing Road Interim Connection between Fremont Boulevard and Interstate 880. The amount of credit for the cost of improvements for the interim connection shall be subject to the approval of the City Engineer. To the extent that progress with the Dixon Landing Road Interchange project obviates this condition, or portions thereof, this requirement may be waived.
30. The applicant/developer shall be responsible for the installation of any temporary traffic signals, if required, at the intersection of Fremont Boulevard and Dixon Landing Road Interim Connection. An analysis to determine if temporary traffic signals are required shall be made by the City Engineer prior to the approval of each Final Map. No credit against the applicant/developer's required Traffic Impact Fees shall be given for any required temporary traffic signal improvements.
31. In conjunction with roadway improvements along Fremont Boulevard and that portion of Dixon Landing Road outside the State of California right-of-way, the applicant/developer shall be responsible for providing a roadway opening (curb and gutter, paving to the curb-return and barricade) for the future extension of a roadway into the Newby Island refuse disposal site.
32. No driveways or other points of access shall front on Dixon Landing Road. A deed restriction shall be recorded against each lot fronting on Dixon Landing Road making a future purchaser of said lot aware of this restriction.
36. If the development is completed as a single-phase development, the applicant/developer shall be required to dedicate and install complete roadway and utility improvements on Fremont Boulevard across the project's frontage. If the development is phased and constructed with more than one Final Map, Fremont Boulevard improvement obligations shall be as follows:
- a. With the approval of a Final Map creating any of the lots numbered 1 through 5 as shown on Tentative Tract Map 6591, the applicant/developer shall enter into an agreement and post bonds to guarantee the extension of Fremont Boulevard from the north (including the two bridges across the flood control channel and Scott Creek) to the most southerly limits of the Final Map creating any of the lots numbered 1 through 5 on Tract Map 6591.
 - b. With the approval of a Final Map creating any of the lots numbered 6 through 9 as shown on Tentative Tract Map 6591, the applicant/developer shall enter into an agreement and post bonds to guarantee the extension of Fremont Boulevard from Dixon Landing Road to the most northerly boundary of any of the lots number 6 through 9 and deposit a pro-rata share for the

construction of the two bridges (across the flood control channel and Scott Creek) and dedicate all the required right-of-way for Fremont Boulevard (from Dixon Landing Road to the Flood Control Channel B).

38. No driveways or other points of access shall front on the first 520 feet of east side of Fremont Boulevard (as measured from Dixon Landing Road). A suitable point of access for Lots 8 and 9 lots would be by means of a public roadway to be sited on the common property line between Lots 7 and 8, with a private or public street serving all three lots. A deed restriction shall be recorded on Lots 8 and 9 informing any future purchasers of this prohibition.

B. WETLANDS AND HABITATS

Effect: With the development of the project site as proposed, significant impacts to the Salt Marsh Harvest Mouse would result from the flooding of a nine-acre area in the northwest corner of the as part of the proposed Wetland Mitigation Plan, in addition to the net loss of "High Value" (as defined by the proposed Wetland Mitigation Plan) Salt Marsh Harvest Mouse habitat as a result of the filling of existing habitat areas with that portion of the project site proposed for development.

Findings: The conditions of approval set forth for this project prohibit industrial development on the project site until the "development standards" have been achieved, or until such time the applicant has reached an agreement with the City, posted a bond in an amount to be determined by the City, or provides a similar mechanism agreeable to the City which ensures preservation and maintenance of the wetland and upland refugia, as well as meet the "year-5 post-development standards". The City finds that the conditions of approval, the environmental effects of the project pertaining to wetland and related habitats will be fully mitigated in advance of the approval of the first Final Map or construction of improvements for urban uses. On this basis, the City hereby finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

18. Prior to the approval of the first Final Map, the applicant/developer shall post bonds (or any other guarantees or assurances deemed acceptable by the City Attorney) for the completion of the proposed levee. Said levee shall be complete and in place prior to the issuance of occupancy permits for any buildings within this vesting tentative tract map approval, subject to the review and approval of the City Engineer.
19. Any existing wetlands within the proposed developable area (i.e., Lots 1 through 9) shall not be filled or graded until the mitigation work contemplated by the Wetland Mitigation Plan has been completed and meets the "development standards" as defined in the project Wetland Mitigation Plan, and as may be modified by actions taken relative to Condition 26 of this approval. A deed restriction shall be recorded on each of the lots which contains a portion of the wetland mitigation area, thereby notifying any potential purchaser of this development restriction. These deed restrictions shall be recorded in conjunction with the first Final Map for this project site.
20. An undeveloped buffer with a minimum width of 50 feet shall be provided adjacent to both sides of Scott Creek. This buffer zone shall be measured from the top of bank of the existing Scott Creek. The applicant/developer shall be responsible for the erection of a black-clad vinyl chain-link fence to exclude people and feral animals from the creek corridor and buffer zone. In most instances, the fence shall be located along the edge of the buffer zone between the buffer zone and the development area. Where the distance between the top-of-bank and the fence is

less than 50 feet, native landscaping shall be planted to act as a buffer between the creek habitat and the developed areas, subject to the review and approval of the Community Development Director.

21. Prior to the approval of the first Final Map for this project, a specific mitigation plan shall be submitted to the Community Development Director for review and approval consistent with the Mitigation Plan dated April, 1992, prepared by Zentner and Zentner, Incorporated (as modified by EIR-89-56). As part of this review process, the City shall retain a consultant, to be paid for by the applicant/developer, to review and make findings relative to the Wetland Mitigation Plan. The findings of the City-retained consultant shall be considered by the Community Development Director in the approval of said plan. Any required relocation and/or enhancement of wetlands shall be completed and in place prior to the City's acceptance of the first Final Map for this project. This wetland relocation and/or enhancement shall be deemed the restoration construction phase of this project.
22. As part of the mitigation/post-construction monitoring plan described in Condition 25, the applicant/developer shall provide information relative to how protection and construction of the existing and proposed wetlands, trees, creek corridors (and any vegetation therein), historic/archaeologic concerns will be addressed during the restoration construction phase of the proposed project. The applicant/developer shall be responsible for retaining an ecological monitor (a qualified ecologist with proven experience in the areas of habitat development and wetland restoration), subject to the review and approval of the City, to monitor site excavation and grading activities. Within two months of the completion of the construction of the relocated or enhanced wetlands, the ecological monitor shall sign a copy of the as-built maps, certifying the project was constructed in accordance with the approved permits and deliver said maps and a construction log to the City. Within 60 days of the receipt of the as-built plans, the City shall inspect the wetland construction project. The City may retain a wetland scientist during the inspection to review the construction project with the City for compliance with the approved permits at the applicant's expense. The construction monitoring plan shall be submitted to the Community Development Director for review and approval prior to the acceptance of the first Final Map for this project or any grading activities, whichever occurs first.
23. The Scott Creek corridor shall be impacted as little as possible, and that portion of the riparian corridor in the area proposed for development and within 50 feet of the banks of Scott Creek (and within the ownership of the applicant) shall be maintained and, if necessary, revegetated with native plants. To accomplish this objective, a riparian corridor plan detailing the work to be done within the corridor, including any restoration and/or replacement work, shall be approved by the Community Development Director prior to the approval of the first Final Map for this project. This riparian corridor plan may be included as a part of the mitigation monitoring plan described above. The 50 foot buffer zone may be used as a part of any required landscape buffer zone required of this project.

With regards to the proposed creek-crossing of Scott Creek, the goal is to span the riparian corridor such that the creek channel underneath the span remains natural (i.e., not concrete). The design of any creek-crossings shall be subject to the review and approval of the Director of Public Works and the Community Development Director.

24. The applicant shall present to the Community Development Director for review and approval a long-term management and maintenance program to be completed after the project meets the fifth year (post-development) performance standards as referenced in the Wetland Mitigation Plan, dated April, 1992, prepared by Zentner and Zentner, Incorporated. For the purposes of this project, "long-term" shall mean a period of time no less than 50 years in duration. Should the applicant choose to transfer management of the wetland area to another entity, the applicant, the City and the management entity shall enter into a long-term maintenance and

management agreement for the wetland area. If another entity is not available, the City shall accept "long-term" management of the wetland area, with fees for the maintenance of said area being funded by a Landscape and Lighting Maintenance Assessment District established on the project site. This condition of approval shall be included in the CC&Rs for this project.

25. The applicant shall prepare and submit to the City a mitigation/post-construction monitoring plan that shall define monitoring methods, frequency of monitoring, likely monitoring stations and other elements detailing the relationship of the monitoring program to the post-construction performance standards. The applicant shall be responsible for the cost of retaining an ecological monitor (a qualified ecologist with proven experience in the area of habitat restoration and monitoring), subject to the review and approval of the Community Development Director. The applicant shall be required to submit a report to the Community Development Director every year for five years from the date of approval of the tentative tract map to verify the required mitigation is being implemented correctly. Each annual report shall compare the results of that year's monitoring with the project performance standards. Following the submittal of the first annual report, an on-site review of the project shall be held with the City and the applicant to review that year's results. The City may retain a wetland monitor for the on-site review to analyze the project site at the time for its compliance with the approved permits and its progress at meeting the performance standards. The applicant shall be responsible for any cost associated with the City's retention of said wetland monitor.

In addition, quarterly reports on the progress of the wetland mitigation effort shall be provided to the Community Development Director in a format to be determined by the Director until such time the fifth year, post-development standards, as defined in the Wetland Mitigation Program, have been achieved. After this, progress reports shall be made every five years. The cost of the City review shall be borne by the applicant.

26. Grading of upland areas pursuant to the approved grading plan and/or grading to implement the Wetland Mitigation Plan may proceed prior to the approval of the first Final Map. Any grading in advance of the first Final Map shall require a separate grading permit and posting of bonds in amounts satisfactory to the City Engineer to guarantee restoration of the impacted areas. Prior to the construction of any buildings on the project site, the percentage of pickleweed cover (absolute value) in the "High Value" habitat area shall be at least 60 percent. Total plant cover (absolute value) shall be 90 percent and plant height shall be a minimum of 14 inches. The remaining percentage of plant cover shall be made up of at least 20 percent native halophytes. Exceptions to these standards may be made if the applicant/developer reaches agreement with the City, posts a bond in an amount to be determined by the City, or provides a similar mechanism agreeable to the City which ensures the preserved and constructed wetlands and upland refugia will be maintained in perpetuity; and that the post-development (Year 5) standards as modified by EIR-89-58 will be met. The applicant shall be responsible for any costs associated with the City determining how much of a bond needs to be posted as described above. These cost may include, but are not limited to, the retention of an outside consultant to determine such costs.

If such an agreement as described above is reached, then, prior to the approval of the first Final Map, the wetland preservation and construction project shall, at a minimum, meet the "Development Standards" as described in the Wetland Mitigation Plan. Additionally, the absolute cover of pickleweed shall be at least 49 percent in the High Value area and the cross-dike shall include land above the 4.0 foot (elevation) level which is suitable refugia habitat for the salt marsh harvest mouse.

27. The Community Development Director shall report to the Planning Commission at such time as the Director determines the appropriate standards for wetland

tr6591-mj
January 27, 1994
PCFILES\TR-6591.EXF

Exhibit "F"
(EIR FINDINGS)
Page 8

CALENDAR PAGE	000153
MINUTE PAGE	000171

restoration have been substantially met. If the Community Development Director determines the applicable standards have been substantially met, the Community Development Director shall approve commencement of construction, subject to the conditions of this approval set forth herein.

C: GEOLOGY AND SOILS

Effect: With the development of the project site as proposed, large quantities of fill will be required to raise the proposed building pad elevations above the 100-year flood level.

Findings: The conditions of approval set forth for this project prohibit any industrial development on the project site until the "development standards" have been achieved, or until such time the applicant has reached an agreement with the City, posted a bond in an amount to be determined by the City, or provides a similar mechanism agreeable to the City which ensures preservation and maintenance of the wetland and upland refugia, as well as meet the "year-5 post-development standards". The City finds that the conditions of approval, the environmental effects of the project pertaining to geology and soils will be fully mitigated in advance of the approval of the first Final Map or construction of improvements for urban uses. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

- 46. The applicant/developer shall submit a detailed soils report including recommendations regarding structural sections, prepared by a qualified soils engineer registered by the State of California. This information shall be reviewed and accepted by the City Engineer prior to the acceptance of the first Final Map. The City Engineer shall require appropriate sections of the soils report to be incorporated into the project.
- 47. The applicant/developer shall adhere to the recommendations of the soils report to mitigate the potential effects of expansive soils on the site.
- 48. The applicant/developer shall submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer and Alameda County Flood Control and Water Conservation District.
- 49. Prior to demolition, excavation and grading on any portion of the project site, all underground obstructions (i.e., debris, septic tanks, fuel tanks, barrels, chemical waste) shall be identified and removed pursuant to Federal, State and local regulations, pursuant to the review and approval of the City's Hazardous Materials Division. Excavations shall then be properly backfilled using structural fill, subject to the review and approval of the City Engineer.
- 50. The applicant/developer shall be responsible for providing slope easements from adjacent properties for all roadways stubbed to the tract boundary. In the event that the applicant/developer cannot obtain the necessary easements, cash-in-lieu of construction for uncompleted improvements will be an acceptable alternative, subject to the approval of the Public Works Director. All cash deposits shall include an escalation factor of 20 percent per year for five years.
- 51. All cut and fill slopes are to be constructed to a maximum of three horizontal to one vertical (3:1), unless otherwise specified on the tract map. Slopes on the proposed levee and detention basins, as well as slopes within the wetland mitigation area, may be designed to a maximum slope of 2:1, subject to the review and approval of the City Engineer.

tr6591-mj
January 27, 1994
PCFILES\TR-6591.EXF

EXHIBIT "C"
[EIR FINDINGS]
Page 9

CALENDAR PAGE	000154
MINUTE PAGE	000172

52. The approval of the Preliminary Grading Plan by the Planning Commission shall run concurrent with the approval and subsequent extensions of the tentative tract map, provided there are no significant changes on the preliminary grading plan, subject to the review and approval of the City Engineer.
53. The applicant may be permitted a grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan, subject to the approval of the City Engineer.
54. Prior to the commencement of any site work, the applicant shall show proof of evidence a Notice of Intent has been submitted to the State in compliance with the State of California Water Resources Control Board Order No. 92-08-DWQ and National Pollution Discharge Elimination System Permit No. CAS000002.
55. The source and haul route for any import fill shall be subject to the review and approval of the City Engineer prior to the commencement of any grading activities.
56. Prior to the issuance of any building permits for structures within this project site, the applicant/developer shall submit "as-built" plans for the final grading work for any approved lot or lots.
57. Approval of this preliminary grading plan shall not extend to the final detailed design approval necessary to be accomplished in connection with the development and improvement plans required with the Final Map for this project.
58. Site grading shall not obstruct the natural flow of waters from abutting properties or divert drainage from its natural watershed.
59. The applicant/developer shall obtain a final grading permit in conjunction with each Final Map. All grading shall be subject to the review and approval of the City Engineer.
60. Proposed curb elevations for the roadway system shall not be less than 1.25 feet above the hydraulic grade line (i.e., design water surface), and at no point shall the curb grade be below the energy grade line. All on-site grades shall be a minimum of 0.75 feet above the hydraulic grade line.
61. All retaining walls shall be limited to a maximum height of three feet, except those required for freeway or roadway construction. All retaining walls supporting a surcharge shall be designed with reinforced concrete.

D. RISK OF UPSET

Effect: Disturbance of contaminated soils could increase the mobility of the contaminants and cause further groundwater degradation, or, by bringing the contaminants to the surface, could result in added hazards to plant and animal life in the portion of the project site proposed for wetland mitigation.

Findings: The conditions of approval set forth for this project prohibit any industrial development on the project site until the mitigation measures set forth for this project have been implemented. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

6. Prior to the approval of the first Final Map, the applicant shall submit a Phase I hazardous materials analysis (i.e., literature search, analysis of past land uses) on

tr6591-mj
January 27, 1994
PCFILES\TR-6591.EXF

Exhibit "F"
(EIR FINDINGS)
Page 10

CALENDAR PAGE 000155

MINUTE PAGE 000173

site, determination whether hazardous materials may have been used on site) to determine whether or not hazardous materials are located on or within the soils of the project site. If necessary, a Phase II analysis (i.e., soils testing) shall also be completed only in those areas of concern identified in the Phase I analysis.

7. Prior to the approval of the first Final Map for this project, the applicant shall have obtained demolition permits for the removal of all structures currently on the site and shall have completed such demolition.

E. STORM DRAINAGE

Effect: Development of the project site would involve extensive regrading of the site, and would have considerable impact on the existing drainage scheme.

Findings: The conditions of approval set forth for this project prohibit any industrial development on the project site until the mitigation measures set forth for this project have been implemented. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

62. The applicant shall provide for a functional drainage system subject to approval of the City Engineer and Alameda County Flood Control and Water Conservation District prior to the acceptance of the first Final Map.
63. Storm drain facilities necessary to drain runoff from the private open space (i.e., detention basins) shall be maintained in a private storm drain system by the property owners association formed in conjunction with Tract 6591.
64. Prior to the acceptance of the first Final Map for this project, the applicant/developer shall provide evidence to the Community Development Director clearly indicating how and by whom the proposed retention pond facilities (including the pump stations) will be operated and maintained. Any property owners association formed in conjunction with the proposed development would be an acceptable means of providing maintenance.
65. Individual lots shall be provided with a separate underground storm drain system. No overland flow to public roadway systems will be permitted.
66. The CC&Rs for the subdivision shall contain provisions for individual property owners to maintain private storm drains within each lot and retention pond.
67. Grading operations for roadways and on-site building pads shall be supervised by a registered civil engineer in accordance with recommendation contained in the approved soils report for this project site.
68. Surface runoff shall be drained from all developed lots to the two proposed retention basins. Where this design concept is not feasible, individual detention facilities shall be constructed on lots which cannot feasibly be drained to the two basins.
69. Improvements to the exterior levees shall comply with the standards of the Alameda County Flood Control District, the Alameda County Public Works Agency, and the Federal Emergency Management Agency.
70. The developed area of the project site shall be designed and constructed such that no portion of the developed area would meet the requirements of being within the

"Special Flood Hazard Area" as defined by the Federal Insurance Administration. The applicant shall seek approval from the Federal Emergency Management Agency to have this area excluded from the "Special Flood Hazard Area."

71. Prior to the approval of the first Final Map for this project, the applicant/developer shall secure approval from the State Lands Commission for the proposed drainage outfall structures into Scott Creek and Coyote Creek.

F. WASTEWATER COLLECTION

Effect: The proposed development would generate an estimated 76,000 gallons of wastewater per day.

Findings: The City has Municipal Code requirements which mandate developments to comply with all requirements of other public agencies before the City will approve the Final Map for any project. Additionally, Union Sanitary District is responsible for signing the Final Map to assert the district will be able to provide service to any approved development. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Additionally, some of the changes or alterations required are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

72. Final plans for the wastewater system extensions shall be approved by the Union Sanitary District prior to the approval of the first Final Map.
73. The sewer line crossing Flood Control Channel "B" shall be constructed in accordance with Alameda County Flood Control District specifications. Final plans for the crossing shall be approved by the Flood Control District prior to the approval of the first Final Map.
74. The existing on-site sewage holding tank shall be abandoned in accordance with the regulations of the Alameda County Environmental Health Department. Evidence of the removal of the tank shall be presented to the City Engineer prior to the approval of the first Final Map as well as prior to the restoration of the wetlands.

G. WATER QUALITY

Effect: The construction of roadways, parking lots and other impermeable surfaces on the project site would mean that a certain amount of pollutants would be picked up in the stormwater run-off. Industrial developments on the site would present further potential for stormwater contamination. Depending on the type of industries, a variety of pollutants could potentially impact the quality of the receiving waters.

Findings: The City has Municipal Code requirements which mandate developments to comply with all requirements of other public agencies before the City will approve the Final Map for any project. Additionally, Alameda County Flood Control and Water Conservation District is responsible for signing the Final Map to assert the district will be able to provide service to any approved development. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Additionally, some of the changes or alterations required are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such

changes have been adopted by such other agency or can and should be adopted by such other agency.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

6. Prior to the acceptance of the first Final Map, the applicant shall submit a Phase I hazardous materials analysis (i.e., literature search, analysis of past land uses on site, determination whether hazardous materials may have been used on site) to determine whether or not hazardous materials are located on or within the soils of the project site. If necessary, a Phase II analysis (i.e., soils testing) shall also be completed only in those areas of concern identified in the Phase I analysis.
68. Surface runoff shall be drained from all developed lots to the two proposed retention basins. Where this design concept is not feasible, individual detention facilities shall be constructed on lots which cannot feasibly be drained to the two basins.

H. POLICE/FIRE PROTECTION SERVICES

Effect: Development of the proposed project would be on the fringe of the Fremont Fire Department's five-minute response range (the goal the department tries to achieve on 75 percent of its responses).

Findings: The City has Municipal Code requirements which mandate developments to comply with the Uniform Fire Code and other building requirements. Additionally, the Police and Fire Departments are responsible for reviewing all development plans to assure the department will be able to provide service to any approved development. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

35. To provide adequate emergency vehicle access during project construction, Fremont Boulevard shall be completely extended from Dixon Landing Road to Scott Creek prior to the commencement of any building construction on Lots 2 through 9 of Tract 6591. Prior to any building construction on Lot 1, the extension of Fremont Boulevard shall include, at a minimum, the construction of one of two required bridges (constructed to its ultimate right-of-way): 1) across Scott Creek; or 2) across the flood control channel at the north end of the project site.

As an interim measure during building construction, the City shall permit alternatives to total paving, such as providing some type of all-weather paved surface capable of accommodating fire apparatus vehicles, without allowing general public traffic, subject to the review and approval of the Fire Chief, City Engineer and Community Development Director. The timing and phasing of implementing emergency access improvements to Fremont Boulevard during the construction phase of this project shall be reviewed and approved by the Fire Chief, City Engineer and the Community Development Director prior to the acceptance of the first Final Map for this project.

If the development is completed in phases, an emergency vehicle access roadway shall be provided by the applicant/developer as follows:

- a. If any of the lots numbered 2 through 5 are created through the approval of a Final Map, the applicant shall provide access from the existing Fremont

Boulevard, through the project site, and connecting to Dixon Landing Road. The emergency access roadway shall include the construction of the two bridges over the flood control channel and Scott Creek. Temporary alternatives to the construction of the bridges may be permitted, subject to the review and approval of the Fire Chief and the City Engineer.

- b. If any of the lots numbered 6 through 9 are created with a Final Map, the applicant shall construct Fremont Boulevard from its intersection with Dixon Landing Road north to Scott Creek.
36. If the development is completed as a single-phase development, the applicant/developer shall be required to dedicate and install complete roadway and utility improvements on Fremont Boulevard across the project's frontage. If the development is phased and constructed with more than one Final Map, Fremont Boulevard improvement obligations shall be as follows:
- a. The applicant/developer shall enter into an agreement and post bonds to guarantee the extension of Fremont Boulevard from the north (including the two bridges across the flood control channel and Scott Creek) with the approval of a Final Map creating any of the lots numbered 2 through 5 as shown on Tentative Tract Map 6591.
- b. The applicant/developer shall enter into an agreement and post bonds to guarantee the extension of Fremont Boulevard from the south (i.e., Dixon Landing Road) and deposit a pro-rata share for the construction of the two bridges (across the flood control channel and Scott Creek) and dedicate all the required right-of-way for Fremont Boulevard (from Dixon Landing Road to the Flood Control Channel B) with the approval of a Final Map creating any of the lots numbered 6 through 9 as shown on Tentative Tract Map 6591.

I. NOISE

Effect: Lots 1 through 4 of Tentative Tract Map 6591 would be in excess of 200 feet from the Interstate 880 right-of-way. Buildings constructed on these lots could be exposed to a future Ldn noise level of up to 74 dB.

Findings: The City has Municipal Code requirements which mandate developments to comply with the Uniform Building Code and other noise attenuation requirements. On this basis, the City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

5. Building construction plans shall be submitted to the Development Organization for review and approval to ensure conformance with the relevant codes, policies, other requirements of the Fremont Municipal Code, as well as all conditions of approval associated with this tentative tract map.

J. ARCHAEOLOGY

Effects: It is possible that buried or obscured archaeological materials may be found during earthmoving in areas where higher ground may have permitted habitation in the past.

Findings: The City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

9. The applicant/developer shall retain a Native American Observer in the event any archaeological materials and/or human remains are discovered during the construction phase of the proposed project. All personnel involved in ground clearing, grading or trenching associated with the project shall be alerted to the possibility of discovery of archaeological materials and instructed to stop work in the immediate area of any find. Once work has been stopped, it will be the responsibility of the applicant to retain a qualified archaeologist, subject to the approval of the City of Fremont, to inspect the find and make necessary plans for the evaluation and mitigation of impacts to any materials still in the area slated for land alteration.

In the event any human remains are discovered, it will be the responsibility of the archaeologist who inspects the find to make a determination of their origin. If aboriginal, the County Coroner shall be notified and instructed to contact the Native American Heritage Commission. The Commission is required to notify a Most Likely Descendent who will meet with the applicant in order to come to an agreement about the method of removal and the place of reinterment of ancestral remains.

K. AESTHETICS/LIGHT AND GLARE

Effect: Implementation of the proposed project would alter the existing visual character of the project area. Additionally, construction of the proposed project would significantly increase the amount of light and glare to the local environment.

Findings: The City hereby finds changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Findings: The following conditions approval (with condition numbers correlating to Exhibit "C" - Conditions of Approval for Tract 6591) have been included in the project, requiring the applicant to do the following:

6. Building construction plans shall be submitted to the Development Organization for review and approval to ensure conformance with the relevant codes, policies, other requirements of the Fremont Municipal Code, as well as all conditions of approval associated with this tentative tract map.
12. As set forth in the General Plan, the Floor Area Ratio for the proposed industrial land uses may be permitted up to the identified threshold. For each individual parcel, increases in floor area ratio above the identified threshold shall be subject to the current provisions set forth in Article 21.3 of Chapter 2, Title VIII of the Fremont Municipal Code or any subsequent amendments to said article which may increase the permitted floor area ratio. The floor area ratios applied to parcels within this tract shall be based upon the developable portion of the site. No density shall be credited or transferred from Area I (i.e., the wetland areas). This condition of approval shall be included in the CC&Rs established for this project.
13. The City shall not permit the placement of parking, outdoor storage areas or loading (docking) facilities adjacent to the Interstate 880 right-of-way without the placement of landscape materials to adequately screen the facilities. The placement of parking or outdoor storage areas adjacent to the Interstate 880 right-of-way shall

be subject to the review and approval of the Community Development Director prior to the issuance of building permits.

14. The applicant/developer shall prepare an overall master landscape plan, to be implemented on a lot-by-lot basis, outlining the primary landscape materials to be used throughout the project site. This master landscape plan shall be the basis for any landscaping to occur within the project boundaries. The master landscape plan shall be subject to the review and approval of the Community Development Director and the City's Senior Landscape Architect prior to the acceptance of the first Final Map for this project.
15. To implement the Gateway designation for this site as shown on the City's General Plan, and to emphasize the entrance into Fremont along the Interstate 880 right-of-way, the master landscape plan described above shall provide effective landscape screening along the Interstate 880 corridor, subject to the review and approval of the City's Senior Landscape Architect and Community Development Administrator. Said plan shall include the extension of cottonwood poplar trees or other native vegetation along the freeway right-of-way.
16. Building proposals which exceed the normally permitted height requirements for the I-R district shall be required to submit, in conjunction with the application for a finding for an increase in building height above the established threshold, a view analysis to be used by the City in analyzing the proposed height increase. This condition of approval shall be included in the CC&Rs established for this project.

SECTION IV STATEMENT OF OVERRIDING CONSIDERATIONS

- A. The California Environmental Quality Act requires that a Lead Agency (i.e., the City) balance the benefits of a proposed project against its unavoidable adverse environmental risks in determining whether to approve the project. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered "acceptable". If the City permits occurrences of significant effects which are identified in the Final EIR, but are not at least substantially mitigated, the City must state in writing the specific reasons to support its action based upon the Final EIR and/or other information in the record. The basis of such a decision can include specific economic, social or other considerations which make mitigation measures or alternatives to the project identified in the Final EIR infeasible.
- B. As determined in Section II above, only two unavoidable significant effects identified could not be mitigated to a non-significant level. The two unavoidable significant effects on the environment are the traffic impacts and air quality impacts described above. The roadways impacted by additionally traffic generated by the proposed project are significantly impacted by regional traffic. The same is true for air emissions. These are cumulative impacts which cannot be mitigated to a level below the standard of significance. If this project were not permitted to proceed, the deteriorating levees would continue to exist, the site would not have an assured source of water for the enhancement and preservation of the wetland habitat, and the habitat on site, as well as the adjacent Interstate 880, would remain open to the threat of flooding in the event of a major storm.
- C. The primary benefits of the proposed project are set forth below:
 1. The proposed project contemplates rebuilding of the levees which will help assure protection of the wildlife habitat, including the habitat for the Salt Marsh Harvest Mouse, and the protection of the adjacent Interstate 880, from flooding. The project site would be provided with an assured source of water which would be able to be managed in periods of drought, thereby assuring preservation of the wetland areas. The success of the mitigation described in the Wetland Mitigation Plan will be assured before filling or grading of the existing wetlands is permitted.

tr6591-mj
January 27, 1994
PCFILES\TR-6591.EXF

Exhibit "F"
[EIR FINDINGS]
Page 16

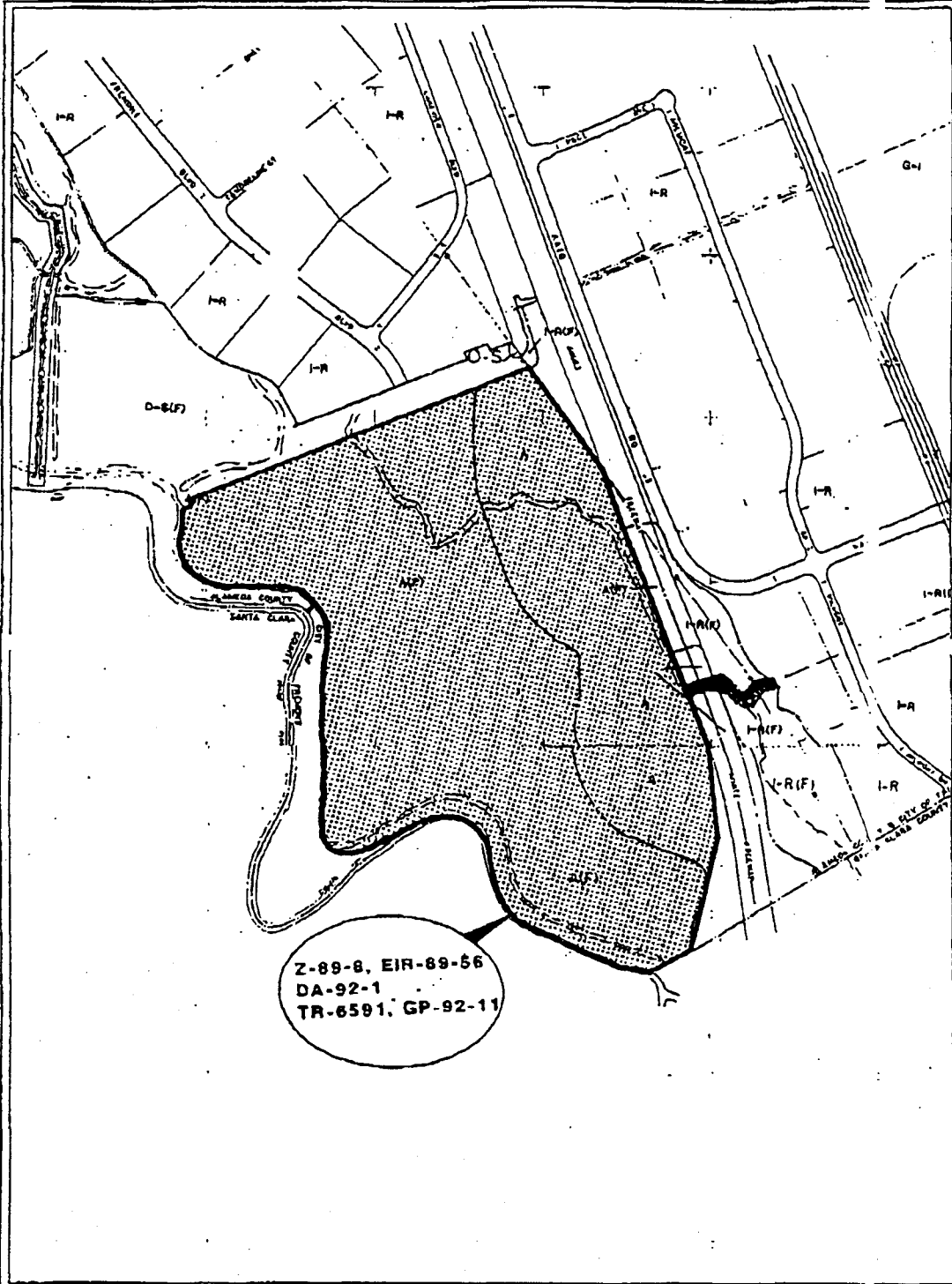
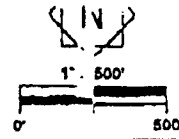
This is a unique mitigation proposal which, in and of itself, is significant. This mitigation proposal, if successful, may serve as a model for other development authorized by the City or other local agencies, and should be encouraged.

2. The proposed project is consistent with the City's policies for development of the project site. Approval of the project is consistent in principle with, and furthers, the goals, policies and objectives of the City's General Plan.

D. Based upon all of the foregoing specific economic, social and other considerations, the City has determined that the benefits of the project outweigh its unavoidable adverse environmental effects, which are deemed acceptable.

ZONING
GENERAL PLAN

EXHIBIT



Z-89-8, EIR-89-66
DA-92-1
TR-6591, GP-92-11

Present Zoning A ; A(F)	Area Sq. Ft. 159 Ac.	General Plan Designation RESTRICTED INDUSTRIAL PRIVATE OPEN SPACE HISTORICAL RESOURCE BICYCLE/FOOT TRAIL
Surrounding Zoning O-S(F) ; I-R	Existing Land Use VACANT ; AIRPORT	
Surrounding Land Use INDUSTRIAL; OPEN SPACE FREEWAY	Proposed Land Use INDUSTRIAL COMPLEX; OPEN SPACE	Owner/Developer KING & LYONS

Secretary, Planning Commission - PLNG 26

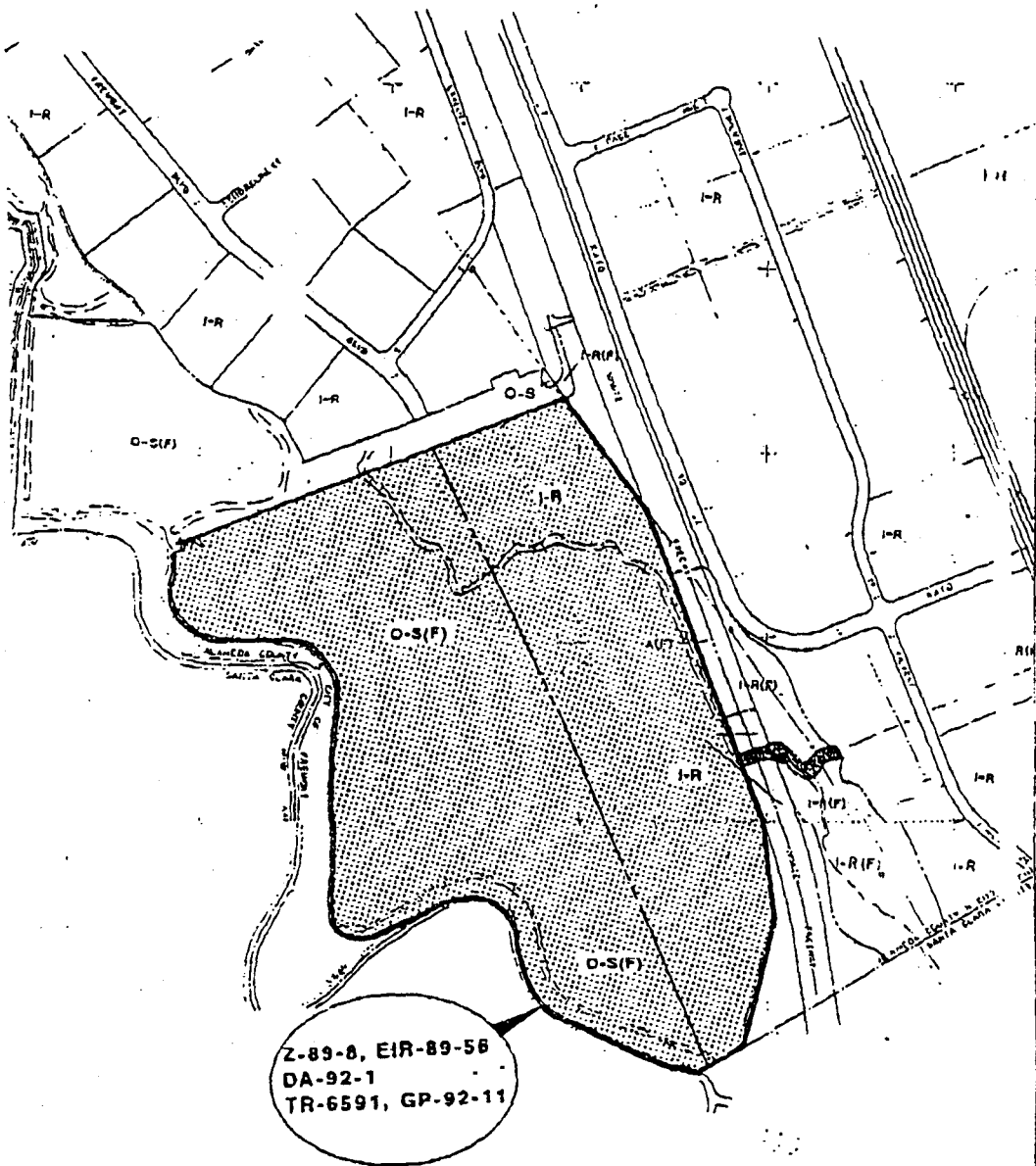
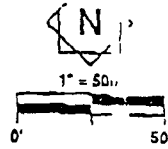
KING & LYONS

Z-89-8, EIR-89-66, DA-92-1
TR-6591, GP-92-11

CALENDAR PAGE **000163**
MINUTE PAGE **000181**

ZONING GENERAL PLAN

EXHIBIT "A"



FROM: A(F), A
 TO: I-R, O-S(F)

Proposed Zoning A ; A(P)	Area Sq. Ft. 159 Ac.	General Plan Designation RESTRICTED INDUSTRIAL PRIVATE OPEN SPACE HISTORICAL RESOURCE BICYCLE/FOOT TRAIL
Existing Zoning I-R, A	Existing Land Use VACANT ; AIRPORT	
Existing Land Use TRAIL; OPEN SPACE AV	Proposed Land Use INDUSTRIAL COMPLEX; OPEN SPACE	Owner/Developer KING & LYONS

Planning Commission - PLUG 20

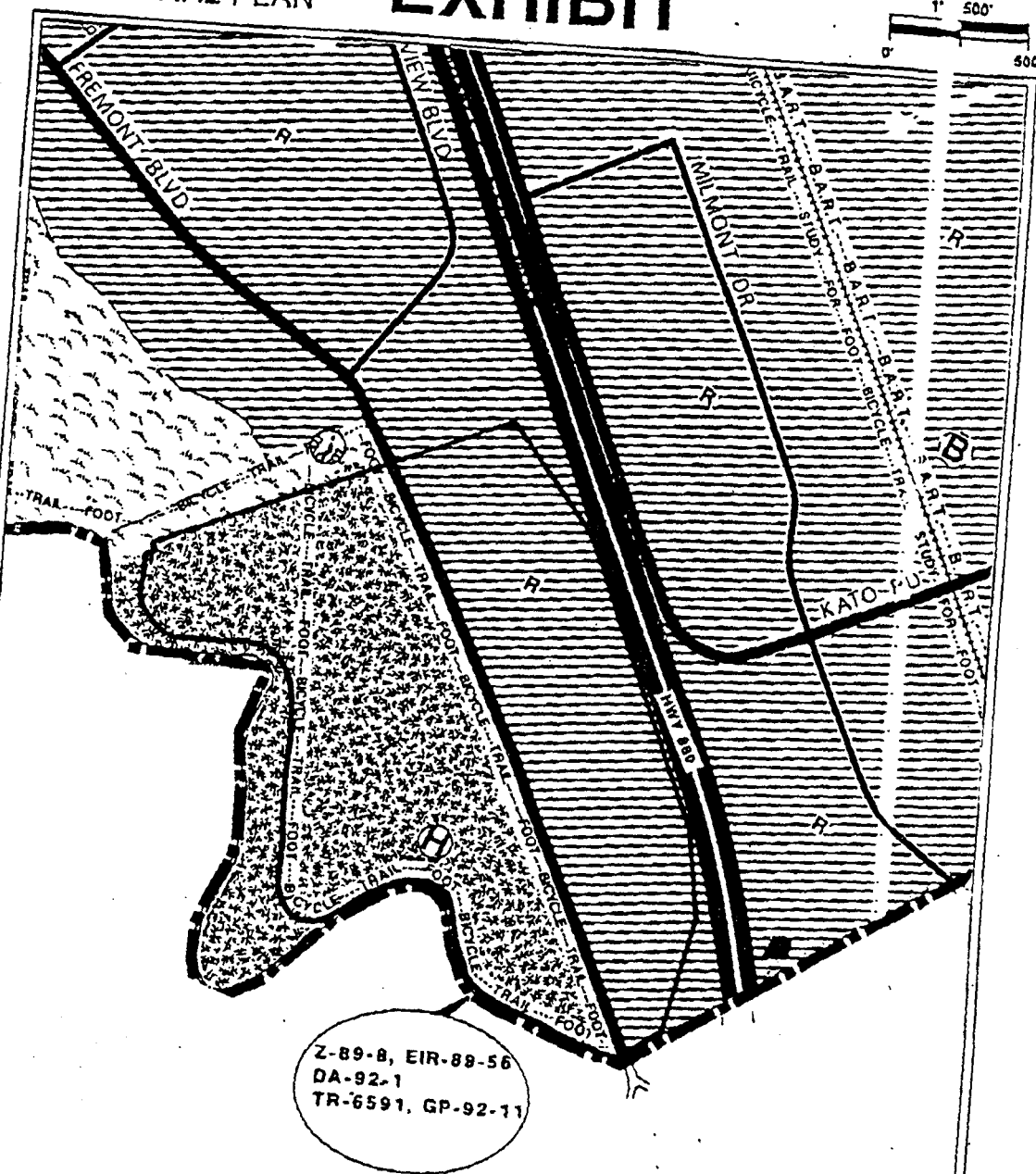
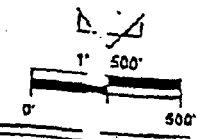
KING & LYONS

Z-89-8, EIR-89-56, DA-92-1

CALENDAR PAGE **000164**
 MINUTE PAGE **000182**

ZONING GENERAL PLAN

EXHIBIT



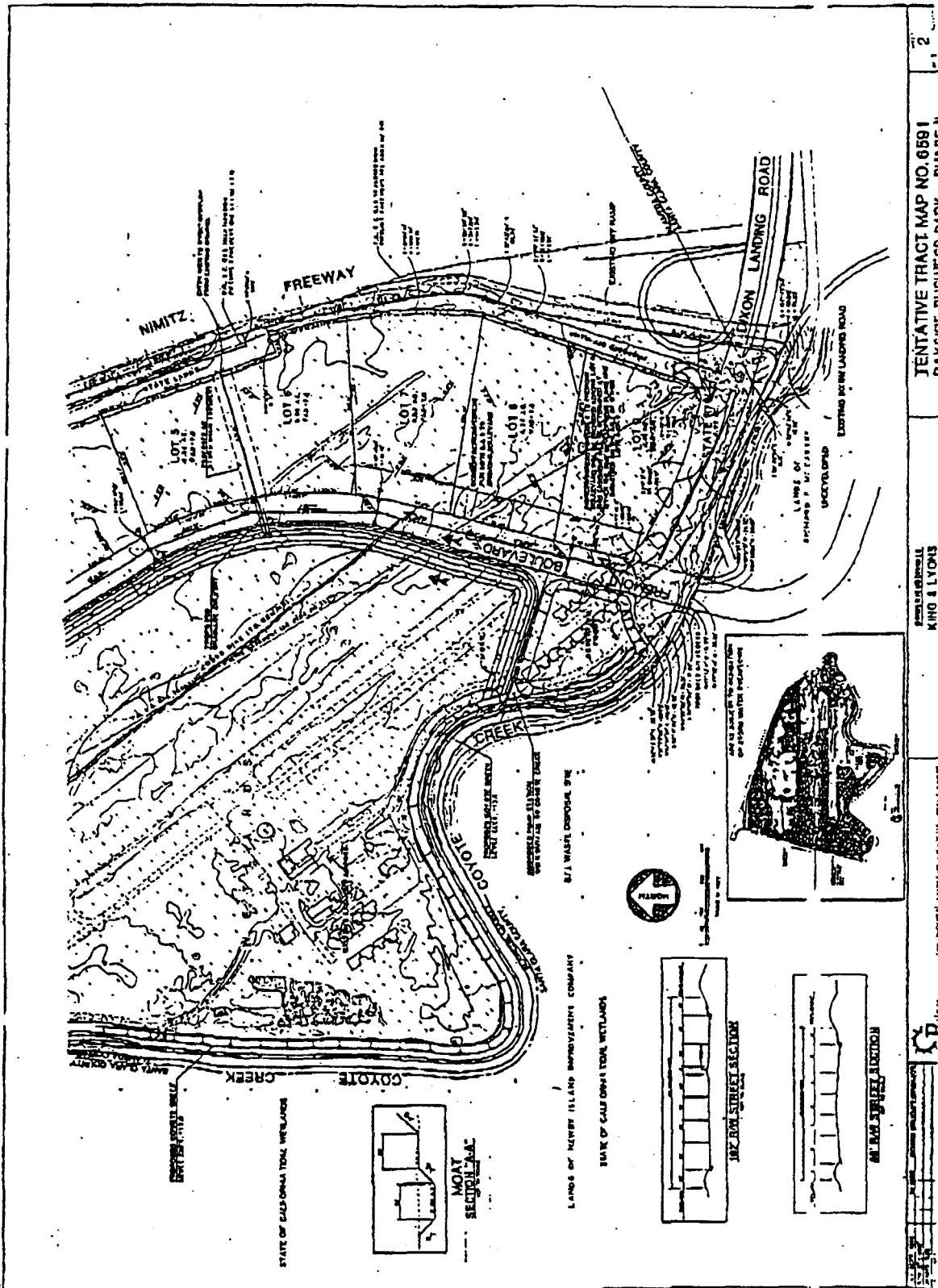
Present Zoning A, A(F)	Area Sq. Ft. 159 Ac.	General Plan Designation RESTRICTED INDUSTRIAL PRIVATE OPEN SPACE HISTORICAL RESOURCE BICYCLE/FOOT TRAIL
Surrounding Zoning O-S(F); I-R; A	Existing Land Use VACANT; AIRPORT	Owner/Developer KING & LYONS
Surrounding Land Use INDUSTRIAL; OPEN SPACE; FREEWAY	Proposed Land Use INDUSTRIAL COMPLEX; OPEN SPACE	

Secretary, Planning Commission - PLNG 36

KING & LYONS

Z-89-8, EIR-89-56, DA-
TR-6591, GP-92-11

CALENDAR PAGE 000165
MINUTE PAGE 000182



12

TENTATIVE TRACT MAP NO. 6891
RAVENNE BUSINESS PARK - PHASE II

PREPARED BY
KING & LYONS

KING & LYONS Z-89-8, EIR-89-56, DA-92-1, TR-6591, GP-92-14

CALENDAR PAGE	000168
MINUTE PAGE	000186



CITY OF FREMONT

COMMUNITY DEVELOPMENT DEPARTMENT

JUL 18 2000

FILED ALAMEDA COUNTY

MAR 07 1994

CLERK'S CERTIFICATE OF POSTAGE Pub. Res. 21152

I certify that a copy of this document was posted at the Clerk's Office, Alameda County, for the period prescribed by law.

Executed at

Oakland, Ca.

on 3-7-94

COUNTY CLERK

by CRYSTAL L. CARMEGIE

Deputy

PATRICK O'CONNELL County Clerk
By [Signature]

TO: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

County Clerk
County of Alameda
1225 Fallon Street, Room 109
Oakland, CA 94612

SUBJECT

Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

PROJECT TITLE: Reimer Associates/King & Lyons (EIR-89-56, Z-89-8)

STATE CLEARINGHOUSE NUMBER (if submitted to Clearinghouse): #89030071

LEAD AGENCY (name of contact person and phone number): Mike Johnson, Community Development Department [phone: (510) 494-4446]

PROJECT LOCATION AND COUNTY: Generally located westerly of interstate 880 and north of Dixon Landing Road, Fremont, Alameda County [APN 519-820-2-14 and 18]

PROJECT DESCRIPTION: Request for approval of a rezoning from A (Agricultural Zoning District) and A.F (Agricultural Zoning District, Flood Combining District) to I-R (Restricted Industrial Zoning District) and O-S(F) (Open Space Zoning District, Flood Combining District) in conformance with the General Plan land use designation for the project site, and a vesting tentative tract map for nine lots and one remainder lot (to be used for wetland mitigation), a Preliminary Grading Plan and Development Agreement on an approximately 159 acre site.

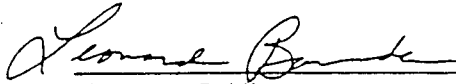
This is to advise that the City of Fremont, Community Development Department (as the Lead Agency) has approved the above described project on March 1, 1994 and has made the following determinations regarding the above described project:

1. The project [will / will not] have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [were / were not] made a condition of the approval of the project.

CALENDAR PAGE	000169
MINUTE PAGE	000187

- 4. A statement of Overriding Considerations [was / was not] adopted for this project.
- 5. Findings [were / were not] made pursuant to the provisions of CEQA.
- 6. The project [will/ will not] have an individual or cumulative adverse effect on fish and wildlife. A Certificate of Fee Exemption [will/ will not] be submitted in conjunction with the Notice of Determination.

This is to certify that the final EIR with comments and responses and record of project approval is available to the General Public at: City of Fremont, Development Services Center, 39550 Liberty Street, Fremont, California 94537.



Senior Planner

March 4, 1994

Signature (Public Agency)

Title

Date

Date received for filing at OPR: 7-20-92.

CALENDAR PAGE	000170
MINUTE PAGE	000188

4. *Upland buffer criteria*

Plant cover in the upland buffers shall be 90%, and absolute native cover shall be over 50%. Target density of trees and shrubs must be met; trees must be at least 60" in height and shrubs must be at least 36" in height; and 75% of the trees and shrubs must be rated as healthy.

C. **Monitoring Program**

1. *Introduction*

Monitoring will review the progress of the constructed and enhanced habitats with annual monitoring reports for each of the first five years after construction and every five years for the next fifteen years. All monitoring will be completed under the direction of a qualified ecologist with experience in wetland restoration and maintenance. These reports will be submitted to the Corps, USFWS, California Department of Fish and Game (CDFG), Regional Water Quality Control Board (RWQCB), and the City.

TABLE 14

Monitoring Elements and References

<i>Habitat Type</i>	<i>Monitored Element</i>	<i>Frequency</i>
Salt Marsh	Water Surface Elevations	Weekly (first year)
	Plant Cover & Height	Annually
	Plant Species Composition	Annually
	SMHM Use	Annually
	Target Acreage	2nd year and tenth
Buffer Habitats	Plant Cover	Annually
	Plant Species Composition	Annually
	Vigor and Height	Twice annually

The monitoring period may be increased if all or a portion of the project is judged to be unsuccessful. Corrective measures should include techniques which have been shown to be successful at this site or other areas and might include significant re-grading or re-planting. These unsuccessful portions of the project will then be monitored until the project is judged to be successful.

Monitoring will include assessments of reference sites for the open water/mudflat wetlands, salt marsh, and brackish riparian zone and of the SMHM refuge areas. The tidal wetland reference site shall be chosen from locations along Coyote Creek adjacent to the site and in the BBP I estuary. The constructed salt marsh reference site shall be chosen from among the relatively recently constructed tidal wetlands in the region. The brackish riparian reference site shall be chosen from a similar habitat type within 5 miles of this site. The reference wetlands and refuge areas will be monitored

for hydrology and vegetation as described below. Data from the reference wetlands and refuge areas will be included in the monitoring reports and compared to the project site.

Monitoring shall frequently scan for evidence of noxious predators and weeds. Predators shall be removed within 10 working days of observation. Where predator sightings reach more than 1 per quarter, the method of entry to the site shall be identified and a predator control program developed with DFG and FWS. All areas where weeds provide more than 25% cover after the first year shall be identified and treated. The case of pepperweed has been described as part of the performance criteria. Other weeds will also be treated although these are not the subject of performance criteria.

Monitoring reports shall include as the final chapter a discussion of recommended actions to correct or modify project conditions. If no comment on these actions is provided, they will be undertaken that fall prior to the onset of the rainy season.

2. *Hydrology*

Once per month for the first year and once per quarter thereafter, the upper limit of inundation by the two high tides that occur in one 24-hour period shall be staked to identify the tidal limits on the ground. The elevations of the tides shall be computed from the tide log and compared to the stakes on the ground to predict sedimentation and vegetation association development.

At least twelve hydrology sampling stations shall be set up in the microtidal mitigation area. These shall consist of staff gauges for reading water surface elevations. Water heights shall be examined monthly, and for each of three days during at least one summer inundation period.

3. *Sedimentation, Erosion and Soil Chemistry*

Sedimentation will be measured once per year through surveyed transects across the tidal wetland and through the analysis of sediment concentrations in the water column. An aerial photograph of the site will be taken every 5 years of the monitoring period and the vegetation associations and unvegetated areas mapped and compared with the previous years.

Erosion may be a critical issue for the first few years after construction. The soil surface of the constructed habitat areas, especially the slope from the salt marsh to the open water area, shall be inspected twice per month for the first 6 months, monthly for the next 2 years, quarterly for the next 3 years and at least annually thereafter. All erosion scars greater than 18" in depth shall be mapped, the likely course of erosion traced and a recommended solution proposed as a part of the monitoring report.

Salinity shall be monitored in the soil profile to a depth of 15 inches below ground surface at random locations in the constructed and enhanced salt marshes. Rates of flooding shall be adjusted appropriately based on monitoring data on soil salinity.

4. Vegetation

All marsh and grassland associations shall be sampled annually for total cover, species richness, and cover by species using at least 24, permanently marked 10' x 10' quadrats; 12 of these shall be centered on the hydrology staff gauges. These areas shall also be walked quarterly the first two years and twice per year thereafter to identify significant infestations of noxious weeds. Additionally, the marsh shall be sampled annually for plant height. Each vegetation monitoring plot and transect will also be photographed. Upland buffer tree and shrubs height, health and morality shall be assessed twice annually.

5. Wildlife

SMHM use will be monitored yearly during the spring (May through June). Monitoring will include at least 2,000 trap-nights and eight trap grids (near the vegetation monitoring stations) with an average of five lines per grid.

6. Habitat Extent

A wetland delineation shall be completed in the second and tenth years and submitted to the Corps for verification.

7. Photo Monitoring

Photo-monitoring will occur twice annually and will entail repeated photographs of the same views, including each vegetation plot. Aerial photographs will be obtained every five years which are suitable for mapping the vegetation of the site.

D. Additional SMHM Reporting Requirements

The applicant shall notify the FWS within twenty-four (24) hours of finding any injured or dead SMHM, or any unanticipated damage to SMHM habitat, associated with project construction. Notification must include the time, date, and precise location of the specimen or incident, and any other pertinent information. The FWS contact person is Ms. Cay Goude, Chief, Division of Endangered Species, in the Sacramento Fish and Wildlife Office (916) 979-2725. Any dead or injured specimens shall be repositied with the Service's Division of Law Enforcement at Sacramento Fish and Wildlife Office, phone (916) 979-2987.

E. Remediation and Contingency Measures

If any yearly or final performance criteria is not met, the applicant shall prepare an analysis of the cause(s) of failure, and if determined necessary by the Corps, propose remedial action for approval.

subject to the contingency requirements, below. The necessary actions will then be undertaken by the applicant in order to satisfy the mitigation requirements.

In the event of population failure (extirpation) of SMHM within five years of tidal restoration or failure of final habitat performance criteria in the constructed tidal marsh either during the non-tidal or tidal phases of habitat restoration, the applicant shall complete one of the following contingency measures below:

1. *Population failure, but habitat performance criteria met.*

If the SMHM population in the constructed marsh becomes extirpated within 5 years after restoration, while habitat performance criteria are met, a program of within-site trapping and translocation of salt marsh harvest mice from other sites to the vacant habitat shall be implemented by a qualified biologist. The plan shall be developed in consultation with the FWS.

The applicant shall monitor the results of the translocation for a period of three years after translocation, using trapping survey methods. If the translocated population fails (exhibits net significant decline or extirpation) at the end of three years, the applicant shall implement the following offsite contingency measures.

2. *Joint habitat and population failure.*

In the event of failure of establishment and persistence of SMHM in the constructed tidal marsh either during the non-tidal phase or within 5 years of tidal restoration, and the joint failure of habitat performance criteria, the applicant shall prepare and implement a plan to restore 30 acres of high salt marsh habitat (intertidal salt marsh above mean higher high water) at the BBP I mitigation site, in areas occupied by low to middle marsh zones dominated by alkali bulrush and tules. The offsite salt marsh habitat would be subject to the same habitat and population performance criteria as the constructed salt marsh. The contingency restoration plan shall be developed in consultation with the USFWS.

F. Notification of Completion

When the initial monitoring period is complete, and if the applicant believes final success criteria have been met, the applicant shall notify the Corps when submitting the report that documents this completion. A current jurisdictional delineation map of created wetlands will be submitted with the report, accompanied by legible copies of supporting field data sheets.

Following receipt of the report which asserts completion, the Corps may require a site visit to confirm completion of the mitigation effort and jurisdictional delineation.

V. IMPLEMENTATION PLAN

A. General

Detailed plans and specifications will be developed prior to each the three phases of the mitigation program, and shall include: grading plans, location and elevation of water control structures, site preparation, seed pre-treatments, handling, storage, certification, warranty period, watering-in, scheduling of seeding and planting operations, irrigation system plans, and the locations of plantings and species (including maps).

Each phase of work will be monitored by an Ecological Monitor (EM). The EM will: (1) monitor habitat protection, site excavation and grading, habitat establishment, and maintenance of the mitigation area and associated structures; and (2) work to ensure conformance with relevant permits and plans for habitat creation, restoration, and protection. The EM is responsible for reviewing any changes made to the implementation plan and monitors all work before the step is taken. The EM will also be responsible for maintaining a construction and implementation log for the project.

B. Order of Operations and Schedule

The general sequence of tasks for each phase is shown in Table 15 below.

TABLE 15

Sequence of Habitat Construction Tasks for Each Phase

(note: not every task will be required for each phase)

1. Install protective flagging and stakes for salvage areas and habitat protection zones.
2. Salvage any desirable plants in areas to be impacted by construction.
3. Handling and storage of salvaged plants.
4. Affirm growers and seed suppliers contracts according to anticipated planting schedule.
5. Identify buried infrastructure, if any.
6. Weed control (including exotic seed bank) and garbage removal from site, with off-site disposal, as needed.
7. Place survey markers and stakes for grading.
8. Grading.
9. Re-apply salvaged topsoil in wetlands.
10. Seed bed preparation.
11. Plant and seed wetlands.
12. Install water control structures.
13. Install irrigation in uplands.
14. Plant and seed uplands.
15. Demobilize and complete as-built drawings and construction report.

Protective flagging and stakes for retained and salvage vegetation will be installed prior to commencement of all other work. Removal of debris and invasive exotic plant will occur soon thereafter. Grading, excavation, and transplanting work will occur simultaneously.

The planting of any cuttings and commercially grown native plant container stock will follow final grading work. Revegetation work should start as soon as practicable after grading concludes. All revegetation activities should be performed in the fall or winter months to enhance survival.

C. Site preparation

1. Introduction

Creation of the new wetlands will be accomplished with a combination of excavation, inoculation, and reintroduction of a micro- and full tidal influence. Top soil and desirable vegetation will be salvaged from the excavation areas and stockpiled. The new wetland areas will then be excavated or filled to appropriate elevations for pickleweed salt marsh to develop within the proposed tidal regime.

2. Habitat Protection and Timing

Prior to any site modification, all existing habitats that are to be left undisturbed or salvaged within the general work area and along all travel ways shall be staked and flagged by the EM. Flagging will be highly visible and replaced as necessary to be continuously in place during construction activities. Stakes will be at least three feet tall. Plastic construction fencing is preferred to flagging for protection of areas exposed to equipment and regular traffic.

This flagging or fencing shall extend around the protected area perimeters or along their entire lengths to prevent any unwanted intrusions and/or damage. Complete replacement or repair of accidentally damaged plants or areas will occur. If flagging proves an insufficient barrier to protected areas, fencing will be required. All fencing and flagging will be removed at the end of all construction work.

3. Salvaging Soil and Vegetation

Desirable soils and plant materials will be salvaged and stockpiled on the site. Salvaged soils will include the top 6 inches of soils, including roots, minus any undesirable vegetation. When ready for final grading, the stockpiled materials will be used as lining and inoculum for the new wetland and upland habitats.

Staking will be used to prevent impacts to existing wetlands adjacent to the wetland creation areas, and may also be necessary to prevent unintentional damage to salvageable vegetation in the excavation areas prior to salvage. Areas of vegetation and soils to be salvaged by grading will be staked prior to any construction work. Undesirable vegetation will be removed from excavation

areas prior to salvaging of the top soils or desirable vegetation. Only native species will be considered for salvaging.

Plant salvage will generally occur with a trenching backhoe or scraper. Some individual plants, however, may require salvaging by hand. In these instances the salvaged plants may require potting and maintenance until the planting season. Efforts should also be made to harvest seed from the development site. Salvage from areas to be excavated or filled may take entire stands. Salvaged plants must be kept viable until out-planting. If wetland construction has not proceeded to the point where salvaged plants can be planted, they shall be stored on the mitigation site in a manner deemed appropriate by the EM.

4. *Grading*

All grading in, and adjacent to, the mitigation areas will be monitored by the EM. The new wetland basins will be excavated into the uplands, with topography appropriate to the seasonal wetland habitat. The excavated soils will be used for contouring of the proposed upland and creation of wetland habitats.

Any excavation or fill during the pre-development phase will occur outside any wetlands, in accordance with the wetland delineation map approved by the Corps of Engineers.

5. *Water Control Structures*

At the first phase, passive inflow and outflow structures will be constructed to restore micro-tidal action to the site. At the commencement of the development phase of the project a storm water diversion culvert will be constructed from Scott Creek to the wetlands and a 20 cfs pump will be installed to empty the perimeter ditch during and after floods.

All of these structures except the ditch will require long-term maintenance, but only the pump will require frequent servicing to assure proper emergency functioning during flood events. In addition two flap-gated culverts connect Scott Creek to Flood Channel B. Regular inspections shall occur to ensure that flow structures are not blocked and that other structures (particularly levees) are intact and functioning.

6. *Erosion Control*

Erosion control is not expected to be a significant problem during the wetland establishment phase of the project, except in the vicinity of the tidal inflow and outflow structures. These areas will be heavily mulched, both as erosion cover and to control weeds; and will also be planted to appropriate native vegetation in order to reduce potential erosion.

Plantings of the buffer areas will occur during the early development phase of the project, and will include extensive plantings of native perennial grasses and herbs (as indicated in the planting lists, above). These upland habitat areas will also be heavily mulched, both as erosion cover and to control weeds during the early phases of native grass establishment. Additionally, erosion fences and/or hay bales will be installed and monitored, under the direction of the EM, during the active construction phase(s) of development in order to prevent excessive erosion and to intercept excess sediment before it can enter the preserved and created wetlands.

7. *Exotic Plant and Debris Removal*

Invasive exotic plants within the mitigation area and buffers (such as Australian salt bush) will be removed manually or mechanically, prior to grading or revegetation work. Such exotic species are often able to out compete the California natives for light, water, and space and can spread aggressively in suitable habitats which have been recently disturbed. If deemed necessary by the EM, an aggressive eradication effort will proceed prior to revegetation in order to give the natives a much needed competitive edge and to reduce future maintenance efforts.

All garbage on the mitigation site or discovered during excavations or grading shall be removed to an approved disposal site. This includes old barbed wire fences.

8. *Preparation for Planting*

Following excavation, the new wetland habitats will be lined with salvaged soils including contained seeds and other plant material. Species indicated in the planting plan will then be broadcast seeded or planted as indicated, in the appropriate habitats. For trees and shrubs, a slow-release fertilizer, such as agriform or osmocote, and a water-holding polymer will be added to the planting hole prior to planting.

9. *Vehicular Access*

Vehicular access to the mitigation areas will be for construction and maintenance only. Construction access routes will be flagged, and sensitive vegetation in the immediate vicinity will also be flagged (or fenced if necessary). All equipment routes will be restored upon completion of construction so as to meet goals of the overall mitigation program.

10. *Buffers, Fences, and Related Measures*

Fences (and signage as necessary) shall be in place at all times, pre- through post-development, to prevent unauthorized foot or vehicular access to the mitigation area.

Buffer habitats will be established at the beginning of the development phase, following wetland establishment. These buffers will include a vegetated berm to be planted with native species chosen for habitat value and effectiveness as a barrier, and will also include permanent six-foot, chain-link fencing (to exclude unauthorized vehicles, people and pets). These buffer habitats (discussed in detail in Mitigation Program, above) will be established along the outboard edge of Fremont Boulevard and at the edges of Scott Creek to separate wetlands from the development areas.

D. Irrigation

A temporary irrigation system is necessary to establish woody plants within the upland and riparian habitats. The salt marsh and upland grassland habitats will not require supplemental irrigation.

The system will be installed below-ground to minimize vandalism. All plastic members of the system will be buried at least four inches below ground with the exception of drip tubing which shall be placed at a depth of at least two inches.

The system will allow separate control over different planting zones. The irrigation system will be removed upon satisfaction of the post-development (5-year) standards, and will remain in operable condition until removed.

Proper irrigation frequency and amounts are crucial to the successful establishment of trees and shrubs. However, the native species planted are adapted to low water regimes and can be harmed by too much water. The case of the native oaks and their aversion to over-watering is well known to landscape contractors throughout California. Irrigation shall be provided in such a manner as to facilitate proper root development, and to avoid over-watering.

The maintenance goal is to aid in establishing the plants so that they are independent of the need for supplemental irrigation after the establishment period. This goal requires that the plants develop extensive root systems that are able to tap groundwater supplies throughout the dry summer months. The use of deep, infrequent watering stimulates the plants to develop the extensive root systems required to meet this goal. If the plants are over-watered, or receive frequent shallow irrigation, there is no incentive for the plants to develop extensive root systems and their roots will remain near the surface.

All temporary irrigation systems shall be maintained in a fully functional condition for approximately five years, regardless of whether the system is still in use. The plants may require supplemental irrigation in unusually harsh conditions during this period. Irrigation may cease once the project restorationist has determined that the vegetation is self-sustaining. If properly maintained, temporary irrigation systems shall be moved to subsequent project phases if deemed desirable.

The irrigation system shall be monitored and repaired on a monthly basis to ensure that all plants are receiving adequate water. The presence of winds requires early morning applications. In addition, all plants shall be monitored for stress and desiccation.

E. As-Built Conditions

A report, to be prepared by the EM, will be submitted to the Corps and the City within 2 months of completion of site preparation and planting for each of the three project phases, which describes the as-built status of the mitigation project. This report shall detail any deviations from the original plan which have potential to impact the created habitats. If site preparation and planting are not completed within six weeks of each other, then separate reports on each shall be submitted to the Corps and the City.

Topographic maps showing as-built contours of the mitigation area will be prepared, and submitted to the Corps when all phases of construction are complete, which shall indicate locations of plantings and any other installations or structures. The ecological monitor shall also sign a copy of the as-built maps, certifying that the project was constructed in accordance with the approved permits, and shall deliver said maps and a construction log to the City.

The applicant will submit a report to the Corps within 6 weeks of completion of site preparation and planting, describing as-built status of the mitigation project. If avoidance is incorporated into development project design, the report should also describe as-built status of the development project, including any deviations from the original plan in the vicinity of, or that will affect, jurisdictional areas. The report shall include topographic maps showing the as-built contours of the mitigation area, plantings, and any other installations or structures. If grading and planting are not completed within six weeks of each other, the applicant will submit separate reports on each.

VI. MAINTENANCE

A. Maintenance During the Monitoring Period

1. *Introduction*

Maintenance activities shall be guided by defined treatments and restrictions. Major elements of the program are described below.

Most native plants are pre-adapted to their growing conditions and do not require substantial maintenance. Pre-adapted to their growing conditions means simply that most native plants will occur only where conditions are relatively optimal for their growth. Essentially, a natural plant community should not require substantial maintenance to encourage its development. In some cases certain maintenance activities, such as fertilization and insecticide applications, might actually create more harm than benefit as discussed below. However, the species to be planted will not have been placed there naturally. They will be restored in anticipation that a native plant community, one adapted to the site conditions, will develop.

Maintenance activities will be needed to ensure that: (1) the community develops as a native plant community, without the introduction of harmful exotic species; (2) the community can naturally regenerate and sustain itself in perpetuity; and (3) the development of this native community does not create potential hazards for the adjacent neighborhoods, including the threat of flood. These goals provide the operating impetus for the initial maintenance program, as detailed below.

2. *Maintenance Manual*

A maintenance manual shall be prepared to aid in the long-term maintenance of the project area. In order that the long term maintenance program benefits from earlier mitigation efforts, the manual shall be prepared within one year after revegetation and shall be designed specifically to accommodate updating.

This manual will detail the maintenance procedures and identify the cultural requirements of the dominate species. The manual shall also address: erosion control, debris removal, exotic plant eradication, species cultural requirements, replanting, protective fencing, and signing. Common pests and disease that occur naturally in the environment (such as anthracnose on Sycamore trees) shall be identified as tolerated infestations. Problems that threaten plant health and vigor shall also be identified, and recommended treatment alternatives shall be included.

3. *Erosion Control*

Erosion control actions shall be undertaken in coordination with construction activities, as previously discussed in Implementation / Site Preparation, above. The EM shall also evaluate and local erosion problems and recommend appropriate remedial actions. In most cases, the area will simply require minor repairs and revegetation. Any severe problems may dictate an engineering solution. Erosion

control failures shall be evaluated on a case-by-case basis.

Common erosion problems of revegetation projects that may be anticipated include: gullies, rill and sheet erosion, and bare soil areas. Repair typically includes redirection or dissipation of the water source, and recontouring of soil, followed by seeding, mulching, or planting.

If appropriate, the EM will prescribe seeding of eroded areas. The plant palette and installation guidelines employed in the revegetation phase shall dictate species selection. The use of invasive exotic species shall be avoided.

4. *Exotic Plant Control*

It may be necessary to weed plant basins to control invasive exotic species that can reduce water or light availability. During the first few years after planting, it will be possible for weedy plants to seriously compete with the native perennial grasses and other planted species for water or nutrients. Weeding will occur under the supervision of an experienced horticulturists or plant ecologists who can recognize the difference between native plants which may (or may not) be relatively benign and those weeds which can harm the mitigation success.

A desirable objective is to remove all noxious exotics prior to planting, which helps give the natives the competitive edge needed to capture the site. Freshly graded soil from site preparation, however, provides a perfect seedbed for windblown seed from invasive exotic species, and must be mulched (as discussed above) to reduce serious re-establishment of the exotics. The success of initial eradication efforts will determine later maintenance requirements.

A desirable maintenance goal is to remove exotics before they are allowed to seed or become seriously reestablished on the site. Invasion of the mitigation areas by exotic species and weeds shall be noted in the monitoring reports and prescriptions for removal will be provided in the maintenance manual. If used at all, chemicals shall be strictly regulated. The maintenance manual shall identify manual and mechanical techniques to achieve exotic eradication.

5. *Cultural Treatments*

It may be necessary to measure certain site conditions, such as soil moisture, salinity, or weather, in order to determine cultural treatments. However, cultural treatments, such as fertilization and pest control, shall be kept to a minimum. Fertilizers shall not be necessary, aside from what is administered at plant installation. The use of chemicals in treatment of pests will be kept to a minimum, and if necessary will be restricted to those approved for use in or adjacent to aquatic areas.

If common pests and disease occur naturally in the environment, these shall be identified as tolerated infestations. Integrated Pest Management shall be considered to control problems that threaten plant health and vigor. The specific cultural requirements of the tree and understory species shall be detailed in a maintenance manual.

6. *Replanting*

The EM will prescribe replanting requirements, including any species substitutions, quantities, locations and schedules. An inspection shall be made within 90 and 180 days of installation to identify and replace mortality. Thereafter, mortality shall be checked quarterly until establishment goals are achieved.

7. *Protective Fencing and Signing*

During the initial revegetation phase, signs shall be posted at all possible access points to prohibit entry or trespass. Permanent fencing will also be constructed at the commencement of final development, along with establishment of buffer vegetation. Signs shall identify areas as sensitive and under restoration.

8. *Special Considerations for Native Grasses*

Establishing native grass species in areas of exotic grassland will require several years of effort. A relatively simple mitigation schedule, consisting of hand seeding and planting of native grass plugs, is described below. Measures to shift the competitive balance from introduced grasses and weeds to native perennial grasses include: planting of native grass plugs rather than seeding alone; mowing in early spring (seed-established grasses only); mulching to inhibit weed establishment and growth; and mowing in fall.

A major impediment to natural (unaided) development of native grassland is competition for light and water between first-year individuals and introduced annual grasses in spring (Bartolome and Gemmill 1981). The primary mode of native grass establishment will therefore involve planting of native grass plugs accompanied by heavy mulching to discourage the competing exotic seedlings.

Needlegrass and some other natives may become dominant if grazing pressure (which can be simulated by mowing) is heavy during early spring, when introduced species are growing and attempting to head, and if grazing pressure is light in late spring and early summer, when many of the perennial natives mature (Burcham 1957). Early spring mowing is thus suggested as a desirable management strategy.

Competition from annuals may be overcome by: 1) selecting against species with rapid early growth (usually introduced annuals) through heavy early season grazing or mowing and light grazing (mowing) at other times; and 2) manipulating the physical environment to favor perennial species and/or compensate for competition with annual grass species.

Mulching can significantly reduce the establishment and growth of many exotic weeds, including yellow star thistle, which is often a considerable threat to the establishment of native grass species.

This noxious species should be removed prior to revegetation. The prepared seed bed should then be heavily mulched with wheat straw (150 bales per acre) to control star thistle (Dremann, 1992) and other noxious weeds.

Mowing has also produced slow but effective results in favoring native grasses over exotics such as yellow star thistle. However, the mowing regime must account for the physiological state of the thistle or the results will be at odds to the mitigation goals. If the star thistle is mowed before it bolts, exposure to light from the mowing will actually favor the exotic. The site must be mowed just as the star thistle bolts and before it sets seed. Star thistle typically bolts in June or July. Since climate and site vary significantly, frequent site surveys are necessary to identify the biological windows that trigger mowing treatments. Further, after a mowing the plants may bolt again and should be mowed immediately prior to this secondary bolting which may occur in as short as two weeks after the initial mowing.

Most of the native prairie species to be reintroduced to this site are not early successional species, and once established these species may persist and increase without disturbance or regular mowing. The mitigation area will be managed to encourage the increase and natural reproduction of these more robust native prairie species.

B. Schedule of Maintenance Inspections

During the monitoring period the EM will prepare quarterly maintenance reports. These reports will address the success of the project at meeting its long-term goals. Elements which will be included in these monthly maintenance reports are:

Tree and Shrub Vigor:

one of three classes (healthy, unhealthy, dead) measured for all planted individuals quarterly.

Exotic Plant Status:

invading species, cover; areas with exotics, areas without exotics.

Mulch:

presence/absence/thickness around planted grasses and woody plants.

Vandalism / Intrusion:

episodes noted and remedial actions taken.

Debris:

amount and disposal.

Water control structures/ Irrigation system:

number and occurrence of leaks repaired per week, and any other irrigation problems.

C. Maintenance After the Monitoring Period

Upon completion of the permittee's mitigation responsibilities, the ownership and long-term maintenance and management will be turned over to an appropriate agency as discussed above. A maintenance manual, also described above, shall provide guidance for long-term management of the mitigation area. This manual shall be prepared during the early phases of mitigation and shall be designed specifically to accommodate updating.