

**Council Meeting: February 12, 2008****SUBJECT: Jay Paul Company Request for Release of “H Street Reservation” and Removal of H Street Alignment as an Alternative for Mary Avenue Extension****REPORT IN BRIEF**

In 1985, as part of the Design Permit Agreement (Attachment A) Lockheed agreed to a reservation of a right-of-way on its property as a potential alignment for Mary Avenue Extension (known as the “H Street Reservation”). In 2006, Lockheed entered into a Subdivision Agreement (Attachment B) with the City which required Lockheed to reserve an alternative alignment for the proposed Mary Avenue Extension (known as the “11<sup>th</sup> Avenue Reservation”). The City and Lockheed also agreed in the 2006 Subdivision Agreement to move forward expeditiously with an environmental review of the Mary Avenue Extension to resolve which of the two alignments is the preferred alternative, so that the City could release and reject the non-preferred alternative. Although at this time no decision has been made on whether to proceed with the Mary Avenue Extension, only one of the right-of-way reservations will be required if the project proceeds.

In 2006, Lockheed sold two of several lots it had recently subdivided to the Jay Paul Company. Jay Paul is constructing Class A office buildings and a parking structure known as “Moffett Towers” on one of the lots purchased from Lockheed. The lot is currently subject to both the H Street and 11<sup>th</sup> Avenue Reservations.

Since 2006, the City has been conducting environmental analysis of the Mary Avenue Extension project, as required by the California Environmental Quality Act (CEQA). On August 24, 2007, the City circulated a Draft Environmental Impact Report (DEIR) for public review and comment. Based on the City’s preliminary determination that the H Street alignment is not the preferred alignment, as reflected in the DEIR, the Jay Paul Company has undertaken construction in the H Street Reservation subject to a removal, indemnification and hold harmless agreement that protects the City in the event that the H Street alignment were to be selected as the preferred alternative. The City previously anticipated the completion and certification of the Final Environmental Impact Report (FEIR) including final selection of an alignment in February, 2008. However, the number of public comments submitted in response to the DEIR and the issues raised by those comments as presented in

RTC 08-048 that is before Council tonight, will require five to fifteen months of additional analysis and response.

The Jay Paul Company has submitted a request (Attachment C) to release the H Street Reservation and remove the H Street alignment from consideration as an alternative for the Mary Avenue Extension. It alleges that prospective tenants will not conclude lease negotiations until the H Street Reservation is either released or selected. It also alleges serious impacts on its financing and construction loan if the H Street Reservation is not released by March, 2008.

The Lockheed Subdivision Agreement (Attachment B) gives Lockheed the right to request a hearing before the Council after December, 2007, if the EIR is not complete and it believes the City is not using best efforts to complete the EIR and select an alignment. The Jay Paul Company submitted its initial request for a Council hearing on the H Street Reservation pursuant to the Subdivision Agreement, Lockheed subsequently submitted a letter (Attachment D) stating that the Jay Paul Company did not have Lockheed's authorization to request the hearing under the Subdivision Agreement. The Jay Paul Company submitted a separate request to the Mayor (Attachment E) to place this matter on the Council agenda and the H Street Reservation is before the Council based on this subsequent request. In contrast to Lockheed's right to request a hearing on the H Street Reservation under the Subdivision Agreement, the Jay Paul Company does not have a contractual entitlement to request a hearing on the alignment.

The Council may release the H Street Reservation, if doing so is consistent with CEQA, but is not required to do so prior to certification of the FEIR. The environmental analysis in the DEIR concludes that the alignment that utilizes the H Street Reservation has greater traffic, cultural and environmental impacts than the preferred alignment, which uses the 11<sup>th</sup> Avenue Reservation. None of the 83 public comments on the DEIR commented on this analysis or suggest that the H Street alignment is preferable to the 11<sup>th</sup> Avenue alignment.

The staff recommendation is that the Council can legally consider release of the H Street Reservation. Such a release is not in violation of applicable CEQA requirements for review of alternatives, but nonetheless may become an issue for legal resolution if a court challenge to the FEIR is filed. Staff makes no recommendation for or against the release of the H Street Reservation. In the event that the Council elects to release the H Street Reservation, staff recommends requiring a hold harmless and indemnification agreement for any additional costs or financial impacts arising from the release of the H Street Extension prior to the certification of the FEIR.

## **BACKGROUND**

The property was originally owned by Lockheed Martin Corporation, which subdivided a portion of its property. In 2006, the Jay Paul Company purchased two lots from Lockheed: Lot 1 and Lot 3. Dedications for the H Street and 11<sup>th</sup> Avenue Reservations for a future Mary Avenue Extension are located in whole or in part on Lot 1. The Jay Paul Company has also provided a refined reservation for 11<sup>th</sup> Avenue that is on the adjacent Arriba parcel also owned by the Jay Paul Company. Lockheed previously entered into a "Design Permit Agreement" with the City in 1985 (Attachment A) that pertained to development on the property sold to the Jay Paul Company. Among other conditions, Lockheed reserved for the City a 9.62 acre plot in 1985 to accommodate a future Mary Avenue extension. The area reserved anticipated a west-curving alignment toward the future H Street, somewhere within the 9.62 acre parcel. In addition, Lockheed agreed to contribute \$1,100,000 toward the cost of construction of Mary Avenue provided the City accepted Lockheed's dedication of land.

Lockheed further subdivided the property into four lots in 2006. The City entered into a Subdivision Agreement with Lockheed which included an alternative dedication for a Mary Avenue Extension right-of-way in the northerly direction of 11<sup>th</sup> Street (Attachment B). The Subdivision Agreement provides that it is in the interest of the City and Lockheed to "move forward as expeditiously as possible" to select the preferred alignment. The Subdivision Agreement provides that although the intention is to complete the EIR and select an alignment by the end of 2007, unforeseen circumstances may delay completion until after 2007. The Subdivision Agreement gives Lockheed the right to request a hearing before the City Council after 2007, if the selection has not been made and if Lockheed believes that the City is not using best efforts to select an alignment.

The status of the Mary Avenue Extension EIR process is described in RTC 08-048 that is before Council tonight. As discussed in RTC 08-048, a number of factors have extended the anticipated completion date of the FEIR past the end of 2007, and into the Summer or Fall of 2008. On January 11, 2008, Jay Paul submitted a letter to the City requesting a hearing before the Council (Attachment C) pursuant to Paragraph 23(d) of the Subdivision Agreement, which provides for a hearing after 2007 if the FEIR and alignment selection has not been completed. Because the Subdivision Agreement is between the City and Lockheed Martin Corporation, the City requested Lockheed to state its position on whether the Jay Paul Company had been assigned the right to invoke Paragraph 23(d) of the Subdivision Agreement (Attachment F). On February 1, 2008, Lockheed responded with a letter stating that the Subdivision Agreement was not assigned to the Jay Paul Company and that Lockheed is not requesting a hearing under Paragraph 23(d) of the Subdivision

Agreement (Attachment D). That being so, Lockheed also stated that it had no objection to the matter of the H Street Reservation being placed on the Council agenda pursuant to a request to the Mayor, and furthermore, does not object to the vacation of the Existing Offer To Dedicate the H Street Reservation. Jay Paul Company submitted a written request to the Mayor on February 1, 2008, (Attachment E) to place the removal of the H Street Reservation on the Council agenda and the Mayor requested staff to do so (Attachment G).

The City has completed and circulated a Draft Environmental Impact Report (DEIR) on the project which was issued in August, 2007. The City provided a public comment period 36 days longer than that required by CEQA to allow public comment on the complex report. A significant number of individuals and other entities provided comments on the DEIR. The majority of comments focus on issues concerning traffic on the existing Mary Avenue rather than any particular alignment after the extension crosses over Highway 101. No comments were received on the DEIR contending that the street alignment on the H Street Reservation is the preferred alternative to the 11<sup>th</sup> Avenue Reservation, or commenting on the two alignments. In related RTC 08-048 also before the Council tonight, staff is requesting Council direction on the scope of responses to comments on the DEIR.

### **EXISTING POLICY**

Land Use and Transportation Element C3, Attain a transportation system that is effective, safe, pleasant and convenient.

Land Use and Transportation Element R1.6, Preserve the option of extending Mary Avenue to the industrial areas north of U.S. Highway 101.

### **DISCUSSION**

#### **A. The Mary Avenue Extension Draft Environmental Impact Report.**

The August 2007 Draft EIR for the Mary Avenue Extension (DEIR) utilizes the 11<sup>th</sup> Avenue Reservation as the proposed project (i.e. the preferred alignment). CEQA requires that an EIR include analysis of alternatives to the project, to determine if the project can be completed at a lower environmental cost. The alternative discussion in Section 6 of the Draft EIR (Attachment H – DEIR pp. 93-110) describes and analyzes the following alternatives:

- (1) No Project Alternative;
- (2) H Street Alignment Alternative (which requires the H Street Reservation);
- (3) Downgrade Mary Avenue Alternative;
- (4) Two-Lane Mary Avenue Extension Alternative;
- (5) Other North-South Sunnyvale Corridors Alternative (deemed infeasible);  
and
- (6) Widen State Route 85 Alternative (deemed infeasible).

The DEIR analysis concludes that the H Street Alignment alternative and the other two feasible build alternatives (*i.e.*, alternatives 2-4 above) would meet the project objective, but would not avoid any of the significant environmental impacts of the proposed project. In fact, each of the three feasible build alternatives would result in greater transportation, land use, and cultural resource impacts than the proposed project. Therefore, the proposed project (using the 11<sup>th</sup> Avenue Reservation as the alignment) has been found by the City's environmental and traffic consultants to be environmentally superior to the H Street Reservation alignment and all other alternatives except the No Project Alternative.

The City has received approximately 83 written comment letters concerning the DEIR, as well as several comments at public meetings held on October 3, and October 10, 2007. Most of the comments focus on the failure to analyze different alternatives suggested by the comments, but none of the comments assert that the H Street Alignment Alternative is preferable to other alternatives, including the 11<sup>th</sup> Avenue Reservation, or warrants further study. Staff has asked the City Council to consider the following options for responding to comments on the DEIR:

- a "Standard" response to comments in a FEIR issued for review by the public and certification by the City Council. (estimated time 5 months);
- an "Enhanced" response to comments in an FEIR issued for review by the public and certification by the City Council (8 - 10 months); and
- revision of the DEIR alternatives analysis and recirculation of the DEIR, followed by another round of public comment, followed by either option listed above (15 months).

The City is required to take actions that are in the best interests of its citizens and consistent with CEQA. In determining whether the Council can consider the Jay Paul company request to release the H Street Reservation prior to the certification of the FEIR, the Council must consider the impact on the environmental review process if the City releases the H Street Reservation. The Lockheed Subdivision Agreement provides Lockheed the right to request a hearing on the release of one of the alignment reservations if it contends that the City is not using best efforts to complete the environmental review process. There is no assertion by Lockheed that the City is not using best efforts to timely complete the EIR process. There is also no assertion in Jay Paul's request to vacate the H Street Reservation that the City is not using best efforts to complete the environmental review process. As discussed in the companion RTC on the status of the environmental review process, the additional time to complete the FEIR is based on the complexity of the Project, the interest in adequate public comment opportunity, and the need to respond to the large number of comments on the DEIR.

## **B. Standards for EIR Alternatives Analysis**

Under CEQA, an EIR must "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain the objectives of the project, but would avoid, or substantially lessen, any of the significant effects of the project, and evaluate the comparative merits of the alternatives" Title 14, Ch. 3, Cal.Code of Regs. §15126.6(a) (CEQA Guidelines). However, an EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible.

The City is the lead agency and therefore "is responsible for selecting a range of project alternatives for examination. It must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. Guidelines §15126.6(a) (citing *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553 (1990), and *Laurel Heights Improvement Assn v. Regents of the Univ. of Calif.*, 47 Cal.3d 376 (1988)). The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project" (Guidelines §15126.6(d)). An EIR must also include an evaluation of a no project alternative (Guidelines §15126.6(e)(1)).

CEQA Guideline (Section 15126.6(c) provides: "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. "

Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts. Guidelines §15126.6(c). A partial list of the factors bearing on feasibility includes: site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site "Guidelines §15126.6(f)(1) (citing *Citizens of Goleta Valley, supra*, and *Save Our Residential Environment v. City of West Hollywood*, 9 Cal.App.4th 1745, 1753 n.1 (1992)). Ultimately, [n]o one of these factors establishes a fixed limit on the scope of reasonable alternatives. *Id.*

The public has had a meaningful opportunity to comment on the H Street Alignment Alternative, which was circulated in the DEIR. Of the public comments received by the City, a large number focused on the alternatives analysis, none of the comments disagreed with the conclusion that the H Street alternative is environmentally inferior, based on impacts, to the proposed project using the 11<sup>th</sup> Avenue Reservation. None of those comments propose any further consideration of the H Street alternative by the City.

Based on the fact that the H Street Alignment alternative can not achieve project objectives at a lower environmental cost, it is not a required alternative for purposes of CEQA's mandatory alternatives analysis. Accordingly, the Council could, consistent with CEQA requirements for alternatives analysis, decide to remove the H Street Alignment alternative from further consideration in the FEIR by releasing the reservation pursuant to the Jay Paul Company request. The FEIR, when brought to the Council for certification later in 2008, will still include the five remaining alternatives identified in the DEIR, and possibly will include additional alternatives if the City ultimately decides to revise the EIR to include alternatives suggested by the public comments on the DEIR. The City's Environmental Consultant for the Mary Avenue Extension EIR concurs with this analysis. It follows that if the Council decides to release the H Street Reservation at this time, the FEIR will continue to meet the CEQA requirement for analysis of a reasonable range of potential alternatives that could accomplish the project's objectives and avoid or substantially reduce any significant environmental impact. That said, an objection may still be raised at the time the Council considers the FEIR related to the release of the H Street Reservation prior to completion of the environmental review process.

Notwithstanding the above analysis, if the adequacy of the FEIR is challenged in a CEQA lawsuit, it is possible that the plaintiffs will include an allegation that the H Street Reservation was released prior to the certification of the FEIR. While such an allegation should not have a significant effect on the outcome of such a challenge under generally accepted legal standards, it is not possible to predict whether a court may give undue consideration to the release of the H Street Reservation prior to certification of the FEIR.

### **FISCAL IMPACT**

As discussed above, Lockheed entered into a "Design Permit Agreement" with the City in 1985 that allowed for construction of a building on what is now Lot 1. Lockheed reserved for the City a 9.62-acre plot to accommodate a future Mary Avenue extension somewhere within the parcel. Lockheed is also obligated to contribute \$1,100,000 toward the cost of construction of a Mary Avenue extension provided the City accepts Lockheed's dedication of land. This sum was based on the cost of improving a two lane, at grade roadway with full improvements along the length of the parcel. The sum is due at the time

the City Council awards the construction contract. When Lockheed and the City entered into the Subdivision Agreement in 2006, Lockheed contributed \$250,000 of the \$1,100,000 for preparation of the Mary Avenue extension study and environmental analysis, leaving a balance of \$850,000 due under the Agreement. It should be noted that the building approved in 1985 has since been demolished.

Lockheed states in its letter that it does not object to the Council's hearing this matter or to vacating the area within the Reserved Plot ("Existing Offer to Dedicate"). However, Lockheed has stated it is reserving its right to contend that release of the H Street Reservation releases it from its obligation to pay the remainder of the \$1,100,000 for roadway construction. In the alternative, Lockheed may contend that it is not subject to any future Traffic Impact Fees as a result of future development, contending that the one-time \$1,100,000 obligation covers all of its responsibilities. The City strongly disagrees with both of these contentions by Lockheed. These fiscal issues, however, will not be resolved prior to the Council's decision on whether or not to release the H Street Reservation on February 12, 2008. It should be noted that these same issues would likely arise at the time the City certifies the FEIR, if it releases the H Street Reservation at that time.

If there is a challenge to the FEIR, City litigation costs may range from \$100,000 to \$200,000 or more. These costs should not be significantly affected whether or not the release of the H Street Reservation is included in a challenge under CEQA. If a court were to ultimately determine that the alternatives analysis was not adequate and required the city to prepare and recirculate a new EIR, the court may award costs and attorney fees to the plaintiffs which could exceed several hundred thousand dollars.

If a challenge to the FEIR delays scheduled construction of the Project, an additional fiscal impact would be the increase in project construction costs resulting from a delay.

## **CONCLUSION**

Lot 1 in the Lockheed Subdivision is currently subject to two reservations of right-of-way for the proposed Mary Avenue Extension; the H Street Reservation and 11<sup>th</sup> Avenue Reservation.

The Jay Paul Company has requested the Council to consider the release of the H Street Reservation pursuant to the Subdivision Agreement, but Lockheed's position is that the Jay Paul Company is not authorized to make that request. In the alternative, the Jay Paul Company requested that the Mayor place the release of the H Street Reservation on the Council agenda and the Mayor approved the request. Lockheed does not object to this request, or to the

release of the H Street Reservation. However, because the request for release of the H Street Reservation is not being made by Lockheed under the Subdivision Agreement, the Council is not required to consider the release of the H Street Reservation at this time.

The H Street Reservation is a project alternative analyzed in the Mary Avenue Extension DEIR. Environmental analysis in the DEIR concludes that the H Street Reservation would not accomplish project objectives at a reduced environmental cost when compared to the preferred alternative of the 11<sup>th</sup> Avenue Reservation alignment. Although the City anticipated the completion of the FEIR and selection of an alignment by the end of 2007, the complexity of the Mary Avenue Extension project and interest in providing comprehensive analysis and opportunity for public comment on the Project has extended completion of the FEIR.

Accordingly, the Council may, consistent with CEQA guidelines, consider the release of the H Street Reservation at this time, prior to certification of the FEIR. While such release should not adversely affect the City's legal position if the FEIR is challenged, there is always some risk in litigation, and the risk should be born by the Jay Paul Company rather than the City. A hold harmless and indemnification agreement from the Jay Paul Company will not preclude a challenge to the FEIR but will properly allocate the financial responsibility if there were to be a challenge based on release of the H Street Reservation pursuant to their request.

### **PUBLIC CONTACT**

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library, the City Clerk's Office, Senior Center and the Sunnyvale Community Center.

### **ALTERNATIVES**

1. Council moves to release and reject the H Street Reservation, based on a finding that the H Street Reservation alignment alternative can not achieve project objectives at a reduced environmental cost.
2. Council moves to release and reject the H Street Reservation, based on a finding that the H Street Reservation alignment alternative can not achieve project objectives at a reduced environmental cost, but conditioned on the Jay Paul Company agreeing to hold harmless and indemnify the City from any additional costs or financial impacts to the City arising from the release of the H Street Reservation prior to the certification of the Final EIR.
3. Council does not release and reject the H Street Reservation.

## **RECOMMENDATION**

The staff recommendation is that the Council can consider, pursuant to the request of the Jay Paul Company, either Alternative 1 or Alternative 2, and that release of the "H Street Reservation", pursuant to the request, is not in violation of applicable California Environmental Quality Act (CEQA) requirements for review of alternatives. There is a risk, however, that the release of H Street will nonetheless be included if there were to be a challenge to the Final Environmental Impact Report (FEIR). Staff makes no recommendation for or against the release of the H Street Reservation. This matter is not before the Council pursuant to the Subdivision Agreement and in any event the City is making best efforts to complete the environmental review process as soon as possible. In the event that the Council elects to release the H Street Reservation, staff recommends Alternative 2 requiring a hold harmless and indemnification agreement for any additional costs or financial impacts arising from the release of the H Street Extension prior to the certification of the FEIR.

### **Reviewed by:**

Marvin Rose, Director, Public Works

Prepared by: Jack Witthaus, Transportation and Traffic Manager

### **Reviewed by:**

David Kahn, City Attorney

### **Approved by:**

Amy Chan  
City Manager

## **Attachments**

- A. September 16, 1985 Design Permit Agreement
- B. June 14, 2006 Subdivision Agreement
- C. January 11, 2008 letter from Jay Paul Company
- D. February 1, 2008 letter from Lockheed Martin
- E. February 1, 2008 letter from Jay Paul Company to Mayor
- F. February 1, 2008 letter from City Attorney David Kahn
- G. February 1, 2008 memo from Mayor Spitaleri to Amy Chan, City Manager and David Kahn, City Attorney
- H. Excerpts from Draft EIR, Mary Avenue Extension Project

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DUPLICATE ORIGINAL

DESIGN PERMIT AGREEMENT

FILED FOR RECORD  
AT REQUEST OF

City Atty.

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OFFICIAL RECORDS  
SANTA CLARA COUNTY  
LAURENCE KARE  
RECORDED

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This AGREEMENT, made and executed this \_\_\_\_\_  
of September, 1985, by and between the CITY OF  
SUNNYVALE, a municipal corporation, hereinafter referred to as  
"City"; and LOCKHEED MISSILES AND SPACE COMPANY, INC., a  
California corporation, hereinafter referred to as "Lockheed";

W I T N E S S E T H:

WHEREAS, Lockheed is the owner of that certain plot of land  
situated in the City of Sunnyvale, Santa Clara, California, as  
shown on the attached Exhibit "B", hereinafter referred to as  
the "Plot"; and

WHEREAS, Lockheed as owner of said Plot has undertaken  
development of same; and

WHEREAS, City, pursuant to its present General Plan, is  
evaluating the extension of Mary Avenue at some time in the  
future; and

WHEREAS, said extension of Mary Avenue could pass through  
said Plot;

NOW, THEREFORE, in consideration of the granting of a Design  
Permit for the construction of Building 107 on said Plot, the  
parties hereto mutually covenant and agree as follows:

1. Lockheed agrees to reserve the remaining portion of the  
Plot, other than that portion of same required for the development  
of Building 107 including required parking area for said building,  
which reserved portion of the Plot is shown on Exhibit "B" and

hereinafter referred to as the "Reserved Plot", for the sole purpose of constructing a potential extension of Mary Avenue, and at such time as requested by the City to dedicate to the City such right-of-way across the Reserved Plot as may be required for the implementation of any future Mary Avenue extension and associated improvements as approved by the City Council.

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2. The right-of-way to be dedicated by Lockheed to City shall be that necessary to construct the Mary Avenue extension as finally determined and approved by the City Council following the conclusion of the North/South Corridor Study, Phase II, presently expected to commence in the immediate future, and being funded jointly by the City and Lockheed.

3. City agrees to consult with Lockheed in good faith to determine a choice of alignment for the proposed Mary Avenue extension which will provide for the desired traffic flow, take into consideration other alternatives which may result from the North/South Corridor Study referred to supra, which may be more desirable than any presently proposed Mary Avenue extension, and the restrictions and requirements of agencies or jurisdictions whose approval is required by the Project, such as Cal Trans, while minimizing the interference with Lockheed's legitimate uses of the Reserved Plot. However, notwithstanding said obligation, City shall have the sole discretion after such good faith consultation to select its preferred alternative and to require dedication of the right-of-way across the Reserved Plot for such preferred alternative.

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4. A. In the event that at the conclusion of the North/South Corridor Study, Phase II, the City Council approves the further evaluation of only one route, or of routes in substantially the same corridor, such that these preferred routes are similar and involve essentially the same alignment, then City will, at such time, execute and record a release from the requirement of dedication under this Agreement of the remainder of the Reserved Plot outside such corridor.

B. If the alternatives approved by the City Council for further evaluation and coordination with other affected agencies such as Cal Trans are for substantially different alignments <sup>involving the Reserved Plot, *see JEM*</sup> /the City will continue to maintain its rights under this Agreement to ultimately require dedication of a sufficient property to accommodate its chosen route. City will continue to maintain such rights under this Agreement until a single preferred alternative is agreed upon and approved by the City and by the California Department of Transportation. This approval will be in conjunction with the studies and designs being performed as part of the Measure A projects administered by the Santa Clara County Traffic Authority. City will, at such time as a final determination of route is made by City and Cal Trans, or a determination is made not to proceed with the Mary Avenue extension in the future, execute and record a release from the requirement of dedication of the remainder of the Reserved Plot outside such corridor.

C. Lockheed may apply for an amendment to its Design Permit for Building 107, to request that a definite time limit

be established on its obligations set forth in this agreement to dedicate land for the Mary Avenue extension. It is understood and agreed by the parties that City staff, in the event that Lockheed does make such an application, will recommend that such Design Permit be modified to provide that, in the event City does not exercise its rights under this Agreement to require dedication by notifying Lockheed pursuant to Paragraph 7 herein, by such date as is recommended by City staff, then all obligations of Lockheed to dedicate land pursuant to this Agreement shall expire, and City shall promptly thereafter record such documents as are necessary to clear the title to Lockheed's property of the restrictions imposed under this Agreement.

D. With respect to the Mary Avenue extension studies, City agrees to advise Lockheed by the end of 1986 of the status of the City's progress relative to its proposed determination as to the Mary Avenue extension alignment.

5. City agrees that, up to the time of acceptance by City of this offer of dedication, Lockheed may continue to use the Reserved Plot provided that such use shall not be of a nature so as to ultimately prevent the extension of Mary Avenue as City may elect. City agrees to issue permits to Lockheed for such permissible use of the Reserved Plot.

6. City agrees that this offer of dedication will not be accepted until such time as a proposed alignment of the Mary Avenue extension has been approved in final form by the City Council as well as by any other agencies or jurisdictions whose approval is required for the extension, such as Cal Trans.

7. Such acceptance by City of this dedication offer will be effected by the City notifying Lockheed by certified mail of its acceptance to the attention of Vice-President, Operations, and setting forth in detail that portion of the Reserved Plot required for dedication. Following receipt of the City's acceptance, Lockheed will deed the dedicated portion of the Reserved Plot to the City.

8. If effected, after completion of the Mary Avenue extension by City, City shall cooperate with Lockheed in the granting of easements for utilities as appropriate and necessary for the further development of the Reserved Plot.

9. Provided that City accepts Lockheed's dedication offer of land as provided in this Agreement, at the time of award of the construction contract by the City Council of the Mary Avenue extension, (provided that the project is not financed through assessment district proceedings), Lockheed agrees to contribute toward the cost of the project a sum of money equal to that typically required by City of developers, namely, the cost of improving a two lane, at grade roadway with full improvements along the length of the subject parcel. Said contribution shall not exceed the sum of the estimated present cost of such construction, One Million One Hundred Thousand Dollars (\$1,100,000), plus an increment calculated as follows:

The percentage of increase shown in the Engineering Newsrecords ("ENR") Construction Price Index, for the first year from the date of execution of this contract, shall be added to the base figure of \$1,100,000. Thereafter,

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in each successive year the annual increase based on this index shall be added to the total for the prior year up until the final date for the opening of bids for the last construction contract for the construction project which includes this Mary Avenue Extension. Any remaining months after the last yearly calculation shall be calculated based upon the monthly adjustments to said index furnished by ENR.

The cost of any desired overbuild beyond a roadway of that capacity shall not be the responsibility of Lockheed.

10. Lockheed's share of the costs as provided for in paragraph 9 above will be deposited with the City at time of award by the City Council of the construction contract for the project. This money shall be held by City in an interest-bearing account until such times as the funds are paid out to the construction contractor pursuant to the terms of the contract on the project. Any interest earned on these funds prior to payment to the contractor of same shall be returned to Lockheed. Furthermore, if all of said funds are not required to be paid out to the construction contractor for completion of the Mary Avenue extension project pursuant to the contract, then any such excess funds shall be returned to Lockheed within sixty (60) days after acceptance of the project by the City Council.

11. Nothing in this Agreement is intended to preclude additional development of the Reserved Plot, provided that such development is in conformance with applicable City codes and ordinances, and further provided that it does not conflict with any of the terms of this Agreement.

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12. In the event that City abandons or terminates that portion of its General Plan which anticipates an extension of Mary Avenue through the subject Reserved Plot, City agrees to take such steps as are necessary to clear the title to Lockheed's property of this dedication offer.

13. This written instrument constitutes the entire agreement between the parties and shall not be varied, amended or supplemented except by an instrument in writing executed by both parties.

State of California  
County of Santa Clara } ss.

On this the 5th day of September 19 85, before me,  
ANN C. KAILA

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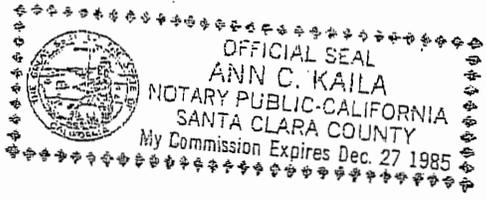
the undersigned Notary Public, personally appeared

E. A. THOMPSON

personally known to me  
 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it. WITNESS my hand and official seal.

Ann C. Kaila

Notary's Signature



State of California  
County of Santa Clara } ss.

On this the 10 day of September 19 85, before me,

Mary E. West

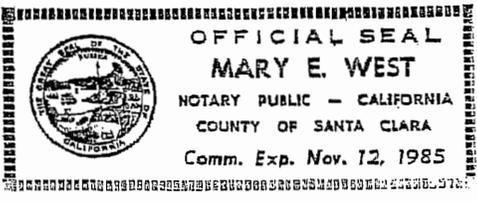
the undersigned Notary Public, personally appeared

John E. Mercer

personally known to me  
 proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Mayor or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it. WITNESS my hand and official seal.

Mary E. West

Notary's Signature



JAS PAGE 102

12. In the event that City abandons or terminates that portion of its General Plan which anticipates an extension of Mary Avenue through the subject Reserved Plot, City agrees to take such steps as are necessary to clear the title to Lockheed's property of this dedication offer.

13. This written instrument constitutes the entire agreement between the parties and shall not be varied, amended or supplemented except by an instrument in writing executed by both parties.

Date: September 5, 1985

LOCKHEED MISSILES & SPACE CO., INC.  
a California corporation

By E. A. Thompson  
E. A. Thompson  
Vice-President, Operations

Date: 9-10-85

CITY OF SUNNYVALE,  
a municipal corporation

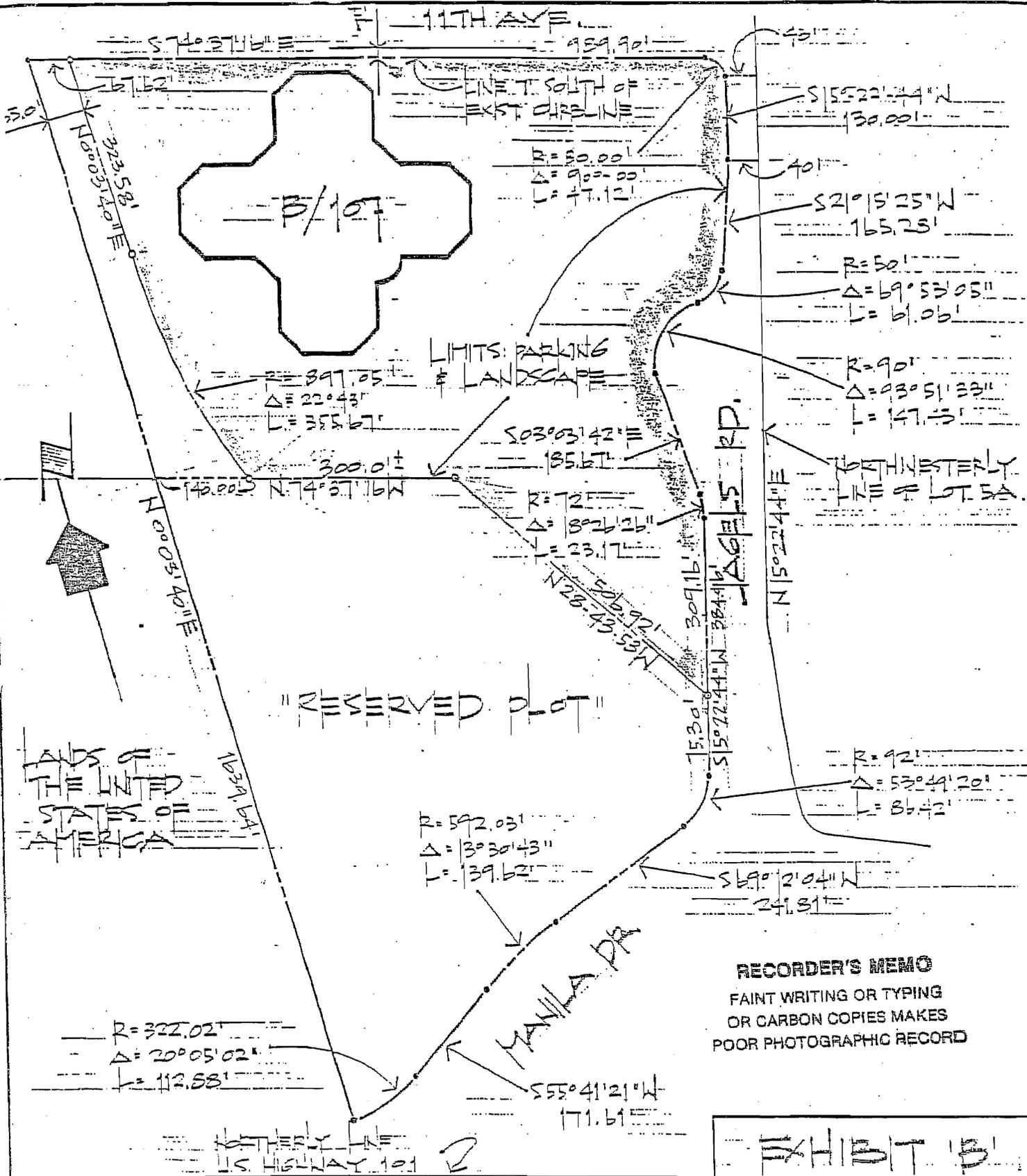
By J. Mercer  
Mayor

ATTEST:  
City Clerk

By Carol Ann Butler  
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:  
Donna P. Scott  
Asst. City Attorney



**RECORDER'S MEMO**  
 FAINT WRITING OR TYPING  
 OR CARBON COPIES MAKES  
 POOR PHOTOGRAPHIC RECORD

**EXHIBIT B**

**LOCKHEED** MISSILES & SPACE COMPANY  
 A GROUP DIVISION OF LOCKHEED AIRCRAFT CORPORATION  
 SUNNYVALE, CALIFORNIA

DRWG. TITLE: EXHIBIT MAP B: RESERVED PLOT

LOCATION: SUNNYVALE CALIFORNIA

FACILITY: 1 ORGN. 25-51 SCALE NONE SHT 1 OF 1

ORGN. <u>45-51</u>	DATE
DRAWN <u>J. C. J. 2</u>	<u>5/14/51</u>
CHECKED	
APPROVED	
APPROVED	

Description of "Reserved Plot" portion of Land of Lockheed, Sunnyvale, California

Being a portion of Parcel One as shown on that certain map recorded in Book 496 of Maps at Page 3, Santa Clara County Records, and as shown on that certain Record of Survey recorded August 10, 1984 in Book 532 of Maps at Pages 36 through 40, Santa Clara County Records, and being more particularly described as follows:

Beginning at the Southwesterly corner of said Parcel One as shown on said maps;  
 Thence North  $0^{\circ} 03' 40''$  East along the Westerly line of said parcel One 1639.64 feet;  
 Thence leaving said Westerly line South  $74^{\circ} 37' 16''$  East 67.62 feet;  
 Thence South  $0^{\circ} 03' 40''$  West along a line parallel to and a distance of 65.00 feet Easterly, measured at right angles, from said Westerly line of Parcel One as shown on said maps, 323.58 feet;  
 Thence along the arc of a tangent curve to the left having a radius of 897.05 feet, through a central angle of  $22^{\circ} 43' 00.48''$  for an arc length of 355.67 feet;  
 Thence South  $74^{\circ} 37' 16''$  East 300 feet more or less;  
 Thence South  $28^{\circ} 43' 53''$  East 506.92 feet to a point on the Westerly edge of Manila Drive;  
 Thence South  $15^{\circ} 22' 44''$  West 75.30 feet;  
 Thence along the arc of a tangent curve to the right, having a radius of 92.00 feet, through a central angle of  $53^{\circ} 49' 20''$  for an arc distance of 86.42 feet;  
 Thence South  $69^{\circ} 12' 04''$  West 241.81 feet;  
 Thence along the arc of a tangent curve to the left, having a radius of 592.03 feet, through a central angle of  $13^{\circ} 30' 43''$  for an arc distance of 139.62 feet;  
 Thence South  $55^{\circ} 41' 21''$  West 171.61 feet;  
 Thence along the arc of a tangent curve to the right, having a radius of 322.02 feet, through a central angle of  $20^{\circ} 05' 02''$  for an arc distance of 112.88 feet to the Point of Beginning.

Containing 11.08 Acres more or less.

## CITY OF SUNNYVALE, CALIFORNIA

SUBDIVISION AGREEMENT

Tract No. 9800, Moffett Park Subdivision  
SD-06-01

THIS SUBDIVISION AGREEMENT (the "Agreement"), is made and entered into in the City of Sunnyvale, County of Santa Clara, State of California, this 14 day of June, 2006, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, hereinafter called "City" and LOCKHEED MARTIN CORPORATION, a Maryland corporation, hereinafter called "Subdivider."

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of the City and Subdivider:

A. Subdivider filed an application for a vesting tentative map approval of a subdivision of Lockheed Martin Plant 1, Parcel 1, located at 1111 Lockheed Martin Way, and identified as Santa Clara County Assessor's Parcels numbered 110-01-025, 110-01-031, and 110-01-029 (the "Property") more particularly described on Exhibit A attached hereto. The Property is comprised of four (4) lots ("Lots"). The subdivision is referred to on the map as Tract No. 9800, Moffett Park Subdivision and is referred to herein as the "Subdivision."

B. On October 24, 2005, the Planning Commission of City approved the vesting tentative map by Motion on 2004-0023/2005-0324.

C. Subdivider has heretofore filed with City a Final Subdivision Map (the "Final Map") for the subdivision of the Property, and has requested that the same be approved by the City Council of the City of Sunnyvale.

D. Subdivider, by said Final Map, has offered for dedication to City those certain easements as delineated thereon.

E. The City Council of City has by Motion heretofore on 11th day of April, 2006, approved said Final Map and accepted the offers of dedication as shown thereon, and by said Motion has required as a condition precedent to the acceptance of any easements as shown on said Final Map, that Subdivider agree to improve said easements and make and install certain other public improvements within said Subdivision as required by this Agreement.

F. The approval of said Final Map is conditioned upon the execution by Subdivider of this Agreement.

NOW, THEREFORE, in consideration of the approval of said Final Map and the acceptance of easements therein, Subdivider and City agree as follows:

1. Subdivider agrees to furnish, construct and install at Subdivider's own expense all required improvements deemed necessary for the Final Map, including all

public improvements (if any), private access roadways and essential private utility mains and as shown on the City approved plans and specifications of said Subdivision and in accordance with Title 18 of the Sunnyvale Municipal Code, or as subsequently amended. The work required by Paragraph 1 above may be completed in two or more phases, generally described as the 11th Avenue improvements, H Street improvements and 5th Avenue Improvements.

2. Subdivider agrees that all improvements to be constructed and installed shall be performed at the expense of Subdivider, or as herein specified, and shall be performed in strict accordance with improvement plans therefore.

3. (a) Subdivider agrees to furnish and deliver to City concurrently with this agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of Eight Million Eight Hundred Thousand Dollars (\$8,800,000), to secure the faithful performance of furnishing, constructing or installing all improvements required by Paragraph 1 above. The amount of the improvement security shall be adjusted annually based on the Engineering News Record Construction Price Index issued in May of each year, and also reduced by mutual agreement to reflect the completed improvements for which no further improvement security is required, provided however, if no agreement is achieved, then such reduction shall be made in conjunction with Section 3(b) below. Subdivider shall have an affirmative obligation to provide the City with evidence of valid security no later than May 31 of each year until all improvements required by Paragraph 1 have been constructed. Provided, however, that no legal action will be taken by the City based on this provision without prior written notice to the Subdivider.

(b) City shall partially release the security upon the partial performance of the work required by Paragraph 1 above in accordance with the Sunnyvale Municipal Code.

(c) Subdivider agrees that a minimum of twenty-five percent (25%) of the faithful performance securities required by this Paragraph 3 shall be retained for a period of one (1) year ("Warranty Period") upon completion of all improvements required by Paragraph 1 above, against any defective work or labor done or defective materials as warranty security ("Warranty Security"). City shall release the Warranty Security upon expiration of the Warranty Period and settlement of any claims filed during the Warranty Period.

4. Subdivider agrees to furnish and deliver to City concurrently with this agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of Eight Million Eight Hundred Thousand Dollars (\$8,800,000), as security for the payment to the contractor, his/her subcontractors and to all persons furnishing materials, provisions, provender, or other supplies, or equipment or teams to them and used in, upon, or about the improvements required to be furnished, constructed and installed in Paragraph 1 above, or for performing any work or labor of any kind in, about or upon said improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the furnishing, constructing, or installing said

improvements, and for payment of a reasonable attorney's fee to be fixed by the court in case suit is brought by the City.

5. Subdivider agrees to repair, replace, restore, or rebuild all improvements as required by Title 18 of the Sunnyvale Municipal Code, or as amended.

6. Subdivider agrees that execution of this Agreement constitutes an application for connection to any and all municipal utilities serving the project.

7. (a) Subdivider agrees to indemnify and hold harmless City, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance of work in furtherance of this Agreement by Subdivider, including all reasonable costs and reasonable attorneys' fees incurred in defending any claim arising as a result thereof. The indemnification set forth in this Section 7(a) is not applicable to any matter arising out of, in response to, or in any manner related to any claim made pursuant to the indemnification set forth in Section 7(b) below, it being the intent of the parties that all such matters shall be governed by Section 7(b) below.

(b) Subdivider agrees to take reasonable measures to afford City access to its closed access perimeter for the purpose of inspecting, repairing or replacing the public water line to be installed on the closed access perimeter as part of the improvements required by Paragraph 1 above, and Subdivider will coordinate with City to develop an access procedure to allow City to access the closed access perimeter for the purposes stated herein. Subdivider agrees to indemnify and hold harmless City, its officers, employees, agents, contractors, or subcontractors from any and all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses, brought against City in connection with any property damage or bodily injury directly arising from the City's inability to access Subdivider's closed access perimeter for the purposes stated herein, provided that the City's inability to access Subdivider's closed access perimeter is caused by Subdivider and is a substantial cause of the loss or damage contemplated hereunder.

8. Concurrently with the acceptance of this Agreement, Subdivider shall furnish and deliver to City a certificate showing that Subdivider has such public liability and property damage insurance. Such policy shall be in an aggregate amount of at least One Million Dollars (\$1,000,000.00) for the death or injury to any person or persons in any one accident or occurrence. The certificate shall also show Workers' Compensation Insurance and Employer's Liability Insurance for all of Subdivider's employees. Said policy shall remain in full force and effect until this Agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the City shall have at least thirty (30) days notice in writing of said cancellation.

A contractual liability endorsement shall be added to each insurance policy extending coverage to include the liability assumed in Paragraph 7 above. THE CITY OF SUNNYVALE MUST BE NAMED AS AN ADDITIONAL INSURED.

Subdivision Agreement SD-06-01- continued

9. The following fees and charges have been or shall be paid:

- |  |    |   |
|--|----|---|
| 1. Sanitary Sewer                          |    |   |
| a. Connection                              | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| b. Existing Sanitary Sewer Frontage Charge | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| 2. Storm Drain Connection                  | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| 3. Water                                   |    |   |
| a. Connection                              | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| b. Existing Water Main Frontage Charge     | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| c. Water Meters                            | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit<br>issuance |
| d. Tapping Fee                             | \$ | To be paid<br>prior to any<br>building/under<br>-ground utility<br>permit             |

Subdivision Agreement SD-06-01- continued

		<u>issuance</u>
4. Fire Hydrants	\$	To be paid prior to any building/under -ground utility permit issuance
5. Inspection and/or Engineering (Charges at 10% of estimated cost of improvements based on 10% of cost estimate dated January, 2006 and subject to revision upon final cost estimates when improvement plans are approved)	\$	<u>401,968</u>
6. Street Lighting System	\$	To be paid prior to any building/under -ground utility permit issuance
7. Street Trees	\$	To be paid prior to any building/under -ground utility permit issuance
8. Maintenance Deposit	\$	To be paid prior to any building/under -ground utility permit issuance
9. Other: <u>Map Fees</u>	\$	<u>1,387</u>
	\$	<u>None</u>
TOTAL FEES AND CHARGES	\$	<u><u>403,355</u></u>

10. Subdivider agrees to perform all of the work required by Paragraph 1 above on or before ten (10) years from the date of the recordation of the Final Map; provided, however, that City may extend the time within which City work and improvements shall be completed if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating the grounds and facts for such extension.

11. Subdivider agrees that all access roadways for the Lots shall be privately owned and maintained unless otherwise agreed to in writing by City and Subdivider, and that any streets offered to City for dedication must meet City's applicable design standards at the time of dedication. This provision shall be effective for ten (10) years from the date of recordation of the Final Map, unless the time to construct the improvements required by Paragraph 1 above is extended pursuant to Paragraph 10 above.

12. Subdivider agrees that if any streets are offered and accepted by City for dedication, Subdivider shall record an encroachment agreement related to maintaining private utilities in a public street, as applicable. This provision shall be effective for ten (10) years from the date of recordation of the Final Map, unless the time to construct the improvements required by Paragraph 1 above is extended pursuant to Paragraph 10 above.

13. Subdivider agrees that all public improvements shall be constructed in accordance with Sunnyvale Municipal Code Section 18.08 and Subdivider's preexisting development agreements, including but not limited to curb and gutter, sidewalks, driveway approaches, curb ramps, street pavements, utility extensions and connections, meters/vaults, trees and landscaping, traffic signals/signs, striping, street lights, etc. as required by the Director of Public Works. This provision shall be effective for ten (10) years from the date of recordation of the Final Map, unless the time to construct the improvements required by Paragraph 1 above is extended pursuant to Paragraph 10 above.

14. Subdivider agrees that all public improvements, applicable private access roadways and private utility facilities shall be designed and installed per City's design standards current at the time of installation unless otherwise approved by the Director of Public Works. This provision shall be effective for ten (10) years from the date of recordation of the Final Map, unless the time to construct the improvements required by Paragraph 1 above is extended pursuant to Paragraph 10 above.

15. The Director of Public Works shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations.

16. Subdivider agrees to keep and maintain all areas within public streets or public rights-of-way contiguous and adjacent to the Subdivision, free and clear of all dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvements required by Paragraph 1 above within said Subdivision.

17. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

18. This Agreement shall not be assigned without the prior written consent of the City. The City shall not unreasonably withhold or delay its consent to an assignment by Subdivider to its successor in interest to a Lot(s) of all of Subdivider's rights and obligations under this Agreement as such rights and obligations relate to the

transferred Lots.

19. Existing and proposed overhead utility lines (electrical (other than the existing 120 kv electrical line)), telephone and cable TV) within the Subdivision and along street frontage shall be placed underground prior to occupancy of any new buildings. The undergrounding requirement shall be in compliance with the SMC 19.38.090.

20. The Declaration of Covenants, Conditions and Restrictions (C. C. & R.'s) applicable to the Subdivision as approved by the City of Sunnyvale shall be filed in the office of the Recorder of Santa Clara County. A certificate of recording or other evidence of recording shall be filed with the City Clerk.

21. Subdivider shall pay for all applicable changes or modifications to existing city utilities, streets and other public utilities within or adjacent to lots, including but not limited to utility facilities/conduits/vaults relocation due to grade changes in connection with the proposed development on such lots. (Sunnyvale Municipal Code 18.20.250)

22. Any proposed development projects and/or building permit issuance on the Property requires submittal of a detailed estimate of water consumption in gallons per day and peak water demand in gallons per minute, and estimate of sanitary sewer generation in gallons per day. Analysis of the cumulative impact of the sanitary sewer discharge associated with development projects and/or building permit may be required as needed.

23. Mary Avenue Extension.

a. Lot 1 is subject to all applicable provisions regarding the "Reserved Plot" (referred to herein as "Existing Offer to Dedicate") set forth in that certain Design Permit Agreement dated September 10, 1985, and recorded on September 12, 1985 (the "Design Permit Agreement").

b. (i) The Final Map includes an area identified as "150' Wide Proposed Roadway Right of Way" along the entire eastern property line of the proposed Lot 1, which Subdivider is obligated to offer to dedicate to the City, and which offer to dedicate is referred to herein as the "New Offer to Dedicate." The New Offer to Dedicate is not shown on the Final Map and shall be offered by separate instrument in the form attached hereto as Exhibit B to be recorded concurrently with the Final Map. The City shall not accept the New Offer to Dedicate except as provided in Paragraph 23(e) below.

(ii) The New Offer to Dedicate is distinct from the Existing Offer to Dedicate. The New Offer to Dedicate, which overlaps with a portion of the Existing Offer to Dedicate at the southeast corner of Lot 1, and the Existing Offer to Dedicate may support alternative alignments for the potential extension of Mary Avenue.

c. Prior to the Final Map recordation, Subdivider contributed Two Hundred Fifty Thousand Dollars (\$250,000.00) toward preparation of a Mary Avenue extension study entitled "Mary Avenue Extension Engineering/Environmental Analysis,"

(the "Mary Avenue Study and EIR") and related environmental impact report, which the City commenced on June 21, 2005. City shall credit that amount against the costs payable to the City pursuant to Paragraph 9 of the Design Permit Agreement. If Subdivider so requests, the City Council shall be required to accept and signify by resolution the credit to the obligation set forth in Paragraph 9 of the Design Permit Agreement.

d. It is in both party's interest to move forward as expeditiously as possible to select an alignment. Accordingly, it is the intent of City, and City shall use its best efforts, to complete the Mary Avenue Study and EIR, and select a preferred alternative for the Mary Avenue extension within the next two (2) years, by the close of 2007. Both parties recognize there may be unforeseen and/or uncontrollable circumstances, including for example, but not limited to, the failure of other involved public entities or agencies to take timely action related to the studies, appeals of the City's actions, or acts of *force majeure*, which may interfere with the City's ability to select a preferred alternative within the two year time frame. Accordingly, the New Offer to Dedicate and the Existing Offer to Dedicate shall remain in effect until the City Council selects a preferred alignment, even though this may extend beyond the close of 2007. If, after the close of 2007, the selection has not been made, and Subdivider believes City is not using its best efforts to complete the studies and select an alignment, Subdivider shall have the right any time thereafter to request a hearing before the City Council, to be held within thirty (30) days of such request, seeking modification of this condition.

e. Once the preferred alternative is selected, and any time for appeal of the decision has expired, the City promptly shall take action to accept or reject, in whole or in part, the New Offer to Dedicate and the Existing Offer to Dedicate. The City shall accept only that portion of the right of way necessary to accommodate the selected alternative. If the City accepts the New Offer to Dedicate, the Subdivider and the City shall amend the Design Permit Agreement to reject, release and vacate the Existing Offer to Dedicate. If the City accepts the Existing Offer to Dedicate, it shall initiate proceedings to reject, vacate and release the New Offer to Dedicate. In each instance, if the City accepts a portion of the New Offer to Dedicate or the Existing Offer to Dedicate, the City shall also take action to reject, release and vacate any remaining interest in the unaccepted portion of the Offer to Dedicate. If the City fails to select a design alternative on or before February 9, 2010, the City shall take action to reject, vacate or release, as appropriate, its interests in both the New and Existing Offers to Dedicate.

f. If, following recordation of the Final Map, the Subdivider sells Lot 1 to the adjacent landowner or to any entity that is directly or indirectly affiliated with the owner of the adjacent property, the City and the adjacent landowner may agree to relocate all or part of the right of way that is included in the New Offer to Dedicate to the adjacent property. In the event City and the adjacent landowner come to such agreement, the City shall initiate proceedings to vacate or release any portion of the New Offer to Dedicate not included in the relocated right of way.

24. All modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the City Manager and in the case of Subdivider, the appropriate party shall be LMC Properties, Inc.

25. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Santa Clara.

26. Time is of the essence.

27. The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

28. Recordation.

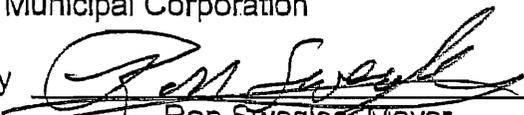
a. Concurrently with recordation of the Final Map, Subdivider agrees to execute and acknowledge a memorandum of this Agreement for recordation with the County Recorder in the form attached hereto as Exhibit C. By recordation of this Agreement or a memorandum of this Agreement, it is the parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. City may record this Agreement or a memorandum if Subdivider fails to record a memorandum.

b. City and Subdivider acknowledge that Subdivider anticipates the construction of the improvements required by Paragraph 1 above to be done in phases. After the City has completed its final inspection(s) and has signed off the applicable permit for such improvements upon a particular Lot or Lots (referred to herein as a "Final Inspection Sign Off") upon a particular Lot or Lots, including completion of all related improvements required for adjoining Lots as reasonably determined by the City, and such determination shall not be unreasonably withheld, the City shall furnish Subdivider with an executed, recordable release (the "Release"), using the form attached hereto as Exhibit D, within thirty (30) days after Final Inspection Sign Off upon Subdivider's request, to release such Lot(s) from the obligations of this Agreement. After issuance and recordation of each such Release, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Lot(s) covered by such Release shall not incur any obligation or liability under this Agreement because of such ownership, purchase, lease or acquisition. The recordation of a Release shall not constitute a waiver of defects by the City.

29. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

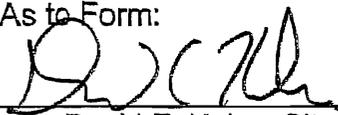
IN WITNESS WHEREOF, the City of Sunnyvale has caused this Agreement to be executed pursuant to the authority of Motion passed by the City Council of the City of Sunnyvale on the 11<sup>th</sup> day of APRIL, 2006, and Subdivider has caused this Agreement to be executed the day and year first above written.

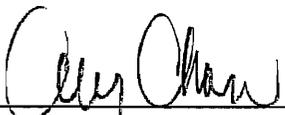
CITY OF SUNNYVALE,  
A Municipal Corporation

By   
Ron Swegles, Mayor

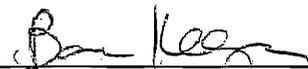
APPROVED:

As to Form:

  
David E. Kahn, City Attorney

  
AMY CHAN, CITY MANAGER

As to Content:

  
Barbara Keegan, City Engineer  
Assistant Director of Public Works

ATTEST:

  
Katherine Chappelle, City Clerk

SUBDIVIDER:

LOCKHEED MARTIN CORPORATION,  
a Maryland corporation

By: LMC Properties, Inc.,  
a Maryland corporation  
Under Special Delegation of Authority  
Dated June 6, 2005

By: *TJ Beatty*  
Name: *Tessi Beatty*  
Title: *President*

All Subdivider signatures must be acknowledged by a Notary Public.

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SS.

On JUNE 13, 2006, before me, MARIA GONZALEZ Notary Public, personally appeared T.E. BEATTIE personally known to me (or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Maria Gonzalez



Exhibit A

REAL PROPERTY in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of LOTS 1, 2, 3 and 4, as shown on that certain map entitled "Tract No. 9800, Moffett Park Subdivision," filed for record on June 14, 2006 in Book 72 of Maps at Pages 7-14, Santa Clara County Records.

APN: 110-01-025, 029 and 031



January 11, 2008

JAN 15 '08 PM 2:47

Mr. David Kahn  
City Attorney  
City of Sunnyvale  
456 West Olive Ave  
Sunnyvale, CA 94088-3707

RE: Request for City Council Hearing  
Moffett Towers Lot 1 Offers of Dedication

Dear David,

Pursuant to Paragraph 23 (d) of the Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01, we request a hearing before the City Council to ask that Council immediately and unconditionally reject, release and vacate its interest in the Existing Offer to Dedicate (the H Street reservation).

The Subdivision Agreement provides that said hearing must be held within thirty (30) days of our request, therefore we ask that the issue be placed on the January 29, 2008 Council agenda.

Sincerely,

MT SPE, LLC  
a Delaware limited liability company

By: Moffett Towers LLC  
a Delaware limited liability company  
its sole member

By: Moffett Towers Management, Inc.  
a Delaware corporation  
its managing member

By:   
Jay Paul, President



January 11, 2008

Mr. David Kahn  
City Attorney  
City of Sunnyvale  
456 West Olive Ave  
Sunnyvale, CA 94088-3707

RE: Letter Supporting Request for City Council Hearing  
Moffett Towers Lot 1 Offers of Dedication

Dear David,

Thank you for taking the time to speak with us this morning about our request for a hearing to ask Council to unconditionally reject, release and vacate the City's interest in the H Street reservation. As I mentioned in our conversation, it is critically important to remove the reservation as quickly as possible for three primary reasons.

First, as you may know, the current leasing market is extremely competitive. We are currently in negotiations with several large tenants but are in danger of losing these potential deals as we cannot sign a lease for Building A unless the reservation is removed. This would obviously have a significant negative financial impact on the project. Moreover, it would delay significant economic benefits to the City in the form of increased property and sales tax revenue and spending within the City by both tenants and their employees. Upon completion and occupancy, the project could have an assessed value in excess of \$1 billion.

Second, we are currently using cash rather than loan proceeds to construct Moffett Towers Building A and the associated parking garage. Our ability to draw loan dollars is conditioned upon the City's release of the H Street reservation. Further, our construction loan commitment for those structures expires in March if the H Street reservation is not released.

This presents a very critical situation for us. Once we lose the ability to draw down the construction loan, we will be forced to seek another construction loan for the project. With the capital markets in their current state of flux, it is extremely unlikely we will be able to secure a new loan with terms as favorable as our current terms. Further, the cost to obtain another loan commitment would be upwards of \$4 million excluding any differential in interest rate and other less desirable terms.

And third, once the buildings are leased, it is our intent to secure long-term, ten year financing for the project at a fixed interest rate to replace our current construction financing which is at an adjustable interest rate. Our ability to do this sooner rather than later is significant in view of the instability in the economy and capital markets.

Mr. David Kahn  
January 11, 2008  
Page Two

As you know, the City received 89 public comments to the Mary Avenue Extension EIR. None of the comments made reference to the issue of the H Street vs. 11th Avenue Alignment. Further, the Draft EIR clearly concludes that the H Street Alignment is inferior to the 11<sup>th</sup> Avenue Alignment.

The EIR process has taken significantly longer to complete than Staff's August 2007 projection. The direct result is that (1) we are in danger of losing potential tenants (2) we will shortly lose access to our current construction financing and we will be forced to refinance the project at a substantial cost and at less favorable terms and (3) without a signed lease, we will be unable to replace our adjustable rate construction financing with more favorable, long-term, fixed rate financing.

David, delaying the occupancy of the project will not only have a significant negative impact on us, but will also delay significant economic benefits to the City and its residents. We have already paid almost \$17 million in fees to the City, and we will be paying an additional \$4.5 million in fees over the next several months for total City fees in excess of \$21 million. The construction at the project is currently employing over 500 union workers, many of whom live in Sunnyvale. A slowdown of the project could result in the loss of many of those union jobs. Delayed occupancy would result in a loss of City tax revenue and spending within the City.

We understand from Public Works that in order to complete the EIR and respond to the 89 public comments, additional funds will be requested from Council. Optimistically, the EIR will take an additional three to six months to complete and the process could go on indefinitely. As there is now a clear and compelling record that there is no public concern about the H Street vs. 11th Avenue Alignment, and it is clear the 11<sup>th</sup> Avenue Alignment is the best alternative, it is now appropriate and feasible for the Council to take action to release the H Street Reservation. Further delay is both unfair and unreasonable. The Council can make this decision now; it's the right thing to do under the circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Paul", with a large, stylized flourish extending to the right.

Jay Paul

ELLMAN BURKE HOFFMAN & JOHNSON  
A PROFESSIONAL LAW CORPORATION

601 CALIFORNIA STREET  
NINETEENTH FLOOR  
SAN FRANCISCO, CA 94108  
415.777.2727  
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JOANNE L. DUNEC  
415.296.1626 DIRECT TEL  
415.296.1726 DIRECT FAX  
JDUNEC@ELLMAN-BURKE.COM

February 1, 2008

**VIA ELECTRONIC MAIL**

David Kahn  
City Attorney  
City of Sunnyvale  
Office of the City Attorney  
456 West Olive Avenue  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Re: Request for Release of H Street Reservation Pursuant to Paragraph 23(d),  
Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01

Dear Mr. Kahn:

On behalf of Lockheed Martin Corporation ("Lockheed"), we are responding to your letter to me and to Jay Paul dated February 1, 2008. We appreciate the opportunity to clarify that Jay Paul's company, MT SPE, LLC, is not a party to the Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision, SD-06-01 (the "Subdivision Agreement"), which is an agreement between the City of Sunnyvale (the "City") and Lockheed. The Subdivision Agreement was not assigned to MT SPE, LLC in connection with the conveyance of Lot 1 from Lockheed to MT SPE, LLC. Pursuant to Section 18 of the Subdivision Agreement, such an assignment would require the City's consent. As a result, MT SPE, LLC does not have the authority to request the vacation of the Existing Offer to Dedicate pursuant to Section 23(d), or any other provision of the Subdivision Agreement, since MT SPE, LLC is not a party to the agreement, nor did Lockheed authorize MT SPE, LLC or Jay Paul to act on Lockheed's behalf.

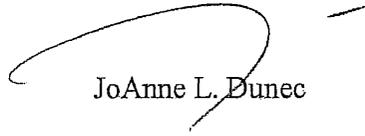
That being said, we do not dispute Jay Paul's ability to request the Mayor to put the matter on the agenda pursuant to the Mayor's authority to put matters on the Council agenda. Further, we will not object to the vacation of the Existing Offer to Dedicate, but request that the City keep us informed about the status of the Existing Offer to Dedicate, which is an offer that originated pursuant to the Design Permit Agreement dated September 10, 1985, which is an agreement between the City and Lockheed. The Design Permit Agreement was not assigned to MT SPE, LLC.

ELLMAN BURKE HOFFMAN & JOHNSON  
A PROFESSIONAL LAW CORPORATION

David Kahn  
February 1, 2008  
Page 2

Again, thank you for the opportunity to clarify matters pertaining to agreements between the City and Lockheed.

Very truly yours,



JoAnne L. Dunec

cc: Joseph Day  
Terry Shea



February 1, 2008

Mayor Spitaleri  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

RE: Moffett Towers  
Request for Removal of H Street Reservation

Dear Mayor Spitaleri,

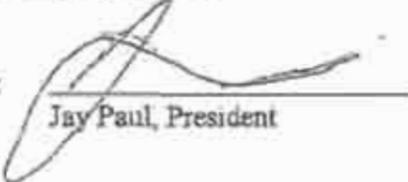
I am formally requesting that you place the issue of removing the H street reservation on the February 12<sup>th</sup> 2008 city agenda. Thank you for giving this matter your consideration.

Sincerely,

MT SPE, LLC  
a Delaware limited liability company

By: Moffett Towers LLC  
a Delaware limited liability company  
its sole member

By: Moffett Towers Management, Inc.  
a Delaware corporation  
its managing member

By:   
Jay Paul, President



**CITY OF SUNNYVALE**  
**OFFICE OF THE CITY ATTORNEY**

David E. Kahn  
 City Attorney  
 Kathryn A. Berry  
 Sr. Assistant City Attorney  
 Rebecca L. Moon  
 Assistant City Attorney  
 Robert L. Boco  
 Assistant City Attorney  
 Barbara "Sam" Roberts  
 Paralegal  
 Victoria Chambers  
 Administrative Aide  
 Risk & Insurance

February 1, 2008

*Via Fax (415-495-7587) & US Mail*

JoAnne Dunec  
 Ellman, Burke, Hoffman and Johnson  
 601 California Street, 19<sup>th</sup> Floor  
 San Francisco, CA 94108

*Via Fax (415-362-0698) & US Mail*

Jay Paul  
 Jay Paul Company  
 350 California Street, Suite 1905  
 San Francisco, CA 94104

Re: **Request for Release of H Street Reservation Pursuant to Paragraph 23(d),  
 Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01**

Dear Ms. Dunec and Mr. Paul:

Attached is a letter received on January 11, 2008, from Mr. Paul requesting the City Council to release the Existing Offer to Dedicate the H Street Reservation pursuant to Paragraph 23 (d) of Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01. I received a phone call from Ms. Dunec on January 31, 2008, inquiring about the status of the H Street Reservation and Existing Offer to Dedicate. I informed Ms. Dunec that pursuant to the letter received from Mr. Paul on January 11, 2008, the City was placing the request to release the H Street Reservation on the February 12<sup>th</sup> Council agenda. Ms. Dunec then stated that the Jay Paul Company was not authorized to submit the request under Paragraph 23(d) because Lockheed did not assign the Subdivision Agreement to the Jay Paul Company and Lockheed did not authorize the request to release the H Street Reservation under the Existing Offer to Dedicate.

I need a response by 5:00 p.m. on February 1, 2008, from both Lockheed and the Jay Paul Company regarding your positions on what authority the Jay Paul Company has, or does not have, under Paragraph 23(d) of the Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01.

JoAnne Dunec/Ellman, Burke, Hoffinan and Johnson

Jay Paul/Jay Paul Company

Re: **Request for Release of H Street Reservation Pursuant to Paragraph 23(d), Subdivision Agreement, Tract No. 9800, Moffett Park Subdivision SD-06-01**

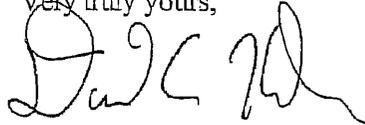
February 1, 2008

Page 2

It is also my understanding that Mr. Paul has, in the alternative, requested the Mayor to place his request for release of the Existing Offer to Dedicate the H Street Reservation on the February 12<sup>th</sup> Council agenda pursuant to his mayoral authority to put matters on the Council agenda.

Thank you for your immediate attention to this matter. Depending on the responses and a determination of the need for additional legal analysis based on this new information, the City will determine whether or not the request will proceed as currently scheduled for the February 12, 2008, Council agenda.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David E. Kahn', written over a light blue horizontal line.

David E. Kahn  
City Attorney

DEK:sam

Enclosure

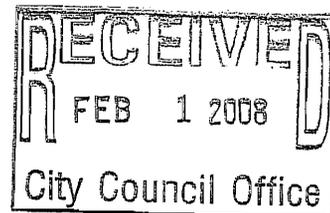
David's Folder\Letters\LetterDunec013108.doc

cc: Don Sobelman, Esq.  
Kathy Berry, Senior Assistant City Attorney  
Jack Witthaus, Transportation Engineer

February 1, 2008

Amy Chan  
City Manager

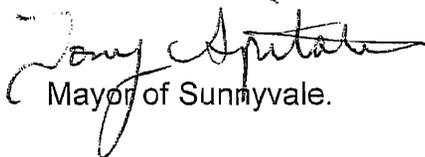
David Kahn  
City Attorney



I have received the following letter from Jay Paul of Jay Paul Company requesting that the matter of the H street reservation be place on the February 12, 2008 council agenda.

Under the authority of Mayor I am requesting that the item concerning the H street reservation be place on the February 12, 2008 council agenda.

Thank You

  
Mayor of Sunnyvale.

# Draft Environmental Impact Report

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# MARY AVENUE EXTENSION

SCH# 2007022024

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Prepared by the



August 2007

## SUMMARY

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The project proposes to extend Mary Avenue from its terminus at Almanor Avenue north, over Highway 101 (US 101) and State Route 237 (SR 237), to Eleventh Avenue at E Street. The Mary Avenue Extension has been in the City's General Plan as part of the planned roadway network for several decades. Existing development, as well as future development, assumes this north-south connection will be constructed.

The proposed Mary Avenue extension includes a 0.3-mile bridge with four traffic lanes, a raised median, sidewalks, and bike lanes. In addition, the project includes signalized intersection improvements at the intersection of Mary Avenue and Almanor Avenue, and at the northerly connection of Mary Avenue to the Eleventh Avenue and E Street intersection. An alternative to the proposed alignment, which is further discussed in at the end of this section and in **Section 6.0 Alternatives to the Project**, was also studied at length and is technically a viable alignment. This alternative alignment, however, has not been formally adopted by the City.

The purpose of the Mary Avenue extension is to help alleviate regional operational deficiencies by providing an alternative north-south connector to lands north of US 101 and SR 237 (including the Moffett Park Area); and alleviating existing and future traffic congestion in the Moffett Park Area and other areas adjacent to Mary Avenue. Currently, Mary Avenue is an approximately 5.6-mile, two- to six-lane, north-south arterial that extends north from Homestead Road in south Sunnyvale and terminates at Almanor Avenue just south of US 101.

The following is a **brief summary** of project impacts and mitigation measures. The reader is referred to the main body text of this EIR for detailed discussions for the existing setting, impacts, and mitigation measures.

### Summary of Impacts and Mitigation Measures

The following table summarizes the significant environmental impacts identified and discussed within the text of the EIR, and identifies the mitigation measures proposed to avoid or reduce those impacts. Per CEQA, impacts determined to be less than significant are not included in this summary.

Significant Environmental Impact	Mitigation and/or Avoidance Measures
<b>Transportation</b>	
<b>Impact TRAN – 1:</b> The proposed project would result in significant traffic impacts to the intersection of Mary Avenue and Maude Avenue.	The project proposes to implement the following mitigation measures to reduce level of service impacts to Mary Avenue and Maude Avenue intersection to a less than significant level:  <b>MM TRAN – 1.1:</b> Construct a new southbound right-turn lane at the Mary Avenue and Maude Avenue intersection. This would require approximately 1,200 square feet of ROW from the property located at the northwest quadrant of Mary Avenue and Maude Avenue. The ROW

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p>needed mostly consists of perimeter landscaping.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<b>Noise</b>	
<p><b>Impact NOI – 1:</b> The construction of the proposed project would result in construction-related noise impacts to nearby commercial and light industrial uses.</p>	<p>The project proposes to implement the following measures to reduce construction-related noise impacts to nearby commercial/light industrial uses to a less than significant level:</p> <p><b>MM NOI – 1.1:</b> For pile driving within 200 feet of a commercial/industrial building, the pile driving will be restricted to between 8:00 AM and 5:00 PM on Saturdays.</p> <p><b>MM NOI – 1.2:</b> For pile driving where the closest commercial/industrial building is greater than 200 feet away, the pile driving will be restricted to between 8:00 AM and 5:00 PM, Mondays through Saturdays.</p> <p><b>MM NOI – 1.3:</b> Noise-generating construction activities shall be restricted to between 7:00 AM and 6:00 PM, Mondays through Fridays, and between 8:00 AM and 5:00 PM on Saturdays (Municipal Code 16.08.110). An exception to this time restriction will be allowed if required by VTA to avoid impacts to LRT operations and/or if required by Caltrans to avoid impacts to freeway operations.</p> <p><b>MM NOI – 1.4:</b> All internal combustion engine-driven equipment shall be equipped with intake and exhaust mufflers that are in good condition and appropriate for the equipment.</p> <p><b>MM NOI – 1.5:</b> Utilize “quiet” air compressors and other stationary noise sources where technology exists.</p> <p><b>MM NOI – 1.6:</b> The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent facilities so that construction can be scheduled to minimize noise disturbance.</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p><b>MM NOI – 1.7:</b> Designate a “disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented.</p> <p><b>MM NOI – 1.8:</b> Conspicuously post the telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.</p> <p><b>MM NOI – 1.9:</b> Multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced if multiple pile drivers are used.</p> <p><b>MM NOI – 1.10:</b> Foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes are a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.</p> <p><b>MM NOI – 1.11:</b> Shroud the pile driver with acoustical blankets or, alternatively, erect temporary noise barriers or acoustical blankets along building facades in the immediate vicinity of pile driving activities. Such shielding typically provides five to 10 dB reduction in noise.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<b>Cultural Resources</b>	
<p><b>Impact CUL – 1:</b> The construction of the proposed project could impact buried cultural resources.</p>	<p>The project proposes to implement the following mitigation measures to reduce impacts to prehistoric resources:</p> <p><b>MM CUL – 1.1:</b> Archaeological test investigations shall be completed once the Area</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p>of Direct Impact for the project has been defined. Fieldwork shall include mechanical coring and hand excavations.</p> <p><b>MM CUL – 1.2:</b> Geoarchaeological explorations shall be completed. Fieldwork shall entail coring to appropriate depths in the portions of the Area of Direct Impact where such construction impacts are planned.</p> <p><b>MM CUL – 1.3:</b> If intact deposits are documented during testing within the Area of Direct Impact (at CA-SCL-12/H or at previously undocumented deeply buried archaeological sites) all work shall stop within 25 feet of the exposure and the City of Sunnyvale (and Caltrans if located within Caltrans right-of-way) shall be notified of the find within 24 hours. As required by federal and state laws, a Finding of Effect shall be prepared and submitted to the City (and Caltrans if applicable) who shall determine the appropriate measures for resolving the adverse effects and ensuring these measures are implemented.</p> <p><b>MM CUL – 1.4:</b> A qualified archaeologist and a Native American monitor shall be present during any subsequent phase of the project that may involve ground disturbance/excavation (pursuant to California Health and Safety Code Section 7050.5 and 7051, and Public Resources Code Sections 5097.98 and 5097.99.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<b>Biological Resources</b>	
<p><b>Impact BIO – 1:</b> Burrowing owls could be present within the project alignment at the time of construction.</p>	<p>The project proposes to implement the following mitigation measure to reduce impacts to burrowing owls to a less than significant level:</p> <p><b>MM BIO – 1.1:</b> In conformance with federal and state regulations against direct “take,” pre-construction surveys for burrowing owls shall be completed by a qualified ornithologist prior to any soil-altering activity or development occurring within the project area. The preconstruction surveys shall be completed per</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p>California Department of Fish and Game (CDFG) guidelines (currently no more than 30 days prior to the start of site grading), regardless of the time of year in which grading occurs.</p> <ul style="list-style-type: none"> <li>• If no burrowing owls are found, then no further mitigation would be warranted. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone around the active burrow must be established as determined by the ornithologist in consultation with CDFG. No activities that may disturb breeding owls, including grading or other construction work or evictions of owls, shall proceed.</li> <li>• If burrowing owls are found, and avoiding development of owl occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the CDFG. The CDFG typically only allows eviction of owls outside of the breeding season (non-breeding season is September 1 through January 31) by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands.</li> </ul> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<p><b>Impact BIO – 2:</b> Construction activities during the nesting season may result in the disturbance or destruction of breeding raptors or their nests.</p>	<p>The project proposes to implement the following mitigation measure to reduce impacts to nesting raptors to a less than significant level:</p> <p><b>MM BIO – 2.1:</b> Construction shall be scheduled to avoid the nesting season to the extent feasible. In the South San Francisco Bay area, most raptors breed from January through August. If construction can be scheduled to occur between September and December, the nesting season would be avoided, and no impacts to nesting birds/raptors would be expected.</p> <p>If it is not feasible to schedule construction between September and December, preconstruction surveys for nesting raptors shall be conducted by a qualified ornithologist to</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p>ensure that no raptor nests will be disturbed during project implementation. These surveys shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist shall inspect all trees in, and immediately adjacent to, the impact areas for raptor nests. If an active raptor nest is found close enough to the construction/demolition area to be disturbed by these activities, the ornithologist, in consultation with California Department of Fish and Game, will determine the extent of a construction-free buffer zone, typically 250 feet, to be established around the nest. Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors, as they are expected to abandon their roosts during staging.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<p><b>Impact BIO – 3:</b> The construction of the proposed project could result in the removal of 120 trees, including 62 significant sized trees, which are mostly located in the southern half of the project alignment.</p>	<p>The project proposes to implement the following mitigation measure to reduce impacts to trees to a less than significant level:</p> <p><b>MM BIO – 3.1:</b> The project shall conform to the City’s Tree Preservation Ordinance (Municipal Code, Chapter 19.94). At the discretion of the Director of Community Development, significant size trees that are to be removed shall be replaced, replanted, or relocated (Municipal Code, Sections 19.94.080, 19.94.090, and 19.94.100).</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<p><b>Geology and Soils</b></p>	
<p><b>Impact GEO – 2:</b> The proposed project, with the implementation of the above standard requirement, would not result in significant seismic-related hazards. The proposed project, however, could still result in significant liquefaction impacts based on the types of soils</p>	<p>The project proposes to implement the following measure to reduce liquefaction impacts to a less than significant level:</p> <p><b>MM GEO – 2.1:</b> A detailed design-level geotechnical investigation shall be completed</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
on-site.	<p>and the project design and construction shall follow the recommendations of the investigation. The design-level investigation shall include subsurface exploration at the site (to address liquefaction potential at the site) and evaluation of appropriate foundation systems for proposed structures, as well as site preparation and pavement design.</p> <p>Due to the depth of groundwater in the project area, the investigation shall also address any need for dewatering during construction. If dewatering is required, this report shall also identify the amount of depth of dewatering and the specifics regarding disposal of the water.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>
<b>Hazards and Hazardous Materials</b>	
<p><b>Impact HAZ – 1:</b> The soil and groundwater within the project alignment could be contaminated with pesticides, metals, lead, VOCs (including TCE and PCE), and petroleum hydrocarbons.</p>	<p>The project proposes to implement the following measures to reduce and/or avoid significant impacts related to soil and groundwater contamination to a less than significant level:</p> <p><b>MM HAZ – 1.1:</b> If the project involves excavation of soils in the project area, soil and groundwater testing shall be completed for pesticides, metals, VOCs, and petroleum hydrocarbons to determine whether contamination is present in levels that exceed applicable standards. The number of test samples shall be determined by a qualified hazardous materials specialist. If such contamination is found to be present, special procedures regarding handling and disposal of such material shall be implemented per applicable regulations.</p> <p><b>MM HAZ – 1.2:</b> Within the project limits, shallow soil within Caltrans ROW (e.g., along US 101 and SR 237) shall be tested for aerially deposited lead. If concentrations of lead are found to exceed applicable standards, the soil shall be buried and covered within the ROW if permitted, or the soil shall be transported to a Class 1 facility for disposal.</p>

Significant Environmental Impact	Mitigation and/or Avoidance Measures
	<p>MM HAZ – 1.3: A Health and Safety Plan shall be in place during construction to safeguard workers who would handle or be exposed to any of the above described hazardous materials.</p> <p>MM HAZ – 1.4: If USTs, water wells, and/or dry wells are encountered during construction, a permit for removal shall be obtained from the City of Sunnyvale Department of Public Safety. All wells shall be closed with permit through the Santa Clara Valley Water District.</p> <p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>

**Significant Unavoidable Impacts**

The proposed project would not result in significant unavoidable impacts.

**Summary of Alternatives**

Section 6.0 Alternatives to the Project evaluates the environmental impacts of six alternatives to the proposed project, one of which is the No Project Alternative. These alternatives are summarized below.

No Project Alternative

The No Project Alternative would consist of not constructing the Mary Avenue Extension between Almanor Avenue and Eleventh and E Streets. No changes to the physical environment would occur. Existing conditions within the alignment would remain.

Although the No Project Alternative would avoid all of the significant environmental effects of the proposed project, it would not meet any of the project objectives.

H Street Alignment Alternative

The H Street Alignment Alternative is a variation in the design of the proposed project at the northerly end. Instead of connecting at Eleventh Avenue and E Street, the extension of Mary Avenue would curve to the west and connect to H Street. The H Street Alignment was an alignment previously contemplated by the City for the Mary Avenue Extension, stemming from the time when there was a need to avoid the secure area of the Lockheed-Martin campus.

While the H Street Alignment Alternative meets the objective of increasing north-south capacity, it does not avoid any of the significant environmental impacts of the proposed project. In fact, the traffic, cultural resource, and land use impacts of this alternative are greater than those of the proposed project.

### Other North-South Sunnyvale Corridors Alternative

This alternative would consist of increasing north-south capacity in corridor(s) parallel to Mary Avenue in Sunnyvale. This would potentially achieve the basic project objective while avoiding impacts along the Mary Avenue Corridor. The Mathilda Avenue and Fair Oaks Avenue Corridors are north-south corridors in Sunnyvale, both of which have existing crossings of US 101 and SR 237.

From a traffic engineering perspective, it would be feasible to construct additional lane(s) in each direction on Mathilda Avenue and/or Fair Oaks Avenue. However, there is insufficient room to construct any new lanes within the existing rights-of-way of either street. The additional right-of-way would need to be purchased and would necessitate the removal/displacement of hundreds of homes and businesses that front both sides of these two streets. The costs to the City, both in terms of buying the right-of-way and in terms of the effects on businesses and residents, would be extraordinary. For these reasons, this alternative is considered infeasible.

### Widen State Route 85 Alternative

State Route (SR) 85 parallels Mary Avenue to the west, generally along the Sunnyvale-Los Altos border. As such, its widening could potentially achieve the basic project objective of increasing north-south capacity in the Sunnyvale area. SR 85, however, is not under the jurisdiction or control of the City. SR 85 is a freeway owned and operated by the State of California, Department of Transportation (Caltrans). Therefore, under CEQA Guidelines § 15126.6(f)(1), this alternative is considered infeasible because the City cannot "reasonably acquire, control, or otherwise have access to" SR 85.

### Downgrade Mary Avenue Alternative

The Downgrade Mary Avenue Alternative would be a variation on the proposed project. It would include the four-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue plus the restriping of the portion of Mary Avenue (between Fremont Avenue and Evelyn Avenue) for one lane in each direction.

While the Downgrade Mary Avenue Alternative meets the objective of increasing north-south capacity, it does not avoid any of the significant environmental impacts of the proposed project. Although this alternative lowers traffic volumes past the residences on Mary Avenue south of Central Expressway, the traffic diverted from Mary Avenue causes impacts elsewhere. In fact, the traffic impacts of this alternative are greater than those of the proposed project due to significant impacts at four additional intersections.

### Two-Lane Mary Avenue Extension Alternative

This alternative would be a variation on the proposed project. Unlike the proposed project which consists of a four-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue, this alternative would consist of a two-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue.

While the two-Lane Mary Avenue Extension Alternative meets the objective of increasing north-south capacity, the benefit is less than that of a four-lane extension. When compared to the proposed project, this alternative provides no benefit to residents living along Mary Avenue in terms of reducing traffic volumes through the neighborhood. This alternative does not avoid any of the

significant environmental impacts of the proposed project. In fact, the traffic impacts of this alternative are greater than those of the proposed project due to significant impacts at five additional intersections.

### Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the No Project Alternative, because all of the project's significant environmental impacts would be avoided. However, Section 15126.6(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."

For this EIR, other than the No Project Alternative, the proposed project is the environmentally superior alternative. This statement is based on the following:

- Of the four feasible build alternatives, all four would result in similar and significant impacts with regard to construction noise, cultural resources, biology, geology, and hazardous materials.
- Of the four feasible build alternatives, the H Street Alignment Alternative, the Downgrade Mary Avenue Alternative, and the Two-Lane Mary Avenue Extension Alternative would each result in greater traffic impacts than the proposed project.

### **Known Views of Local Groups and Areas of Controversy**

On February 21, 2007, the City held a Mary Avenue Extension EIR Scoping Meeting at the Sunnyvale Community Center for the purpose of soliciting input from residents regarding environmental issues of concern. The meeting was attended by approximately 15 residents. The primary concern voiced by residents was the project-related increase in traffic on various streets, especially Mary Avenue. Several speakers questioned the need for the project, while others voiced support.

Subsequent to the EIR Scoping Meeting, the City received substantial comments from various residents living in the neighborhoods along Mary Avenue, primarily south of Evelyn Avenue. These residents' comments expressed concern that the proposed project would lead to a substantial decrease in their quality of life, based on the belief that traffic volumes along Mary Avenue would significantly increase once the project was constructed. This concern was heightened by fears that the City's long-term agenda is to construct a second extension of Mary Avenue, to the south across I-280 into Cupertino, or to convert Mary Avenue to an expressway.

In response to these concerns, the City held a series of follow-up community meetings to explain the project and its objectives, as well as to answer questions. The City indicated that there is no plan for a southerly extension of Mary Avenue into Cupertino. The City noted that such an extension is precluded by the new Mary Avenue pedestrian/bicycle bridge over I-280. There also is no plan to widen existing Mary Avenue or to convert the roadway to an expressway, although the City does have three intersection widening projects along Mary Avenue in its long range plan. These intersection widening projects are necessary with or without the Mary Avenue Extension to Moffett Industrial Park. Further, to address concerns, the City has added additional alternatives for evaluation in this EIR, including an alternative to downgrade Mary Avenue to two lanes between Fremont Avenue and Evelyn Avenue. These alternatives are described and analyzed in **Section 6.0**.

## 6.1 OVERVIEW

The CEQA Guidelines specify that an EIR should identify a reasonable range of alternatives that “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” The purpose of this requirement is to determine whether there are alternatives of design, scope or location that would substantially lessen the significant impacts, even if those alternatives “impede to some degree the attainment of the project objectives” or are more expensive [§15126.6]. Discussion of the “No Project” alternative is also required, so as to provide a comparison of the impacts of approving the project to the impacts of not approving the project.

The CEQA Guidelines emphasize a common sense approach to the identification and evaluation of alternatives: 1) the alternatives should be reasonable, 2) should “foster informed decision making and public participation,” and 3) should focus on alternatives that avoid or substantially lessen the significant impacts. Discussion of infeasible or unreasonable alternatives is not required.

The three critical factors to consider in selecting and evaluating alternatives are, therefore:

- the significant impacts from the proposed project that could be reduced or avoided by an alternative;
- the degree to which an alternative attains the project objectives; and
- the feasibility of the alternative.

As described in **Section 1.1.2**, the objective of the Mary Avenue Extension project is to provide additional north-south transportation capacity in Sunnyvale. The additional capacity is needed to reduce existing congestion on other north-south routes, as well as to adequately serve future planned growth in the greater Moffett Park area. The long-term need for this additional capacity was identified in 1972, which was when the proposed project was added to the City’s General Plan.

Based on the analyses contained in **Section 2**, the proposed project will result in a number of significant impacts, all of which will be mitigated to a less-than-significant level by measures included in the project. These impacts are as follows:

- Traffic, by causing the level of service at the Mary Avenue/Maude Avenue intersection to drop to “E” during the PM peak hour).
- Construction Noise, due to the use of heavy equipment (including pile driving).
- Cultural Resources, by impacting a known archaeological site, portions of which extend within the proposed roadway alignment.
- Biology, by the removal of over 60 “trees of significant size” (as defined by City ordinance) and potential impacts to nesting raptors during construction.
- Geology, due to the presence of soils having a potential for liquefaction.
- Hazardous Materials, due to the possibility that soil and/or groundwater contamination may be present within the roadway alignment.

The discussion that follows describes feasible and reasonable alternatives, if any, that would avoid one or more of these impacts, while at the same time attaining most of the objectives of the project. As noted above, the No Project Alternative is also discussed.

## 6.2 NO PROJECT ALTERNATIVE

The No Project Alternative would consist of not constructing the Mary Avenue Extension between Almanor Avenue and Eleventh and E Streets. No changes to the physical environment would occur. Existing conditions within the alignment would remain.

The No Project Alternative would avoid all the environmental impacts of the proposed project, significant or otherwise. No trees would be removed, nesting raptors or cultural resources would not be impacted, and noise and liquefaction impacts related to project construction would not occur. In addition, hazards and hazardous materials impacts would not occur.

Conversely, the No Project Alternative would not meet any of the project objectives and would avoid the beneficial transportation impacts of the Proposed Project. Specifically, congestion and delay would be substantially greater under the No Project Alternative in comparison to the Proposed Project. Examples of where congestion would be worse under the No Project Alternative include the following intersections:

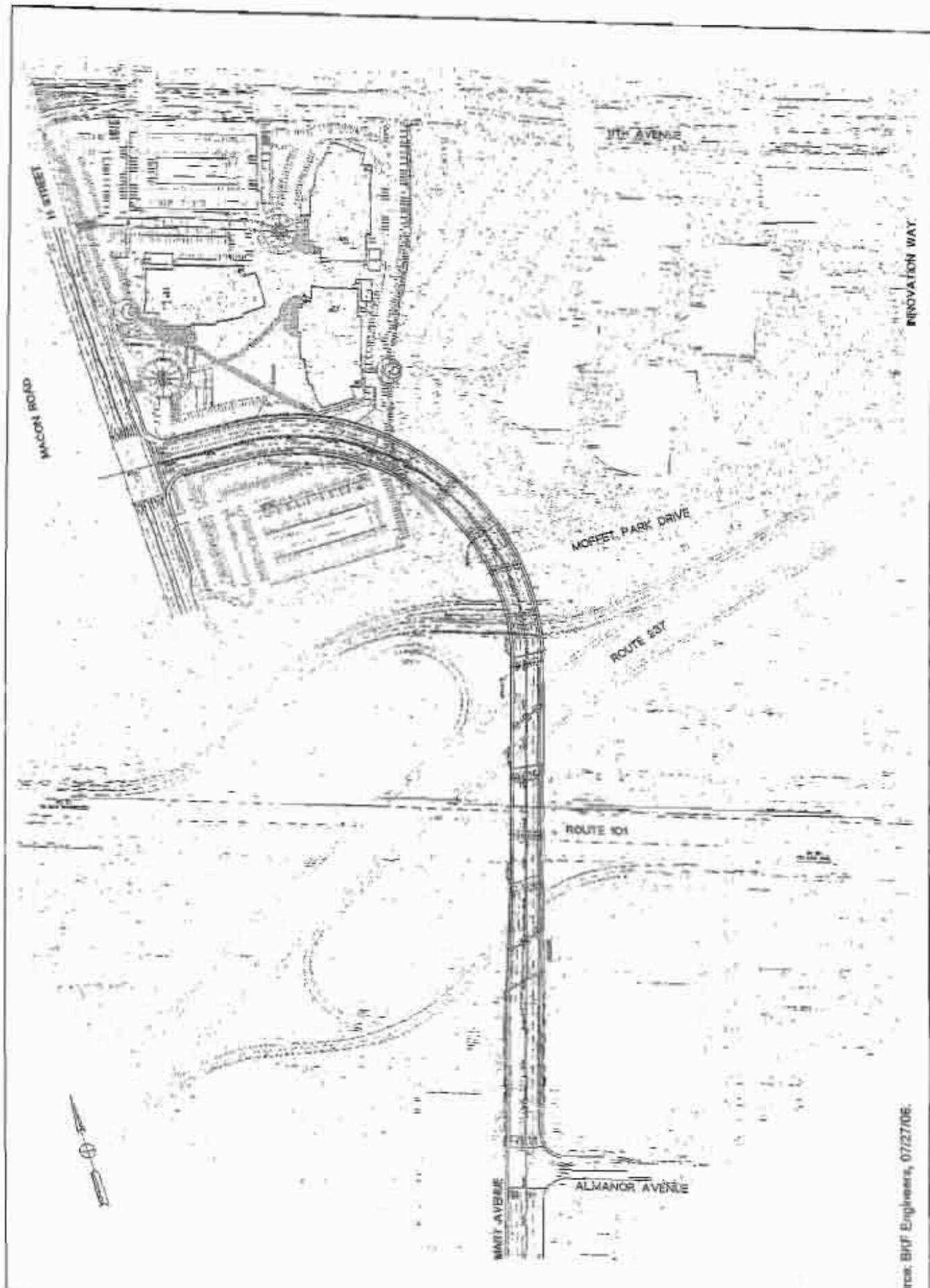
- Moffett Park Drive/Manila Street/H Street (AM peak hour)
- Moffett Park Drive/US 101 northbound ramp (PM peak hour)
- Moffett Park Drive/Innovation Way (AM peak hour)
- Mathilda Avenue/Moffett Park Drive (PM peak hour)
- Mathilda Avenue/Ross Drive (AM peak hour)
- Mathilda Avenue/Almanor Avenue (AM peak hour)

To summarize, although the No Project Alternative would avoid all of the significant environmental effects of the proposed project, it would not meet any of the project objectives.

## 6.3 H STREET ALIGNMENT ALTERNATIVE

The H Street Alignment Alternative is a variation in the design of the proposed project at the northerly end. Instead of connecting at Eleventh Avenue and E Street, the extension of Mary Avenue would curve to the west and connect to H Street, as shown on Figure 6.0-1. All other aspects of this alternative would be identical to the proposed project.

The H Street Alignment was an alignment previously contemplated by the City for the Mary Avenue Extension. A major consideration in developing the original alignment was the need to avoid the Lockheed Martin Corporation (formerly Lockheed Missiles & Spacecraft Corporation) campus, a secure area in which the public was prohibited. Lockheed has since sold the portion of its campus located in this immediate area and, therefore, this constraint is no longer applicable.



Source: BKF Engineers, 07/27/06.

H STREET ALTERNATIVE ALIGNMENT

FIGURE 6.0-1

The H Street Alignment Alternative would result in impacts that are similar to those of the proposed project with regard to tree removal, construction-related noise, potential for liquefaction, and the potential for encountering soil/groundwater contamination within the alignment. As described below, the H Street Alignment Alternative would, however, result in greater transportation, land use, and cultural resources impacts than the proposed project.

In regards to transportation impacts, the H Street Alignment does not provide superior traffic circulation when compared to the proposed project. Although the H Street Alignment would improve overall traffic conditions over the No Project, the H Street Alignment would result in significant level of service impacts to two intersections (Moffett Park-Manila/H Street and Moffett Park/Innovation Way) and would restrict access to the parcel located on H Street. The proposed project, on the other hand, would result in significant level of service impacts at only one intersection (Mary Avenue/Maude Avenue). Therefore, the H Street Alignment Alternative would have greater transportation impacts than the proposed project.

Ground disturbance for the H Street Alignment would impact a known archaeological site. The proposed alignment would also affect this site, but to a lesser degree than the H Street Alignment because there are more resources within the H Street Alignment. For this reason, the H Street Alignment Alternative would have greater impacts to cultural resources than the proposed project.

In terms of land use, the impacts of the H Street Alignment would be greater than those of the proposed project. This statement is based on the fact that the H Street Alignment would render Parcel 1 of the recently-approved Moffett Towers project nearly inaccessible. The following excerpt from Section 3.1 of the Moffett Towers Draft EIR (2006) summarizes this issue:

The [H Street] alignment would substantially limit egress from Parcel 1 to H Street. With the introduction of the Mary Avenue intersection on H Street approximately 500 feet north of the light rail tracks, the resulting spacing of the driveways in relationship to the Mary Avenue alignment would make it difficult to provide left turns out of the site on to H Street. If Mary Avenue connects to H Street, a signalized driveway would need to be located between Mary Avenue and the light rail tracks. Based on the Mary Avenue/H Street intersection analysis, this driveway would need to be located approximately 200 feet north of the light rail tracks. North of the Mary Avenue intersection, it would not be feasible to allow left turns into or out of Parcel 1 due to southbound PM peak hour queuing that would extend along H Street between Mary Avenue and Eleventh Avenue.

In terms of providing additional north-south transportation capacity in Sunnyvale, the H Street Alignment Alternative's ability to meet the project objective is similar to that of the proposed project. However, as noted above, traffic operations along Moffett Park Drive would be superior under the proposed project, when compared to the H Street Alternative Alignment.

To summarize, while the H Street Alignment Alternative meets the objective of increasing north-south capacity, it does not avoid any of the significant environmental impacts of the proposed project. In fact, the traffic, cultural resource, and land use impacts of this alternative are greater than those of the proposed project.

#### 6.4 OTHER NORTH-SOUTH SUNNYVALE CORRIDORS ALTERNATIVE

This alternative would consist of increasing north-south capacity in corridor(s) parallel to Mary Avenue in Sunnyvale. This would potentially achieve the basic project objective while avoiding impacts along the Mary Avenue Corridor. The Mathilda Avenue and Fair Oaks Avenue Corridors are north-south corridors in Sunnyvale, both of which have existing crossings of the US 101 and SR 237 freeways.

From a traffic engineering perspective, it would be feasible to construct additional lane(s) in each direction on Mathilda Avenue and/or Fair Oaks Avenue. However, there is insufficient room to construct any new lanes within the existing rights-of-way of either street. The additional right-of-way would need to be purchased and would necessitate the removal/displacement of hundreds of homes and businesses that front both sides of these two streets. The costs to the City, both in terms of buying the right-of-way and in terms of the effects on businesses and residents, would be extraordinary. For these reasons, this alternative is considered infeasible.

#### 6.5 WIDEN STATE ROUTE 85 ALTERNATIVE

State Route (SR) 85 parallels Mary Avenue to the west, generally along the Sunnyvale-Los Altos border. As such, its widening could potentially achieve the basic project objective of increasing north-south capacity in the Sunnyvale area. SR 85, however, is not under the jurisdiction or control of the City. SR 85 is a freeway owned and operated by the State of California, Department of Transportation (Caltrans). Therefore, under CEQA Guidelines § 15126.6(f)(1), this alternative is considered infeasible because the City cannot “reasonably acquire, control, or otherwise have access to” SR 85.

#### 6.6 DOWNGRADE MARY AVENUE ALTERNATIVE

The Downgrade Mary Avenue Alternative would be a variation on the proposed project. It would include the four-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue *plus* the restriping of the portion of Mary Avenue (between Fremont Avenue and Evelyn Avenue) for one lane in each direction. This portion of Mary Avenue, which passes through residential neighborhoods, is currently two lanes in each direction. A comparison of the number of through lanes on Mary Avenue between each of the alternatives is shown in Table 6.0-1.

Segment	Existing/ No Project	Proposed Project	Downgrade Mary Avenue Alternative	2-Lane Extension Alternative
Homestead Avenue to Fremont Avenue	2	2	2	2
Fremont Avenue to Evelyn Avenue	4	4	2	4
Evelyn Avenue to Maude Avenue	6	6	6	6
Maude Avenue to Almanor Avenue	4	4	4	4
Almanor Avenue to 11 <sup>th</sup> Street	--	4	4	2

Although the Downgrade Mary Avenue Alternative would not avoid any of the significant impacts of the proposed project, it is included in the EIR at the request of a number of residents. The residents, some of whom live on Mary Avenue, have expressed concern that the long-term effect of the Mary Avenue Extension will be a substantial increase in traffic through their neighborhoods, with a corresponding degradation in quality of life. Although the traffic analysis (see Section 2.3) concludes that the proposed project will have a minimal effect on traffic volumes on Mary Avenue south of Evelyn Avenue, nonetheless the City is analyzing this alternative so as to provide as much information to the public and decision-makers as possible.

In terms of physical changes to the environment, this alternative would be identical to the proposed project because the four-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue would occur in both cases. The difference between this alternative and the proposed project involves changes in traffic circulation, as described in the following paragraphs.

Table 6.0-2 depicts peak-hour operations at each of the study intersections under the Downgrade Mary Avenue Alternative, and compares this to the No Project and proposed project conditions. Changes in AM and PM peak-hour roadway volumes between this alternative and the No Project are shown on Figures 6.0-2 and 6.0-3, respectively. Changes in AM and PM peak-hour roadway volumes between this alternative and the proposed project are shown on Figures 6.0-4 and 6.0-5, respectively. A summary of these data is as follows:

- When compared to No Project, both the Downgrade Mary Avenue Alternative and the proposed project will increase traffic on Mary Avenue north of Central Expressway, as well as decrease traffic on parallel north-south routes such as Mathilda Avenue, Fair Oaks Avenue, Lawrence Expressway, and Middlefield Road/Ellis Street.
- When compared to No Project, the proposed project will have little effect on traffic volumes on Mary Avenue south of Central Expressway. In contrast, the Downgrade Mary Avenue Alternative will decrease volumes on Mary Avenue south of Central Expressway, with the greatest decrease occurring south of Evelyn Avenue.
- While downgrading Mary Avenue decreases traffic on Mary Avenue, especially south of Evelyn Avenue, the downgrade causes increases in traffic on parallel streets such as Bernardo Avenue, Sunset Avenue, and Pastoria Avenue. This shift in traffic from Mary Avenue to parallel streets is most pronounced in the PM peak hour.
- When compared to No Project, both the Downgrade Mary Avenue Alternative and the proposed project will improve intersection operations in the Moffett Park area.
- When compared to No Project, both the Downgrade Mary Avenue Alternative and the proposed project will result in a significant impact at the Mary Avenue/Maude Avenue intersection during the PM peak hour.
- When compared to No Project, the Downgrade Mary Avenue Alternative will result in a significant impact at the Mary Avenue/Evelyn Avenue intersection during the AM peak hour, at the Mary Avenue/El Camino Real intersection during both peak hours, at the Mary Avenue/Fremont Avenue intersection during both peak hours, and at the Mathilda Avenue/El Camino Real intersection during both peak hours. These impacts would not occur under the Proposed Project.



- Volume decreases by more than 500 vehicles
- Volume decreases by more than 100 and less than 500 vehicles
- Volume decreases by less than 100 vehicles
- Volume increases by more than 500 vehicles
- Volume increases by more than 100 and less than 500 vehicles
- Volume increases by less than 100 vehicles

DIFFERENCE BETWEEN DOWNGRADE  
 MARY AVENUE ALTERNATIVE & NO PROJECT (AM PEAK HOUR)

FIGURE 6.0-2



DIFFERENCE BETWEEN DOWNGRADE MARY AVENUE ALTERNATIVE & NO PROJECT (PM PEAK HOUR)

FIGURE 6.0



DIFFERENCE BETWEEN DOWNGRADE MARY AVENUE ALTERNATIVE & PROPOSED PROJECT (AM PEAK HOUR)

FIGURE 6.04



DIFFERENCE BETWEEN DOWNGRADE MARY AVENUE ALTERNATIVE & PROPOSED PROJECT (PM PEAK HOUR)

FIGURE 6.1

To summarize, while the Downgrade Mary Avenue Alternative meets the objective of increasing north-south capacity, it does not avoid any of the significant environmental impacts of the proposed project. While this alternative lowers traffic volumes past the residences on Mary Avenue south of Central Expressway, the traffic diverted from Mary Avenue causes impacts elsewhere. In fact, the traffic impacts of this alternative are greater than those of the proposed project due to significant impacts at four additional intersections.

## 6.7 TWO-LANE MARY AVENUE EXTENSION ALTERNATIVE

This alternative would be a variation on the proposed project. Unlike the proposed project which consists of a four-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue, this alternative would consist of a two-lane northerly extension of Mary Avenue between Almanor Avenue and Eleventh Avenue.

Similar to the Downgrade Mary Avenue Alternative discussed above, this alternative is included in the EIR to determine if a "smaller" project would meet the project objectives, while at the same time reducing citizens' concerns that the long-term effect of the Mary Avenue Extension will be a substantial increase in traffic through their neighborhoods.

When compared to the proposed project, the physical impacts of the Two-Lane Mary Avenue Extension Alternative would be reduced because the "footprint" of a two-lane extension would be smaller than a four-lane extension. For example, a two-lane extension would remove fewer trees, although "trees of significant size" would still need to be removed. It would also have a lesser impact on a known archaeological site, although the impact from disturbing the site would still be significant. It would also somewhat shorten the duration of construction noise impacts (and other construction impacts) since the bridge structure and roadway cross-sections would be smaller.

Table 6.0-2 depicts peak-hour operations at each of the study intersections under the Two-Lane Mary Avenue Extension Alternative, and compares this to the No Project and proposed project conditions. Changes in AM and PM peak-hour roadway volumes between this alternative and the No Project are shown on Figures 6.0-6 and 6.0-7, respectively. Changes in AM and PM peak-hour roadway volumes between this alternative and the proposed project are shown on Figures 6.0-8 and 6.0-9, respectively. A summary of these data is as follows:

- When compared to No Project, both the Two-Lane Mary Avenue Extension Alternative and the proposed project will increase traffic on Mary Avenue north of Central Expressway, as well as decrease traffic on parallel north-south routes such as Mathilda Avenue, Fair Oaks Avenue, Lawrence Expressway, and Middlefield Road/Ellis Street. However, as indicated on Figures 6.0-8 and 6.0-9, the magnitude of the increase in volume on Mary Avenue north of Central Expressway will be less under the Two-Lane Extension than the four-lane extension. Similarly, the magnitude of the decrease in volumes on parallel streets will be less under the Two-Lane Extension than the four-lane extension. This is expected since the capacity provided by a two-lane extension is less than that of a four-lane extension.
- When compared to No Project, both the proposed project and the Two-Lane Mary Avenue Extension Alternative will have little effect on traffic volumes on Mary Avenue south of Central Expressway.

- When compared to No Project, both the Two-Lane Mary Avenue Extension Alternative and the proposed project will improve intersection operations in the Moffett Park area. However, the degree to which traffic operations are improved will be less with a two-lane extension than with a four-lane extension.
- When compared to No Project, both the Two-Lane Mary Avenue Extension Alternative and the proposed project will result in a significant impact at the Mary Avenue/Maude Avenue intersection during the PM peak hour.
- When compared to No Project, the Two-Lane Mary Avenue Extension Alternative will result in a significant impact at the Mary Avenue/Eleventh Avenue intersection during the AM peak hour, at the Mary Avenue/Almanor Avenue during the AM peak hour, at the Mary Avenue/Fremont Avenue intersection during the AM peak hour, at the Mathilda Avenue/Maude Avenue during both peak hours and at the Mathilda Avenue/El Camino Real intersection during the AM peak hour. These impacts would not occur under the Proposed Project.

To summarize, while the Two-Lane Mary Avenue Extension Alternative meets the objective of increasing north-south capacity, the benefit is less than that of a four-lane extension. When compared to the proposed project, this alternative provides no benefit to residents living along Mary Avenue in terms of reducing traffic volumes through the neighborhood. This alternative does not avoid any of the significant environmental impacts of the proposed project. In fact, the traffic impacts of this alternative are greater than those of the proposed project due to significant impacts at five additional intersections.

## 6.8 ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the No Project Alternative, because all of the project's significant environmental impacts would be avoided. However, Section 15126.6(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."

For this EIR, other than the No Project Alternative, the proposed project is the environmentally superior alternative. This statement is based on the following:

- Of the four feasible build alternatives, all four would result in similar and significant impacts with regard to construction noise, cultural resources, biology, geology, and hazardous materials.
- Of the four feasible build alternatives, the H Street Alignment Alternative, the Downgrade Mary Avenue Alternative, and the Two-Lane Mary Avenue Extension Alternative would each result in greater traffic impacts than the Proposed Project.

**TABLE 6.0-2  
EXISTING AND FUTURE 2020 PROJECT AND ALTERNATIVES INTERSECTION LEVELS OF SERVICE**

Intersection	Peak Hour	Future – 2020 Conditions									
		Existing		No Project		Project		Downgrade Mary Avenue Alternative		Two-Lane Mary Avenue Extension Alternative	
		Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>
Moffett Park Drive/ Manila Drive/H Street	AM	17.6	B	247.0	F	58.3	E+	75.2	E-	74.5	E
	PM	11.1	B+	17.8	B	16.7	B	17.7	B	17.7	B
Moffett Park Drive/US 101 northbound on-ramp	AM	1.8	A	3.6	A	3.6	A	3.6	A	3.5	A
	PM	4.9	A	27.5	C	9.8	A	10.0	A	10.1	B+
Moffett Park Drive/Innovation Way	AM	9.0	A	96.9	F	24.2	C	36.9	D+	46.5	D
	PM	14.1	B	17.5	B	24.9	C	27.1	C	19.7	B-
E-Street-Mary Avenue/11 <sup>th</sup> Avenue	AM	7.4	A	9.6	A	33.7	C-	35.1	D+	60.2	E
	PM	7.3	A	8.0	A	29.9	C	27.1	C	33.5	C-
H Street/11 <sup>th</sup> Avenue	AM	9.4	A	12.6	B	35.2	D+	35.2	D+	30.3	C
	PM	13.5	B	9.8	A	29.2	C	29.2	C	19.9	B-
Mary Avenue/Almanor Avenue	AM	Does not exist				17.6	B	18.2	B-	104.2	F
	PM	Does not exist				13.2	B	13.1	B	25.7	C
Mary Avenue/Maude Avenue	AM	26.6	C	31.1	C	43.8	D	38.4	D+	34.9	C-
	PM	24.4	C	32.8	C-	63.7	E	62.8	E	47.8	D
Mary Avenue/Central Expressway**	AM	44.0	D	99.4	F	88.8	F	80.0	E-	86.1	F
	PM	43.6	D	96.1	F	97.7	F	86.4	F	96.9	F
Mary Avenue/Evelyn Avenue	AM	32.8	C-	79.8	E-	81.6	F	194.7	F	82.2	F
	PM	34.7	C-	39.9	D	40.0	D	44.2	D	39.6	D
Mary Avenue/El Camino Real**	AM	37.6	D+	46.3	D	50.1	D	56.4	E+	49.2	D
	PM	38.2	D+	62.0	E	64.5	E	85.0	F	63.7	E
Mary Avenue/Fremont Avenue	AM	44.9	D	51.6	D-	53.1	D-	118.1	F	56.6	E+
	PM	41.0	D	42.5	D	42.9	D	65.3	E	42.5	D
Mary Avenue/Remington Avenue	AM	24.1	C	18.7	B-	18.1	B-	23.8	C	18.3	B-
	PM	24.0	C	26.8	C	27.2	C	28.5	C	26.0	C
Mary Avenue/Homestead Avenue	AM	30.0	C	33.6	C-	34.3	C-	33.1	C-	35.0	D+
	PM	28.9	C	34.5	C-	34.2	C-	33.4	C-	33.9	C-

**TABLE 6.0-2  
EXISTING AND FUTURE 2020 PROJECT AND ALTERNATIVES INTERSECTION LEVELS OF SERVICE**

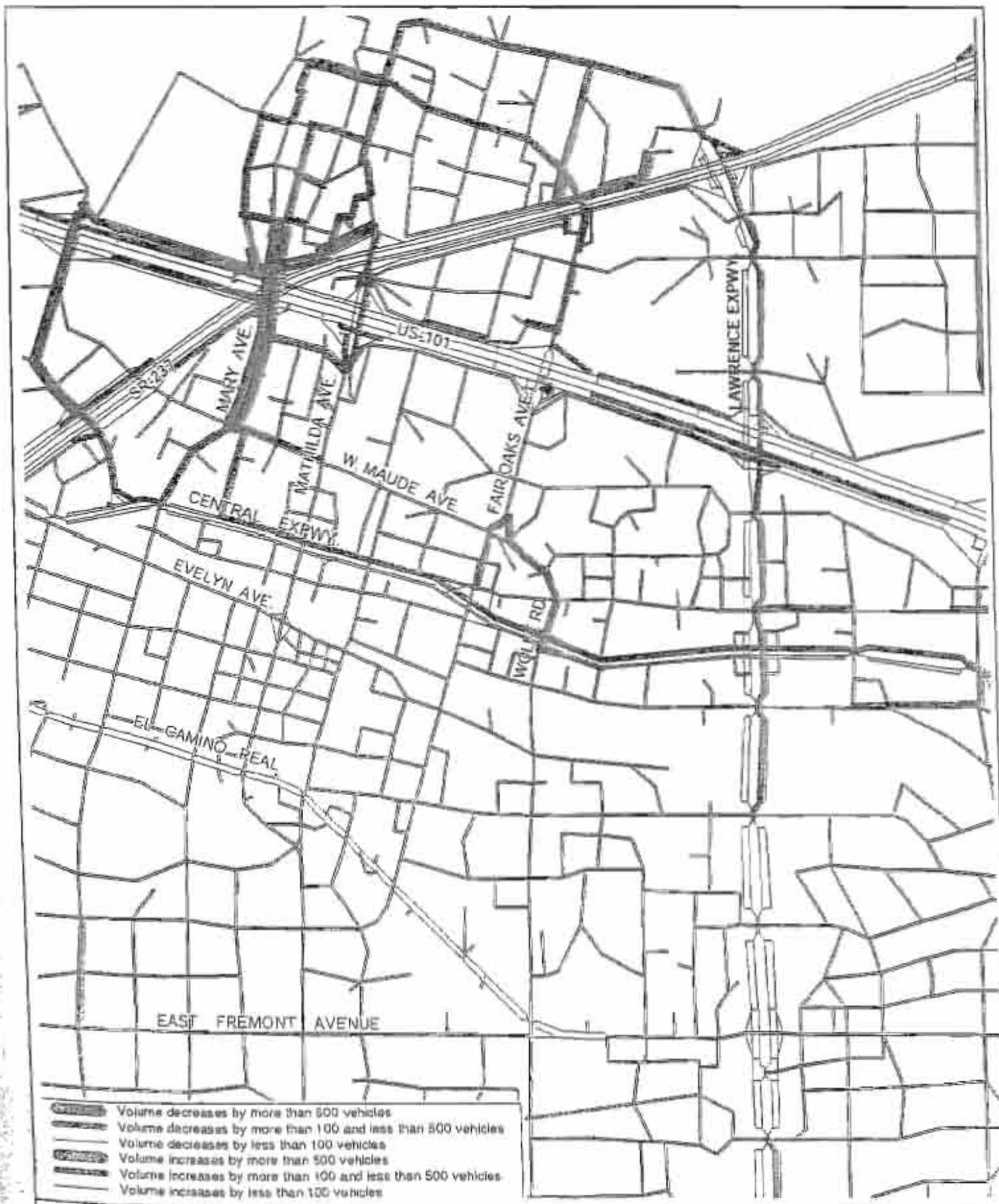
Intersection	Peak Hour	Existing		Future – 2020 Conditions							
				No Project		Project		Downgrade Mary Avenue Alternative		Two-Lane Mary Avenue Extension Alternative	
		Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>	Delay <sup>1</sup>	LOS <sup>2</sup>
Mathilda Avenue/ Moffett Park Drive <sup>3</sup>	AM	15.3	B	120.4	F	97.0	F	95.9	F	130.6	F
	PM	20.4	C	181.3	F	115.7	F	117.6	F	127.3	F
Mathilda Avenue/ SR 237 westbound ramps	AM	14.1	B	Intersection is eliminated with SR 237 interchange improvements							
	PM	23.3	C								
Mathilda Avenue/ SR 237 eastbound ramps	AM	18.9	B	24.4	C	22.6	C	24.5	C	22.3	C
	PM	9.7	A	20.9	C	20.4	C	28.9	C	34.9	C
Mathilda Avenue/ Ross Drive	AM	11.1	B	31.0	C	12.0	B	12.7	B	14.0	B
	PM	9.5	A	18.5	B	18.0	B	16.5	B	15.7	B
Mathilda Avenue/ US 101 northbound on-ramp	AM	Does not exist		70.8	E	46.3	D	46.8	D	47.4	D
	PM	Does not exist		14.1	B	14.9	B	14.4	B	15.1	B
Mathilda Avenue/ Almanor Avenue-Ahwanee Avenue	AM	22.8	C	90.6	F	67.6	E	77.0	E	73.2	F
	PM	19.9	B	39.6	D	43.5	D	40.4	D	38.4	D
Mathilda Avenue/ Maude Avenue**	AM	36.4	D	108.0	F	114.0	F	108.6	F	135.8	F
	PM	31.6	C	96.2	F	99.7	F	99.6	F	106.1	F
Mathilda Avenue/ Washington Avenue	AM	18.6	B	27.3	C	27.0	C	27.6	C	32.2	C
	PM	27.3	C	31.9	C	32.0	C	30.0	C	30.3	C
Mathilda Avenue/ El Camino Real	AM	44.4	D	158.1	F	158.1	F	165.0	F	169.9	F
	PM	65.6	E	124.6	F	124.2	F	139.4	F	128.2	F

Notes:

<sup>1</sup> Whole intersection weighted average control delay expressed in seconds per vehicle using methodology described in the *2000 Highway Capacity Manual*, with adjusted saturation flow rates to reflect Santa Clara County Conditions.

<sup>2</sup> LOS = Level of Service

\*\* CMP intersection



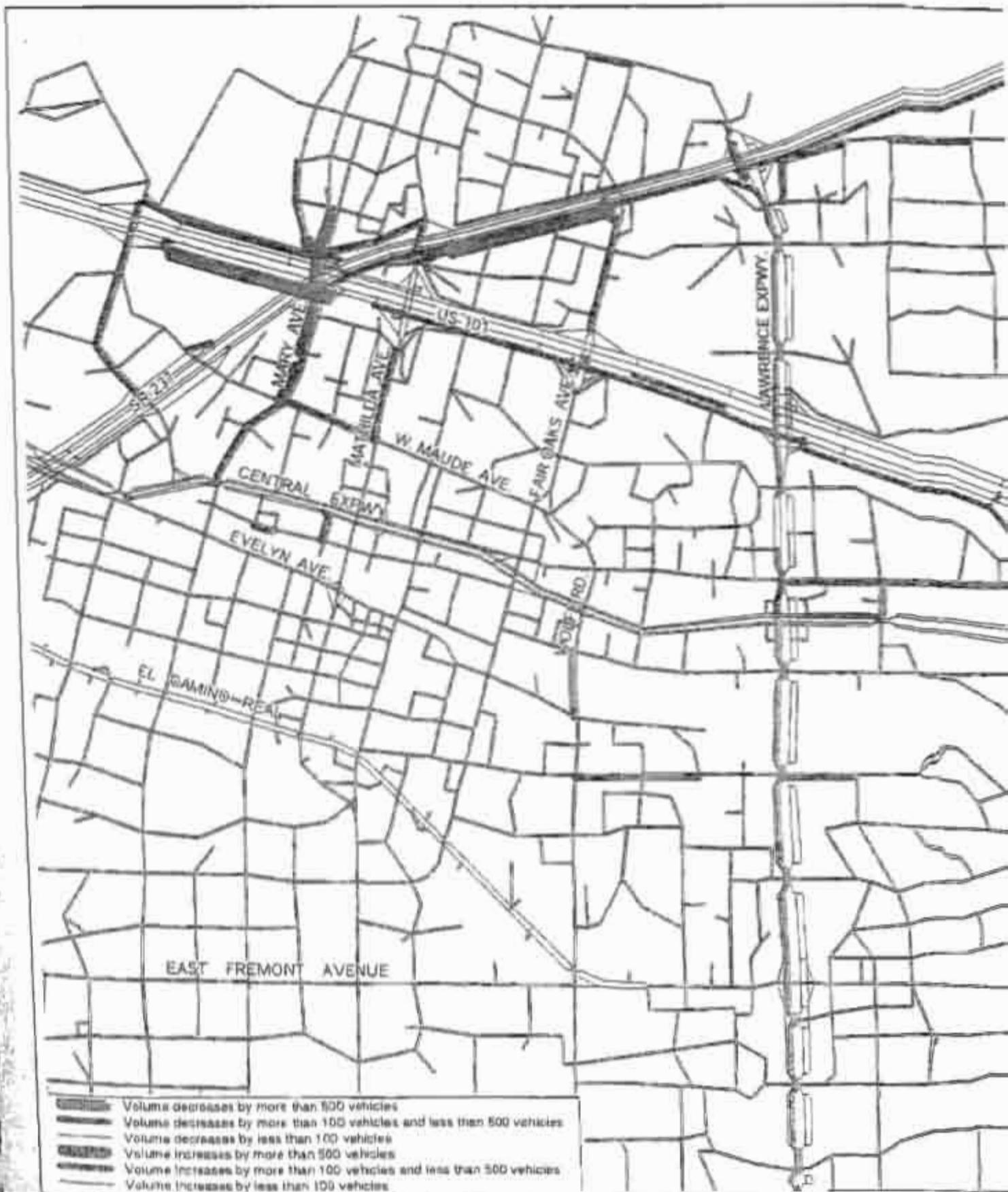
DIFFERENCE BETWEEN 2-LANE MARY AVENUE EXTENSION ALTERNATIVE & NO PROJECT (AM PEAK HOUR)

FIGURE 6.0-6





DIFFERENCE BETWEEN 2-LANE MARY AVENUE EXTENSION ALTERNATIVE & PROPOSED PROJECT (AM PEAK HOUR) FIGURE 6.0-8



DIFFERENCE BETWEEN 2-LANE MARY AVENUE EXTENSION ALTERNATIVE & PROPOSED PROJECT (PM PEAK HOUR) FIGURE 6.0