

**[PROPOSED]**

RESOLUTION NO. 2012 - \_\_\_\_

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA ADOPTING: (1) FINDINGS, A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; (2) A WATER SUPPLY ASSESSMENT PURSUANT TO WATER CODE 10911; AND (3) CONFORMING AMENDMENTS TO THE NAPA COUNTY GENERAL PLAN CONCERNING THE DEVELOPERS REVISED PROPOSAL NAPA PIPE PROJECT**

DRAFT 10/25/12

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Exhibit A: General Plan Amendment

Exhibit B: Mitigation Monitoring & Reporting Program

**WHEREAS**, on June 5, 2007, the Board of Supervisors directed the Conservation, Development and Planning Department (now the Planning, Building and Environmental Services Department, and hereafter "Planning Department") to formally commence preparation of a General Plan amendment (PO-00230) related to the Napa Pipe Project ("Project or "proposed Project") re-designating the Project site from "Study Area" to "Napa Pipe Mixed Use". The Project was generally proposed as a mixed use neighborhood including 3,200 dwelling units on the 154-acre industrial site south of the City of Napa; and

**WHEREAS**, the subject property, bearing Assessor's Parcel Numbers 046-100-030 and 046-412-005, is located at 1025 Kaiser Road in unincorporated Napa County on the west side of Kaiser Road southwest of its intersection with Syar Industrial Way approximately 3 miles south of the downtown of the City of Napa, and is adjacent to the City of Napa boundary. The site has a General Plan designation of Study Area, and is zoned I:AC (Industrial:Airport Compatibility); and

**WHEREAS**, in conjunction with the General Plan amendment, the Project also proposed zoning designation and text amendments, design guidelines, a subdivision map, and an entitlement referred to as a development plan; and

**WHEREAS**, the Project was the focus of three technical studies prepared at the direction of the City of Napa-County Study Group examining issues related to water supply, traffic, and public services; and

**WHEREAS**, the Planning Department determined through the preparation of an Initial Study that the Project might result in significant environmental effects, and required the preparation of an Environmental Impact Report ("EIR") consistent with the requirements of the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, on January 2, 2009, a Notice of Preparation was distributed to appropriate agencies for the purpose of obtaining written comments from those agencies regarding the scope and content of environmental information and analysis which said agencies wanted to be addressed in the EIR; and

**WHEREAS**, during the scoping period (January 2, 2009 through February 2, 2009) public meetings were held on January 15 and January 29 where interested parties and members of the public submitted oral and written comments on the proposed Project, project alternatives and the scope of the EIR; and

**WHEREAS**, during preparation of the Napa Pipe Draft EIR, the Napa County Conservation, Development and Planning Commission ("Planning Commission" or "Commission") in 2009 held five public workshops with local residents and stakeholders to discuss the Project and EIR process. Each workshop had a specific topic and allowed attendees to offer comments or questions on the following topics:

- March 18: What Makes a Successful Neighborhood?
- April 22: Neighborhood Character and Design.
- May 20: Public Open Spaces, Drainage and Flooding.
- June 24: Potential Traffic Impacts and Mitigation Measures.
- July 15: Groundwater and Sustainability; and

**WHEREAS**, a Draft EIR ("2009 DEIR") for the Project was prepared. The 2009 DEIR was circulated for public review and comment originally from October 23, 2009 through December 22, 2009, and notice of availability of the 2009 DEIR was provided to appropriate agencies and the general public via a Notice of Completion sent to the State Clearinghouse and via a public notice published in the Napa Valley Register, a local newspaper of general circulation; and

**WHEREAS**, on November 17, and twice on December 16, the Planning Commission held public hearings on the 2009 DEIR at which time the Planning Commission heard and considered all verbal and written evidence and testimony presented on the 2009 DEIR. At the November 17 Planning Commission hearing, the Commission voted to extend the comment period from December 22, 2009 to January 21, 2010. That decision was appealed to the Board of Supervisors, and the Board further extended the comment period through February 5, 2010<sup>1</sup>; and

**WHEREAS**, subsequent to the close of the public comment period on the 2009 DEIR, the Project was modified to include a surface water transfer, elimination of discharges of treated wastewater to the Napa River, and to include possible donation of a school site; and

**WHEREAS**, to analyze those revisions to the Project and provide updated information about site clean-up and air pollutant emissions, the County caused to be prepared a Supplement to the 2009 DEIR (hereafter "Supplement" or "Supplement to the 2009 DEIR"), which was prepared and circulated for public and agency review from February 14 through May 2, 2011; and

**WHEREAS**, the 2009 DEIR concluded that the Project would have unavoidable significant impacts related to: population/employment/housing, traffic/transportation, air quality, green house gas emissions, and cultural resources. None of the conclusions of the 2009 DEIR was changed in the Supplement to the 2009 DEIR, except that air pollutant concentrations during remediation and grading were now considered significant under thresholds of significance contained in new BAAQMD guidance; and

**WHEREAS**, subsequent to the close of the comment period on the Supplement, the Project was modified to reduce the number of dwelling units from 2,580 to 2,050, consistent with studies prepared by the Napa Sanitation District for the use of that District's wastewater services and with the "Medium Density Alternative" described in the 2009 DEIR and Supplement as "environmentally superior;" and

**WHEREAS**, the proposed Project as refined constitutes a mixed-use residential neighborhood of 2,050 units on 135 acres, containing attached housing in rowhouse and mid-rise form, neighborhood serving retail, light industrial /R&D/commercial space, a senior housing facility, a hotel, and parks and open space. Key project features are:

- ❖ *Brownfield Recycling*: Remediation, grading and site preparation to raise the elevation of the flat, largely paved 154-acre industrial site;

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<sup>1</sup> The full text of the Appeal is contained in the appeal packet filed with the Clerk of the Board on November 25 and December 3, 2009. The Board rendered its decision on January 12, 2010.

- ❖ *Housing*: Development of approximately 2,580 units in three phases with varying dwelling unit sizes, heights and building types; 20 percent of the units constructed would be deed restricted as affordable to low and very low income households;
- ❖ *Seniors Facility*: Construction of a 150-unit Continuing Care Retirement complex with 225 beds that would provide independent living for seniors, with common dining, recreational activities, housekeeping and transportation as well as assisted care for seniors;
- ❖ *New Infrastructure and Public Open Space*: New roads, sidewalks and other infrastructure, plus approximately 56 acres of new public parks, open spaces and wetlands, including a new segment of the Napa River trail about 0.8 miles long.
- ❖ *Community Facilities*: Development of community facilities encompassing a total of 15,600 square feet, including a transit center, interpretive nature center, boat house, public safety building, café/visitor pavilion and drydock theater;
- ❖ *Office*: Approximately 50,000 square feet of office space;
- ❖ *Industrial/Research & Development/Warehousing*: Approximately 140,000 square feet (may include wine-related businesses);
- ❖ *Retail*: Approximately 40,000 square feet of neighborhood serving retail and restaurant uses;
- ❖ *Hotel*: 150 suites with associated uses, such as meeting space and spa;
- ❖ *School Site*: At the request of the Napa Unified School District, the Project proponents would reserve 10 acres across Kaiser Road from the 154-acre Napa Pipe site for possible use as a school site if Napa Unified School District determines that a new school is needed based on the school age population of the Project;
- ❖ *Special District and County Services*: The proposed development would be served by the Napa County Fire Department and Napa County Sheriff. A new investor-owned public utility, mutual water company, or special district would provide potable water, transferred from a tributary of the Sacramento River if feasible, with groundwater as a back-up source. Wastewater treatment and recycled water supplies (for irrigation) would be provided by the Napa Sanitation District; and
- ❖ *Reserve Area*: Nineteen acres of the site would be un-programmed, and would remain designated "Study Area" and zoned for industrial uses; thus the area would be available for a range of potential future uses.

**WHEREAS**, in accordance with California Environmental Quality Act (CEQA), all comments received on the 2009 DEIR and Supplement to the 2009 DEIR during the public comment period were responded to and included in a Final Environmental Impact Report (Final EIR or FEIR), and mailed to commenting state and local agencies, organizations and individuals on February 3, 2012; and

**WHEREAS**, included within the FEIR documents is a Water Supply Assessment ("WSA") prepared by Brownstein, Hyatt, Farber and Schreck, dated August 2011. The WSA was prepared in accordance with the requirements of Water Code sections 10910 et seq., and analyzes whether the total water supplies available during normal, single-dry and multiple-dry water years during a 20-year projection will meet the projected water demand associated with the proposed Project in addition to existing and planned future uses, and concludes sufficient water supplies exist and are available for serving the Project.

**WHEREAS**, the FEIR was prepared pursuant to CEQA, Public Resources Code section 21000 et seq., and the State CEQA Guidelines, California Code of Regulations, Title 14, section 15000 et seq.; and

**WHEREAS**, on or before February 10, 2012, the FEIR was made available to the public. In addition, the FEIR was sent to all public agencies that commented on the 2009 DEIR and the Supplement to the 2009 DEIR; and

**WHEREAS**, on or before February 10, 2012 the Planning Department recommended a less intensive development proposal than the proposed Project, and requested amendment of the General Plan for only that portion of the Napa Pipe site encompassed by Assessor's Parcel No. 046-412-005 consisting of approximately 63 acres; and

**WHEREAS**, this 63-acre proposal, referred to as the "Modified (63 Acre) Project" (or "63 Acre Project"), reflects changes in economic conditions since the original application was filed and accepted for processing, balances land for housing and job creation, and would still achieve most of the Project objectives; and

**WHEREAS**, the 63 Acre Project called for a new mixed-use neighborhood to be constructed on the portion of the Napa Pipe site between the Napa River and the railroad tracks. This new neighborhood would have a combination of residential uses, neighborhood-serving retail, a 150-unit senior/assisted living facility, a 150-room hotel, 100,000 additional square feet of non-residential uses in addition to public open spaces, new streets and other infrastructure; and

**WHEREAS**, under the Planning Department's recommendation, the 91 acre parcel east of the railroad tracks would retain its current General Plan land-use designation ("Study Area") and zoning (Industrial with Airport Compatibility Combination District overlay (I:AC)), and would contain project-related open space and infrastructure. The remaining area on the 91 acre parcel was forecasted to build out with up to 550,000 square feet of warehousing and other industrial uses permitted in the Industrial zoning district; and

**WHEREAS**, on February 21, March 19, April 2, and May 2, 2012, the Planning Commission held a duly noticed public hearing to consider recommendations to the Board of Supervisors to adopt the proposed General Plan amendments, CEQA Findings of Fact, Statement of Overriding Considerations, Mitigation and Monitoring Reporting Program, and Water Supply Assessment; and

**WHEREAS**, after the May 2, 2012 public hearing was closed, the Commission deliberated, and by a 3 to 2 vote, modified the Planning Department's 63 Acre Project proposal by recommending to the Board of Supervisors that the entire Napa Pipe site comprised of APN's 046-412-005 and 046-400-030, with the exception of a 19 acre area within APN 046-400-030 to remain as "Study Area", be re-designated in the General Plan as "Napa Pipe Mixed Use", and recommended further General Plan amendments; and

**WHEREAS**, subsequent to the May 2, 2012 actions of the Planning Commission, and prior to a hearing by the Board of Supervisors, the Project applicant submitted a revised development application, and asked that the revised development application be analyzed and resubmitted to the Planning Commission for its consideration; and

**WHEREAS**, the revised development application ("Developers Revised Proposal") mirrors the Modified 63 Acre Proposal as adopted by the Planning Commission with the following revisions:

- A 16-acre portion of the land located east of the railroad tracks (APN 046-400-030) in "Zone D," north of Bedford Slough would be rezoned to "Napa Pipe Industrial/Business Park Zoning District" (NP-IBP).
- The remainder of the 91 acres located east of the railroad tracks retains its existing "I:AC" zoning designation.

**WHEREAS**, the NP-IBP zoning would allow the same uses as proposed in the NP-IBP-W zoning district previously considered by the Planning Commission, but would also allow, upon approval of a development plan, "General Wholesale Sales Commercial Activities" to facilitate the development of a Costco on the 16 acre portion of the site.

**WHEREAS**, key project features of the Developers Revised Proposal include:

- 1) Remediation of hazardous materials on the entire 154-acre Napa Pipe site consistent with a clean-up plan approved by the Regional Water Quality Control Board;
- 2) Grading of the entire 154-acre site and filling to raise the elevation of the 63-acre waterfront site, approximately 16 acres of the site for the Costco, and the major access roads on the 91-acre parcel;
- 3) Development of approximately 700 dwelling units at densities of 20 dwelling units per acre (or up to 945 dwelling units if a State-mandated density bonus is obtained) with an average unit size of 1,200 square feet;
- 4) Construction of a 150-unit Continuing Care Retirement complex with 225 beds that would provide independent living for seniors, with common dining, recreational activities, housekeeping and transportation as well as assisted care for seniors;
- 5) Construction of new roads, sidewalks and other infrastructure, plus approximately 34 acres of new public parks, open spaces and wetlands, including a new segment of the Napa River trail about 0.8 miles long;
- 6) Development of community facilities encompassing a total of 15,600 square feet, including a transit center, interpretive nature center, boat house, public safety building, café/visitor pavilion and drydock theater, and approximately 40,000 square feet of neighborhood serving retail and restaurant uses;
- 7) Development of a 150 room hotel with associated uses, such as meeting space and spa;
- 8) Development of up to approximately 10,000 square feet of office, research & development, or food and/or wine production sales space on the 63-acre parcel. On



the 91-acre parcel development of a 154,000 square foot Costco with the remaining area forecasted to build-out with up to 165,000 square feet of warehousing and other light industrial uses permitted in the Industrial zoning district;

- 9) Development of a five acre community farm and reservation of a ten acre school site on the 91-acre parcel;
- 10) The Developers Revised Proposal would be served by the Napa County Fire Department and Napa County Sheriff;
- 11) Potable water would be supplied by a mutual water company or investor-owned utility which would purchase water from the City of Napa or an alternative source, and use groundwater only as part of a conjunctive use program;
- 12) Wastewater treatment and recycled water supplies (for irrigation) would be provided by the Napa Sanitation District; and

**WHEREAS**, in a Supplemental Environmental Analysis dated September 19, 2012 ("SEA"), the environmental effects of the Developers Revised Proposal were compared to the proposed Project as analyzed in the Final EIR. The SEA found, in comparison to the proposed Project, that the Developers Revised Proposal would not result in any new or increased environmental impacts which were not addressed in the Final EIR; and

**WHEREAS**, a Notice of Public Hearing regarding the Developers Revised Proposal was published in a newspaper of general circulation in the County and mailed to interested persons within 300 feet of the Project and other parties as required by law; and

**WHEREAS**, on February 21, March 19, April 2, May 2, 2012, and October 3, 2012, the Planning Commission held public hearings on the Project for purposes of considering making an advisory recommendation to the Board of Supervisors (Board) on certification of the FEIR and merits of the Project, in accordance with Government Code Sections 65353(a) and 65354 and County Code Section 18.124.010; and

**WHEREAS**, on March 7, 2012, the Napa County Airport Land Use Commission held a public hearing to consider whether the proposed Project was consistent with applicable airport land use compatibility plans pursuant to Public Utilities Code Section 21676(b) and concluded that the proposed Project was consistent with such plans; and

**WHEREAS**, the Planning Commission, prior to making its recommendation to the Board of Supervisors considered all testimony, both oral and written, regarding the Project. After closing the public hearing on October 3, 2012, the Planning Commission thereafter adopted, with respect to the Developers Revised Proposal Project, Resolution No. 2012-█ recommending that the Board of Supervisors certify the FEIR; Resolution No. 2012-█ recommending the Board adopt findings, a statement of overriding considerations and a mitigation monitoring program, water supply assessment, and adopt conforming general plan amendments, including re-designating the entire Project site to Napa Pipe Mixed Use in the General Plan. The Planning Commission also adopted Resolution No. 2012-█ recommending that the Board of Supervisors adopt a proposed zoning

ordinance associated with the Developers Revised Proposal and rezone APN 046-412-005 and 16 acres of 046-400-030 to the new Napa Pipe Zoning District; and

**WHEREAS**, on [REDACTED] 2012, the Board of Supervisors held a duly noticed public hearing and testimony was presented regarding the FEIR and the Developers Revised Proposal as recommended by the Commission. After considering the Planning Commission's recommendations contained in Planning Commission Resolution Nos. 2012-\_\_, \_\_, and \_\_ and all the evidence in the record, the Board closed the public hearing, thereafter adopted a motion of intent to adopt: (1) a resolution certifying the FEIR; (2) a resolution adopting findings, a statement of overriding considerations, a mitigation monitoring and reporting program, water supply assessment and adopting conforming General Plan amendments, and (3) a zoning ordinance amendment to Title 18 of the Napa County Code adding Chapter 18.66 (Napa Pipe Zoning District) and rezoning APN 046-412-005 and a portion of APN 046--400-030 to that District. The Board directed the County Counsel's office to prepare the referenced resolutions and zoning ordinance amendment in accordance with the Board's intended decision and bring them back to the Board for consideration on [REDACTED], 2012; and

**WHEREAS**, the FEIR referenced in subsequent sections of these Findings shall consist of the *Napa Pipe Draft EIR, Volumes I – IIIB (dated October 23, 2009)* [also referred to herein as the "2009 DEIR"], the *Napa Pipe Supplement to the Draft EIR, Volumes I & II (dated February 14, 2011)* [also referred to herein as the "Supplement" or "Supplement to the 2009 DEIR"], the *Napa Pipe Final Environmental Impact Report (dated February 3, 2012)*, the *September 19, 2012 Supplemental Environmental Assessment ("SEA")*; as well as all of the comments and staff responses entered into the record orally and in writing between February 21, 2012 and [REDACTED], as well as accompanying planning and other County records, files, minutes, technical memos or evidence entered into the record; and

**WHEREAS**, the Project referenced in subsequent sections of these Findings shall consist of the Developers Revised Proposal as described above and analyzed in the *September 19, 2012 Supplemental Environmental Assessment*; and

**WHEREAS**, the Board now desires to adopt findings, mitigation measures, a statement of overriding considerations, a mitigation monitoring and reporting plan in connection with the FEIR, and conforming amendments to the General Plan relating to the Project:

**NOW, THEREFORE, BE IT RESOLVED as follows:**

**SECTION 1.**        **Recitals.**

The Board hereby finds that the foregoing recitals are true and correct.

**SECTION 2.**        **Purpose of the Findings.**

The purpose of these Findings is to satisfy the requirements of Public Resources Code Section 21000, et seq., and Sections 15091, 15092, 15093 and 15097 of the CEQA Guidelines, Title 14 California Code of Regulations, associated with approval of the proposed Project. These Findings provide the written analysis and conclusions of the Board of Supervisors regarding the Project. The Findings are divided into general sections. Each of these sections is further divided

into subsections, each of which addresses a particular impact topic and/or requirement of law. At times, these findings refer to materials in the administrative record, which are readily available for review in the County's Conservation, Development and Planning Department.

### **SECTION 3. Project Objectives.**

As noted in Section 3.0 of the 2009 DEIR, the Board of Supervisors finds that the objectives of the Project, with respect to the Applicant and the County are, respectively:

#### **Project Applicant's Objectives**

- Make a substantial contribution towards meeting the County's ABAG-defined Regional Housing Needs Allocation (RHNA), by developing 2,580 new residential units, including 20 percent for designated for low and very low income affordable housing categories.
- Integrate affordable housing within the market-rate housing development area.
- Reduce the pressure for residential development of properties within the County's Agricultural Preserve and the existing neighborhoods of the incorporated Cities by redeveloping County industrial lands as residential.
- Locate housing in proximity to jobs to reduce commuting traffic to and from the jobs within a 4-mile radius of the project.
- Provide workforce housing and housing appropriate for a variety of ages and life stages to create a multi-generational, mixed income community, in a location proximate to educational and recreational amenities (the Community College, Kennedy Park and the Napa River).
- Provide a financially feasible development program to allow for the remediation and revitalization of an industrially-contaminated site as a sustainable site, consistent with LEED for Neighborhood Design (LEED-ND), to reduce pressure on undeveloped land.
- Recycle one of the County's largest urbanized properties in a compact manner, consistent with principles of "smart growth" so as to promote walking, biking and transit use.
- Provide substantial additional public open space including public access to a broad reach of the Napa River across lands previously closed to the public, for active and passive recreation, as well as add a new riverfront segment to and connection with the Bay Trail.
- Improve the ability of local public-serving employers, such as hospitals and education institutions, to recruit and retain employees by increasing the housing stock suitable for members of their workforce.
- Develop a sufficiently dense residential project to support pedestrian, bicycle, bus and water taxi use, in a location with the potential for rail transit use.

- Ensure that the project provides fiscal benefits to the County and City of Napa and does not require either agency to divert resources from other residents/businesses.
- Ensure that benefits of the project outweigh environmental impacts.
- Provide a safe and attractive neighborhood with services suitable to an urban neighborhood.

#### County's Objectives

- Address a significant portion of the County's RHNA requirements for three cycles.
- Provide a location for moderate-priced and affordable housing that is protective of agriculture and of existing neighborhoods.
- Provide a location for a variety of housing types where sufficient densities can support transit services and development of pedestrian and bicycle facilities.
- Make sure that the pace of growth is measured, and that potentially significant environmental impacts are mitigated to the maximum extent feasible.
- Facilitate remediation of an underutilized industrial site, addressing soil contamination, improving water quality, and restoring wetlands.
- Ensure significant ongoing public benefits from site re-use, including river-front access, regional trail connections, and publicly accessible open space.
- Ensure short- and long-term fiscal benefits for the county and the City of Napa.
- Enable a healthy, "walkable" neighborhood, with a focus on energy and water conservation, reducing green house gas emissions, and alternatives to the private automobile.

#### **SECTION 4. General Plan Amendment and Zoning Ordinance.**

A. In conjunction with the Developers Revised Proposal, the amendments to the General Plan shown in Exhibit A are being made to ensure internal consistency between and among the elements. Those amendments include a new Policy AG/LU-41, and revisions to existing Policies AG/LU-25 and -52. Those changes are collectively referred to as the Conforming Amendments and are also considered part of the Developers Revised Proposal. The Conforming Amendments are found to be within the ambit of the FEIR and part of the Project.

B. Also in conjunction with the Developers Revised Proposal, there is proposed a zoning ordinance amendment to Title 18 of the Napa County Code adding Chapter 18.66 (Napa Pipe Zoning District) which would provide the zoning regulations governing the Napa Pipe site, and conditions of approval for its development. The ordinance is subject to separate approval by the Board, and is found to be within the ambit of the FEIR and part of the Project.

## **SECTION 5.**            **Requirement for Findings of Fact.**

CEQA requires public agencies to consider the potential effects of their discretionary activities on the environment and, when feasible, to adopt and implement mitigation measures that avoid or substantially lessen the effects of those activities on the environment. Specifically, Public Resources Code Section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to state that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a).) For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The three possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(Public Resources Code Section 21081, subd (a); see also CEQA Guidelines Section 15091, subd. (a).)

Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)* (1990) 52 Cal.3d 553, 565.)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 (court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives); see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 1001 (CNPS) (“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is

supported by substantial evidence in the record”) (quoting Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* [Cont.Ed.Bar 2d ed. 2009] (Kostka), § 17.309, p. 825).

Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*); see also *CNPS, supra*, 177 Cal. App. 4th at p. 1001 (after weighing “‘economic, environmental, social, and technological factors,’ ... ‘an agency may conclude that a mitigation measure or alternative is impractical or undesirable from a policy standpoint and reject it as infeasible on that ground”) (quoting Kostka, *supra*, § 17.29, p. 824).

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II, supra*, 52 Cal.3d at p. 576.) The Board of Supervisor’s Statement of Overriding Considerations for the Project is included herein in Section 13 below.

The Board of Supervisors recognizes that there may be differences in and among the different sources of information and opinions offered in the documents and testimony that make up the FEIR and the administrative record; that experts disagree; and that the Board of Supervisors must base its decision and these Findings on the substantial evidence in the record that it finds most compelling. Therefore, by these Findings, the Board of Supervisors ratifies, clarifies, and/or makes insignificant modifications to the FEIR and resolves that these Findings shall control and are determinative of the significant impacts of the Project.

**SECTION 6. Findings Associated With Impacts That Will No Longer Occur or Mitigation Measures that are No Longer Necessary Because of Revisions to the Project.**

Because of revisions made to the Project during the course of environmental evaluation and up through the adoption of this Resolution, the Board finds the following impacts will no longer occur: **BIO-6, HYDRO-1, CULT-5, TRA-1, TRA-2, TRA-4, and TRA-7**. Because of revisions made to the Project during the course of environmental evaluation and up through the adoption of this Resolution, the Board finds the following Mitigation Measures are no longer necessary: **AQ-5a, PEH-1, and PS-3**.

The Project no longer proposes to construct and operate its own Wastewater Treatment Plant, but instead the Project will connect to and utilize the wastewater treatment system of the Napa Sanitation District. Based on this project revision, Impacts BIO-6 and HYDRO-1 will no longer occur, and no mitigation is necessary for them. On the same basis, the portion of Impact AQ-5 associated with potential odors from an onsite wastewater treatment facility will no longer occur and Mitigation Measure AQ-5a is no longer necessary.

With the reduction in the number of dwelling units included in the Project, the applicant is no longer proposing to obtain surface water supplies from a tributary of the Sacramento River and construction of a water supply pipeline as described in Impact CULT-5. As a result, Impact CULT-5 will no longer occur and no mitigation is necessary.

With the reduction in the number of dwelling units included in the Project and the addition of the proposed Costco, the traffic contribution of the Project will be reduced. As such, the Project will no longer result in significant impacts (project + existing conditions) at the following intersections: First St./Soscol Ave.; Third St/Silverado Trail (SR 121)/East Ave./Coombsville Rd.; SR 29 Northbound Ramps/Imola Ave.; Imola Ave (SR 121)/Jefferson St; and SR 221 (Napa-Vallejo Highway)/Kaiser Rd. As a result, Impacts TRA-1 through TRA-4 and TRA-7 will no longer occur and no mitigation is necessary with respect to these impacts. Mitigation Measures TRA-1b and TRA-7 are, however, still required to mitigate the Project's impacts to First St./Soscol Ave. and SR 221 (Napa-Vallejo Highway)/Kaiser Rd under cumulative conditions. (See Impact TRA-19) Mitigation Measure TRA-1a was previously determined to be infeasible due to the cost, physical constraints of the site, and lack of community support for changes to the new bridge. (See Section 9, below.)

The Developers Revised Proposal, with its reduction in dwelling units to a maximum of 945, would no longer exceed the number of units allowed by the County's Growth Management System, and would not result in development in excess of County projections, so Mitigation Measure PEH-1 is no longer necessary.

With the reduction in the number of dwelling units included in the Project, the payment of required school fees is considered legally sufficient mitigation pursuant to Government Code Section 65995. As a result, Mitigation Measure PS-3 is no longer proposed. However, the Project applicant is offering to reserve a 10 acre school site on a portion of APN 046-400-030 for use by the Napa Valley Unified Scholl District.

**SECTION 7. Findings Associated With Less Than Significant Impacts Without Need for Imposition of Mitigation.**

The Board of Supervisors has reviewed and considered the information in the FEIR addressing environmental effects, mitigation measures, and alternatives. The Board of Supervisors, relying on the facts and analysis in the FEIR, which were presented to the Board of Supervisors and reviewed and considered prior to any approvals for the Project, concurs with the conclusions of the FEIR regarding the less than significant environmental effects.

The Board also finds that the following impact from implementation of the proposed Project is less than significant:

1) **Impact TRA-3: State Route 29 Northbound Ramps/Imola Avenue.** The project contributes to existing LOS F conditions (51 AM peak hour trips and 35 PM peak hour trips). The contribution to AM peak hour traffic volumes is greater than 50 trips. This was considered a *significant* impact in the 2009 DEIR, p. 4.3-54.

**Mitigation Measure TRA-3:** Install a traffic signal to reduce the vehicular delay, thus improving the intersection level of service to acceptable conditions. This traffic signal is being designed as part of developer project mitigation and will be funded through the City Street Improvement Program. Construction is expected to occur in 2009. Alternatively, implementation of Mitigation Measure TRA-1b would reduce the impact at this intersection to a less than significant level. (See 2009 DEIR, p. 4.3-54 to 55, as revised)

Finding: As noted in Table 2-1 "Summary of Impacts and Mitigation Measures" of the FEIR, the mitigation called for to address this Impact has already been constructed, and therefore Mitigation Measure TRA-3 is no longer necessary. Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**SECTION 8. Findings Associated With Potentially Significant Impacts Which Can Be Mitigated To A Less Than Significant Level.**

Significant impacts of the Project are listed by topic below with applicable mitigation measures and findings. The mitigation measures have been incorporated into the Mitigation Monitoring and Reporting Program attached as Exhibit B and adopted herein.

**LAND USE AND PUBLIC POLICY**

**A) Impact LU-1:** The project proposes residential units in proximity to noise-generating land uses that would result in a "normally incompatible" noise exposure at the site as designated the Noise Element of the General Plan. The project's residential units would also be located in proximity to air pollutant emission sources. Both of these circumstances would constitute a potential significant land use compatibility issue, which would be reduced to **less than significant** with adoption and implementation Mitigation Measures NOISE-1 and AQ-4. (2009 DEIR, p. 4.1-25.)

**Mitigation Measure LU-1:** Implement Mitigation Measures NOISE-1 and AQ-4. (see 2009 DEIR, pgs. 4.5-25, 4.6-50)

Finding and Rationale: Mitigation Measure NOISE-1 requires sound-rated building construction to achieve acceptable indoor noise levels in residential units, as well as mechanical ventilation for noise control, proper site planning and noise barriers. These measures would reduce noise levels to acceptable levels, thereby eliminating conflicts from siting residential units near vehicular and industrial land uses. Mitigation Measure AQ-4 requires measures to reduce exposure of residences to potential air quality nuisances, including air pollution and dust, associated with adjacent industrial uses. These measures will prevent the transport of dust and other pollutants to the project site, thereby eliminating conflicts from siting residential units near industrial land uses. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts Mitigation Measures NOISE-1 and AQ-4 and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect described as LU-1 to a **less than significant** level.



## TRAFFIC AND TRANSPORTATION

**B) Impact TRA-8: Soscol Ferry Road/Devlin Road.** The addition of project traffic is expected to cause this intersection to deteriorate from LOS A in the AM peak hour and LOS E in the PM peak hour to LOS F in both the AM and PM peak hours. Additionally the average vehicular delay on the northbound stop-controlled approach would be greater than 4.0 vehicle hours. This is a significant impact. (2009 DEIR, p. 4.3-57; SEA, Attachment 3, September 7, 2012 Fehr & Peers Memorandum).

**Mitigation Measure TRA-8:** Forecasted volumes warrant a traffic signal; however, the intersection's close proximity to an adjacent signalized intersection renders a standard signalized intersection infeasible. Construct a median treatment on Soscol Ferry Road that essentially controls all movements except for the westbound through movement on Soscol Ferry Road. Widen Soscol Ferry Road to the west of its intersection with Devlin Road to allow for merging of the two lanes. The merge distance shall be in accordance with the standard roadway design criteria for lane merges. Please see the figure presented in the Traffic Impact Analysis in Appendix E. This improvement shall be constructed prior to the occupancy of the project. (See 2009 DEIR, p. 4.3-57-58, as revised at FEIR, p. 3-48.)

**Finding and Rationale:** Implementation of this mitigation measure would lessen this impact to a less than significant level. The County and Caltrans have considered the reconfiguration of the State Route 12-State Route 29/State Route 221 intersection. Due to the close proximity, this project may have a large influence on the operations of this intersection. Alternatively, the combined implementation of Mitigation Measures TRA-9 and TRA-10 would reduce traffic demand at this intersection by adding capacity to State Route 29. If these two mitigation measures are implemented (Measures TRA-9 and TRA-10), the impact at this intersection would be reduced to a less than significant level and this Mitigation Measure would be unnecessary. However, absent implementation of those two measures, Mitigation Measure TRA-8 is adopted. Based on adoption of this mitigation measure, and pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect related to this impact to a **less than significant** level.

**C) Impact TRA-14:** Without a Construction Management Plan, construction activity may adversely affect vehicle, pedestrian and bicycle circulation in the area. This is a significant impact. (2009 DEIR, p. 4.3-62)

**Mitigation Measure TRA-14:** The Project Sponsor shall develop and implement a Construction Traffic Management Program (CMP) to minimize impacts of the project and its contribution to cumulative impacts related to both on and off site construction and remediation activities and traffic. The program shall provide necessary information to various contractors and agencies as to how to maximize the opportunities for complementing construction management measures and to minimize the possibility of conflicting impacts on the roadway system, while safely accommodating the traveling public in the area. The program shall supplement and expand, rather than modify or supersede, any manual, regulations, or provisions set forth by Napa County departments and agencies. Preparation of the CMP shall be the responsibility of the Project Sponsor, and shall be reviewed and approved by County staff prior to initiation of construction. The program shall:

- Identify construction traffic management practices in Napa County, as well as other jurisdictions that could provide useful guidance for a project of this size and characteristic.
- Describe procedures required by different departments and/or agencies in the county for implementation of a construction management plan, such as reviewing agencies, approval process, and estimated timelines.
- Identify construction traffic management strategies and other elements for the project, and present a cohesive program of operational and demand management strategies designed to maintain acceptable traffic operations during periods of construction activities in the project area. These could include construction strategies, construction staging areas, construction phasing, construction staging, demand management strategies, alternate route strategies, and public information strategies.
- Coordinate with other projects in construction in the immediate vicinity (i.e. Syar), so that they can take an integrated approach to construction-related traffic impacts.
- Identify barge routes to access the project site and other information as required by Napa County in the event soil import may be serviced by barge via the Napa River.
- Ensure that adequate pedestrian circulation is maintained when then-existing sidewalks must be closed or obstructed for construction purposes.
- Ensure that adequate bicycle facilities are maintained, including detour signs for then-existing bicycle routes.
- Ensure that construction-truck traffic follows established truck routes, where designated.
- Ensure that transit facilities, including stops locations and associated amenities, such as shelters, etc., are maintained, or that acceptable temporary facilities are established.

(See 2009 DEIR, p. 4.3-63, as revised and setting forth specific CMP measures in FEIR, pp. 3-15 to 3-52)

**Findings and Rationale:** Implementation of the CMP would help reduce the proposed project's construction-related traffic impacts by minimizing the possibility of conflicting impacts on the roadway system, while safely accommodating the traveling public in the area. Given the magnitude of the proposed development and the duration of the construction period, some disruptions and increased delays could still occur even with implementation of the CMP, although these disruptions would not be considered a significant impact because they would be intermittent over the course of the construction period. As such, implementation of a CMP, approved by Napa County staff, would mitigate this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect related to construction activity on vehicle, pedestrian and bicycle circulation in the area related to a **less than significant** level.

**D) Impact TRA-15:** Construction traffic may adversely affect pavement conditions in the area. This is a significant impact. (2009 DEIR, p. 4.3-63)

**Mitigation Measure TRA-15:** Prior to beginning construction on the proposed project, survey road conditions for proposed trucking routes on the following roadways:

- Kaiser Road

- Napa Valley Corporate Drive
- Napa Valley Corporate Way
- Bordeaux Way
- Anselmo Court
- Soscol Ferry Road

This shall include roadway pavement and other surfaces that construction traffic may cross. The project applicant shall return roadway conditions to their pre-construction conditions (or better) following the remediation and grading phase of the project. For subsequent construction phasing, truck traffic to/from the project shall be monitored on the identified roadways to determine project's construction traffic contribution to overall truck traffic. Project applicant shall pay a fair share contribution to return roadway conditions to their pre-construction conditions following each phase of construction. (See 2009 DEIR, p. 4.3-63, as revised at FEIR p. 3-54.)

**Findings and Rationale:** By requiring the applicant to return roadway conditions to their pre-construction conditions (or better) following the remediation and construction of the project, implementation of this mitigation measure would mitigate this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect from construction impacts on pavement conditions to a **less than significant** level.

**E) Impact TRA-16:** The design of the public promenade along the waterfront portion of the Napa Pipe project may present a situation with high levels of pedestrian and bicycle conflicts. This would be a significant impact. (2009 DEIR, p. 4.3-66)

**Mitigation Measure TRA-16:** The design shall minimize these conflicts through means such as channelizing pedestrians to discrete crossing points of the trail, widening the trail through areas where higher pedestrian volumes are expected, and where necessary, separating pedestrian and bicycle travel. (See 2009 DEIR, P. 4.3-66, as revised at FEIR, p. 3-54)

**Finding and Rationale:** The pedestrian and bicycle conflicts experienced in the public promenade would be local to the project and are not anticipated to be reflected in the mixed-use trail system. The conflicts in the promenade would occur due to the sporadic nature of travel in a public plaza. Bicycle and pedestrian travel on the pathways will be directional in nature and capacity constraints are not anticipated. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect from pedestrian and bicycle conflicts on the public promenade to a **less than significant** level.

**F) Impact TRA-18:** The proposed off-street parking supply is less than the shared parking demand and the suggested County parking rates and may not meet demand. This is a significant impact. (2009 DEIR, p. 4.3-75)

**Mitigation Measure TRA-18:** The project applicant shall collaborate with County Staff to develop a parking monitoring plan that assesses the utilization of available parking in each phase of the project development. Alternatively, implementation of a parking management program, a component presented in Mitigation Measure TRA-1b, could be implemented to monitor parking demand and carry out parking reduction strategies when needed. (See 2009 DEIR, p.4.3-75)

**Mitigation Measure TRA-1b:** To lessen the severity of this and other significant peak hour impacts, the project applicant shall establish a transportation demand management (TDM) program which shall be funded and administered by the property owners association with the goal of reducing the forecasted auto trip generation from the project by 15 percent. The TDM program shall include certain required (immediate, long term) measures, as follows.

Required TDM Measures

- Establish a full-time, paid TDM coordinator to implement required TDM measures, monitor their effectiveness and implement additional measures as needed to meet the 15 percent goal. The coordinator shall also monitor volumes and delays at intersections where traffic mitigation measures have been called for.
- Implement peak period shuttle service to key employment centers (e.g. hospital, downtown) or provide funding to allow relocation of the nearby VINE route to serve the site, with added service in peak periods.
- Implement a parking management program to establish and monitor compliance with parking restrictions.

The effectiveness of these required measures shall be monitored on a biannual basis, and traffic counts will be conducted to determine if the 15 percent reduction of forecasted traffic levels is being achieved. If additional measures are necessary to achieve the 15 percent reduction, the TDM coordinator shall implement other measures to enhance the TDM program. Below is a selection of additional measures that may be considered to achieve a reduction in auto traffic:

- Develop incentives for employer programs
- Guaranteed Ride Home Program
- Information kiosk w/brochures
- Newsletter articles
- Advertised carpool information phone number
- Annual promotional events
- Car-share program
- Shuttles to regional transit like the Vallejo ferry
- Transit Subsidies
- Water taxis
- On-site Ticket Sales (some level also included in existing, initial, moderate)
- Carpool/Vanpool Subsidies (Start up, empty seat subsidies)
- Employer-owned/sponsored Vanpools
- Fleet Vehicles for mid-day trips
- On-site circulator shuttle or golf-carts and/or campus bicycles
- Aggressive flextime/telecommute programs

(See 2009 DEIR, p. 4.3-51 to 53)

Findings and Rationale: Implementation of this mitigation measure would mitigate this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental parking effects to a **less than significant** level.

## **BIOLOGICAL RESOURCES**

**G) Impact BIO-1:** Although no special-status plant species were encountered during surveys of the site, there remains a remote possibility that new populations could be established in shoreline areas before construction begins, that such populations cannot be avoided by shoreline activities, especially for bridge construction across Asylum Slough, and that additional mitigation and incidental take authorizations may be required from jurisdictional agencies. (2009 DEIR, p. 4.4-64.)

**Mitigation Measure BIO-1:** In the event that pre-construction surveys conducted in accordance with the Biological Resource Assessment ("BRA") identify any federally- or State-listed plant species that have become established along shoreline areas proposed for bank work, the applicant shall obtain all necessary permits and/or authorizations from the CDFG and USFWS as required by federal and State law to for incidental take of those species. If CNPS 1B plants are found in the area of proposed disturbance and cannot be avoided, a salvage/relocation plan shall be developed and approved by CDFG prior to initiation of bridge construction and other improvements in marshland habitat. Evidence that the applicant has secured any required authorization from these agencies shall be submitted to the Napa County Conservation, Development & Planning Department prior to issuance of any grading or building permits for the project. (See 2009 DEIR, p. 4.4-65)

Finding and Rationale: After confirmation surveys, and any required permits or authorizations have been issued or obtained and submitted to the Napa County Conservation, Development & Planning Department, the impact would be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**H) Impact BIO-2:** The Biological Resource Assessment (BRA) only provides for confirmation surveys on absence of Mason's lilaopsis if the River Trail alignment includes a bridge crossing over Asylum Slough, and does not recognize the potential for occurrence of other special-status plant species associated with brackish water marsh that could occur in this area, as well as the Bedford Slough bridge crossing vicinity and shoreline of the Napa River where enhancement plantings are proposed. (2009 DEIR, p. 4.4-65)

**Mitigation Measure BIO-2:** If project improvements affecting or adjacent to brackish marsh habitat are not initiated until after 2010, supplemental confirmation surveys shall be conducted to determine whether Mason's lilaopsis, Delta tule pea, and other marsh associated special-status plant species have become established at the Bedford Slough bridge crossing and shoreline of the Napa River where the bridge over Asylum Slough is proposed. The surveys shall be conducted by a qualified botanist in the year prior to the anticipated start of construction, and shall

be appropriately-timed to allow for detection of all species of concern (typically between April and November). (See 2009 DEIR, p. 4.4-65)

**Findings and Rationale:** Implementation of *Avoidance/Minimization Measures During Construction* called for in the BRA and as refined above would reduce potential impacts on special-status plant species to a less-than-significant level. Limitations on construction timing, conduct of preconstruction surveys, and other measures would serve to avoid inadvertent take of any special-status species considered to have a remote potential for occurrence on the site. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**I) Impact BIO-3:** Proposed development could result in inadvertent loss of bird nests in active use, which would be a violation of the Migratory Bird Treaty Act and CDFG Code. (2009 DEIR, p. 4.4-69.)

**Mitigation Measure BIO-3(a):** To avoid the potential for disturbance of nesting birds associated with marsh habitat on or near the site, schedule any construction activities that encroach within 300 feet of the brackish marsh, diagonal drainage, and Bedford Slough for the period of August 16 through February 14. If construction work cannot be scheduled during this period, a qualified biologist shall conduct pre-construction surveys for nesting birds in the wetland habitats. The surveys shall be conducted no later than 14 days prior to the start of work and shall focus on determining whether San Pablo song sparrow, saltmarsh common yellowthroat and/or tricolored blackbird are nesting in these areas. If these or other birds protected under the Migratory Bird Treaty Act or CDFG Code 3503 are found nesting, then appropriate construction buffers shall be established to avoid disturbance of the nests until such time that the young have fledged. The size of the nest buffer shall be determined by the biologist in consultation with CDFG, and shall be based on the nesting species, its sensitivity to disturbance, and expected types of disturbance. Typically, these buffers range from 150 to 250 feet from the nest site. Nesting activities shall be monitored periodically by a qualified biologist to determine when construction activities in the buffer area can resume. The nest buffer shall remain in effect and the nest protected until the young have fledged and the nest is no longer in active use, as determined by the qualified biologist. (See 2009 DEIR, p. 4.4-69, as revised at FEIR, p. 3-66)

**Mitigation Measure BIO-3(b):** Tree and brush removal on the remainder of the project site (those areas not subject to BIO-3(a) shall take place during the period of August 16 through February 14 to the maximum extent possible to avoid possible disturbance to nesting birds. If tree and brush removal cannot take place outside of this timeframe, a qualified biologist shall conduct pre-construction surveys for nesting birds in the trees and brush to be removed no later than 14 days prior to the start of work. If active nests of raptors or other birds protected under the Migratory Bird Treaty Act or CDFG Code 3503 are located in trees or brush to be removed, then appropriate construction buffers shall be established to avoid disturbance of the nests until such time that the young have fledged and the nest is no longer active, as determined by a qualified biologist. The size of the buffer shall be determined by the biologist in consultation with CDFG, and shall be based on the nesting species, its sensitivity to disturbance, and expected types of disturbance. See 2009 DEIR, p.4.4-69, as revised at FEIR, p. 3-66)

**Mitigation Measure BIO-3(c):** A qualified biologist shall conduct preconstruction surveys in the annual grassland and ruderal brushland habitats on the site to confirm that there are no burrowing owls or northern harriers nesting in these areas. The surveys shall be conducted no later than 30 days prior to the start of ground disturbing activities in these areas. If construction is initiated in these areas during the period of August 31 through January 31, then pre-construction surveys are not required. If active nests of either species are discovered in the proposed area of disturbance or within 300 feet of this area, the biologist shall consult with CDFG to determine the appropriate construction buffer. Once the biologist determines that the nests are no longer active, then construction activities can resume within the buffer area. (See 2009 DEIR, p. 4.4-70)

**Findings and Rationale:** Implementation of the *Avoidance/Minimization Measures During Construction* called for in the BRA and incorporated as mitigation above would reduce potential impacts on nesting birds to a less-than-significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts these mitigation measures and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**J) Impact BIO-4:** Any in-channel construction activities could inadvertently affect steelhead and other special-status fish species if they were to seasonally disperse into the lower segment of Asylum Slough and Bedford Slough during construction. (2009 DEIR, p. 4.4-70.)

**Mitigation Measure BIO-4(a):** In the event that work is required below the Ordinary High Water Mark in the Napa River, Asylum Slough or Bedford Slough, the applicant shall obtain all necessary authorizations from the CDFG and NOAA Fisheries as required by federal and State law for potential harm to special-status fish species. Such authorization would be obtained as a result of interagency coordination through USACE and/or Coast Guard permit(s) and the CDFG Streambed Alteration process (see Mitigation Measure BIO-5 below). Evidence that the applicant has secured any required authorization from these agencies shall be submitted to the Napa County Conservation, Development & Planning Department prior to issuance of any grading or building permits for the project. (See 2009 DEIR, p. 4.4-71)

**Mitigation Measure BIO-4(b):** To avoid potential impacts to Central California steelhead that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between January through April. (See 2009 DEIR, p. 4.4-71)

**Mitigation Measure BIO-4(c):** To avoid potential impacts to Delta smelt or Sacramento splittail that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between February through May. During the summer months, it is unlikely for these species to be in this area of the river due to increased salinity. (See 2009 DEIR, p. 4.4-71)

**Mitigation Measure BIO-4(d):** To avoid potential impacts to chum salmon that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between February through May. (See 2009 DEIR, p. 4.4-71)

**Findings and Rationale:** Implementation of the *Avoidance/Minimization Measures During Construction* called for in the BRA and incorporated as mitigation above, together with any conditions required as part of the possible incidental take authorizations (see Mitigation Measure

BIO-5) would serve to adequately mitigate these potential impacts to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts these mitigation measures and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**K) Impact BIO-5:** Fill in jurisdictional wetlands and waters would require authorization from the USACE and RWQCB while bridge crossings over Bedford Slough and Asylum Slough could require authorizations from the Coast Guard and CDFG (Streambed Alteration Agreement). Each of these agencies could include additional conditions to avoid, minimize or mitigate potential impacts on navigable and jurisdictional waters and stream zones. (2009 DEIR, p. 4.4-75.)

**Mitigation Measure BIO-5:** *The Avoidance/Minimization Measures During Construction* called for in the BRA along with the following additional measures shall be implemented.

- Where verified waters of the United States are present and cannot be avoided, authorization for modifications to these features shall be obtained from the USACE through the Section 404 permitting process. Similarly, a Section 401 Certification shall be obtained from the RWQCB where waters of the United States are directly affected by the project. All conditions required as part of the authorizations by the USACE and RWQCB shall be implemented as part of the project.
- A CDFG Stream Bed Alteration Agreement shall also be required where proposed project activities would affect the bed or banks of Bedford Slough, Asylum Slough and other regulated drainages on the site. The applicant shall submit a notification form to the CDFG, shall obtain all legally-required agreements, and implement any conditions contained within that agreement.
- Consultation or incidental take permitting may be required under the California and federal Endangered Species Acts (as discussed above under Mitigation Measures BIO-1 and BIO-3). The applicant shall obtain all legally required permits or other authorizations from the USFWS, NOAA Fisheries, and CDFG for the potential “take” of protected species under the Endangered Species Acts.
- Install orange construction fencing around the boundary of all wetland areas to be preserved so that they are not disturbed during construction. The fencing shall be placed a minimum of 25 feet out from the boundary of the wetland but may need to be adjusted if restoration activities are to be conducted within this area. Grading, trail construction and restoration work within the 50-foot wetland buffer zones shall be conducted in a way that avoids or minimizes disturbance of existing wetlands. In some cases (e.g. at the connection point of the new swale with the diagonal drainage), this may mean use of smaller equipment such as a Bobcat.
- A biologist/restoration specialist shall be available during construction to provide situation-specific wetland avoidance measures or planting recommendation, as needed. (See 2009 DEIR, p. 4.4-75 to 76, as revised at FEIR, p. 3-70)

**Findings and Rationale:** Implementation of the above mitigation measures, together with documentation submitted to Napa County Conservation, Development & Planning Department regarding issuance of permits and any conditions required, would reduce the potential impacts on



jurisdictional wetlands and waters to less than significant levels. Functions and values of wetlands affected by the project would either be maintained or improved through implementation of these measures and conformance with agency permitting requirements. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **NOISE**

**L) Impact NOISE-1:** The project proposes residential units in an area where noise levels would exceed the Napa County Noise and Land Use Compatibility Standards resulting from transportation noise or the Napa County Noise Ordinance limits resulting from industrial noise. (2009 DEIR, p. 4.5-25)

**Mitigation Measure NOISE-1:** In accordance with 2010 California Building Code (Chapter 12, Appendix Section 1207.11.2), sound-rated building construction shall be used to achieve acceptable indoor noise levels (45dBA Ldn) in residential units along the east and north perimeters of the site. Building sound insulation treatments include, but are not limited to sound retardant windows and doors, resilient wall constructions, heavy siding and roofing materials (e.g. stucco, Hardi-plank), ventilation silencers, and gasketing. The specification of these treatments shall be developed during the architectural design of the buildings. All residential units in the project shall require mechanical ventilation to allow for air circulation while windows are closed for noise control. Through application of the design guidelines, residential outdoor use areas shall be shielded from traffic and industrial noise by locating buildings between these sources and the outdoor areas. Noise barriers would be utilized where additional shielding is required to achieve compatible noise levels in order to meet the requirements set forth in the Napa County Noise Ordinance, Section 8.16.070, Exterior Noise Limits. (See 2009 DEIR, p. 4.5-25, as revised at FEIR, p. 3-71)

**Findings and Rationale:** Through appropriate use of barriers and shielding and construction techniques, impacts due to traffic, aircraft, trains, and industrial sources on residences and other noise sensitive uses can be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**M) Impact NOISE-2:** The project proposes residential units in an area where vibration levels may exceed the FTA Vibration Impact Criteria. (2009 DEIR, p. 4.5-27.)

**Mitigation Measure NOISE-2:** Locate proposed residential land uses no closer than 100 feet from the railroad tracks or require that railroad train vibration levels be confirmed by an analysis conducted by an expert in rail vibration during the detailed design phase of the project. Vibration levels shall not exceed the screening level threshold of 80 VdB or the detailed vibration impact criteria of 78 VdB during the day or 72 VdB at night at the proposed setback of residential units adjoining the tracks. The noise expert would recommend design level measures to mitigate any excessive vibration levels. Residential buildings shall not be constructed within 100 feet of active railroad tracks unless design measures that mitigate excessive vibration to levels below FTA

impact thresholds are included in the project. (See 2009 DEIR, p. 4.5-27, as revised at FEIR, p. 3-72)

**Findings and Rationale:** The implementation of this mitigation measure will reduce vibration impacts to residential uses to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## AIR QUALITY

**N) Impact AQ-4:** The project could expose new residences to air quality nuisances associated with adjacent heavy industrial uses that may include gravel loading/unloading facilities. This would be a potentially significant impact. (2009 DEIR, p. 4.6-50.)

**Mitigation Measure AQ-4:** The following measures shall be implemented prior to construction of new residences near barge loading/unloading areas:

- Prior to occupation of the project by sensitive receptors (e.g. residents), the applicant will develop a detailed site plan that includes features to reduce dust nuisance exposures to future project residences located near industrial activities. These features shall include the following:
  - Wind break in the form of mature trees with sufficient density to reduce wind flow. BAAQMD recommends consideration of tiered plantings of trees such as redwood, deodar cedar, and live oak to reduce TAC and PM exposure.
  - Buffers to avoid placement of residences near or adjacent to active or planned active industrial uses. Adequate buffers shall be determined through site-specific studies that take into account designs for new residences and anticipated future industrial activities or establish a 200-foot buffer.
  - Install and maintain air filtration systems of fresh air supply either on an individual unit-by-unit basis, with individual air intake and exhaust ducts ventilating each unit separately, or through a centralized building ventilation system. The ventilation system should be certified to achieve a certain effectiveness, for example, to remove at least 80 percent of ambient PM25 concentrations from indoor areas. The air intake for these units shall be located away from areas producing the air pollution (i.e. toward the south).
  - Require rerouting of nearby heavy-duty truck routes.
  - Enforce parking restrictions and idling of heavy-duty diesel trucks in the vicinity. (See 2009 DEIR, p. 4.6-50, as revised at FEIR, pp. 3-79 to 3-80)

**Findings and Rationale:** Through the installation of air filtration systems, the implementation of windbreaks and buffers, and rerouting heavy-duty truck routes, dust will not significantly affect the project site, and the implementation of this mitigation measures would reduce this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**O) Impact AQ-5:** New restaurants could be a source of odors that could result in odor complaints from new residences that are part of the project. This would be a potentially significant impact. (2009 DEIR, p. 4.6-52.)

**Mitigation Measure AQ-5:** The County shall review plans for new restaurants in neighborhoods with residences to ensure that these uses install kitchen exhaust vents in accordance with accepted engineering practice, and shall install exhaust filtration systems or other accepted methods of odor reduction. (See 2009 DEIR, p. 4.5-52, as revised at FEIR, p. 3-80)

**Findings and Rationale:** With adequate odor controls and operational features in place, objectionable odors should not be generated by restaurant uses and the impact would be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **HAZARDS AND HAZARDOUS MATERIALS**

**P) Impact HAZ-1:** The project may expose people to a significant risk related to the accidental release of hazardous materials during the cleanup, construction and operation phases of the project. (2009 DEIR, p. 4.8-30.)

**Mitigation Measure HAZ-1:** The project applicant shall fully implement the provisions of the RAP and RDIP including but not limited to the soil risk management protocols in the RDIP that address discovery of new or different contamination during earth-working and subsurface construction activities. As outlined in the RAP, such implementation would include multiple dust control strategies that would be employed during remediation. A water mist would be applied to the excavation and soil handling area and all truck haul routes, while the soil itself would be wetted, to reduce airborne dust generation. In addition, intermittent air monitoring would be conducted in accordance with local air quality management regulations, and equipment used to excavate, transport and manage soil would be decontaminated through a process of brushing and washing in a central decontamination area. In conjunction with amending the Site 1 WDRs, prepare and record a deed restriction acceptable to the RWQCB that ensures that no buildings are constructed on the WMU in a fashion that impairs access or functioning of the collection trench and drainage system, and that provides access for inspections and maintenance of a collection trench/drainage system sufficient to comply with the Site 1 WDRs. (See 2009 DEIR, p. 4.8-30)

**Findings and Rationale:** With full implementation of the RAP, including multiple dust control strategies, intermittent air monitoring, and equipment decontamination, potential to expose people to a significant risk related to the accidental release of hazardous materials during the cleanup, construction and operation phases of the project would be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**Q) Impact HAZ-2:** The project site is currently listed by the Regional Board as a

leaking underground fuel tank (LUFT) site as well as a spill, leak, investigation or cleanup (SLIC) site. Until implementation of the RAP has been successfully completed to the satisfaction of the RWQCB, materials and activities of the project site would create a hazard to the public or environment. (2009 DEIR, p. 4.8-33.)

**Mitigation Measure HAZ-2:** The applicant shall carry out the provisions set forth in the RAP and clean up the site to levels below the levels protective of human health and the environment agreed to by the RWQCB. Following full implementation, the applicant shall prepare and submit a report to the San Francisco Bay RWQCB for review and approval. The report shall document cleanup activities performed, quantities of soil reused on-site and disposed of off-site, facilities that received exported material, soil gas sample analytical results, and verification that the targeted cleanup levels have been achieved. (See 2009 DEIR, p. 4.8-34)

**Findings and Rationale:** Full implementation of the RAP and subsequent determination by the RWQCB that contaminant concentration levels pose no risk to people or the environment would reduce this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**R) Impact HAZ-3:** Previously unknown soil contaminants hazardous to the public and/or environment may be encountered during the process of project construction. (2009 DEIR, p. 4.8-34)

**Mitigation Measure HAZ-3:** To allow for the successful assessment and remediation of any previously unknown soil contaminants hazardous to the public and/or environment encountered during project construction, implement the protocols documented in the soil risk management plan portion of the RDIP in the event that such contaminants are encountered, and record in the deed records for the site a notice of the existence of the soil risk management protocols from the RDIP (including a full copy of those protocols) so that all owners of portions of the site have advanced notice of both the existence of the soil risk management plan and its terms and provisions. (See 2009 DEIR, p. 4.8-34)

**Findings and Rationale:** Development and implementation of the RDIP, which would provide for a soil risk management plan in the event unknown hazardous soil contaminants are encountered, would reduce this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **GEOLOGY, SOILS, AND SEISMICITY**

**S) Impact GEO-1:** Large earthquakes could generate strong to violent ground shaking at the site and could cause damage to buildings and infrastructure and threaten public safety. This is considered to be a *significant* impact. (2009 DEIR, p. 4.9-19.)

**Mitigation Measure GEO-1:** Prior to the issuance of permits for the construction of infrastructure, buildings and bridges, the applicant's geotechnical engineer shall prepare and submit to the County for review geotechnical reports incorporating the specific mitigation of seismic hazards pursuant to State law, as detailed in the California Building Code, and as required by the County of Napa to ensure that structures and infrastructure can withstand ground accelerations expected from seismic activity. The improvement plans shall incorporate all design and construction criteria specified in the report(s). The geotechnical engineer shall sign the improvement plans and approve them as conforming to their recommendations prior to parcel/final map approval. The project geotechnical engineer shall provide geotechnical observation during the construction, which will allow the geotechnical engineer to compare the actual with the anticipated soil conditions and to check that the contractors' work conforms to the geotechnical aspects of the plans and specifications. The geotechnical engineer of record will prepare letters and as-built documents, to be submitted to the County, to document their observances during constructions and to document that the work performed is in accordance with the project plans and specifications. (See 2009 DEIR, p. 4.9-19, as revised at FEIR, p. 3-85)

**Findings and Rationale:** Implementation of this mitigation measure would reduce potential ground shaking impacts to a less than significant level because the project would comply with seismic safety regulations of the IBC and CBC, as required by the County of Napa. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**T) Impact GEO-2:** The proposed project facilities could be damaged by liquefaction. This is considered to be a *significant* impact. (2009 DEIR, p. 4.9-20.)

**Mitigation Measure GEO-2:** The recommendations for both special foundations and other geotechnical engineering measures specified in the applicant's geotechnical reports (prepared by T&R, dated January 23, 2007 and May 21, 2007) shall be implemented during design and construction. These measures include engineering and compaction of new fills, removal or improvement of potentially liquefiable soils and compressible soils, and use of deep foundations. Documentation of the methods used shall be provided in the required design-level geotechnical report(s). (See 2009 DEIR, p. 4.9-20)

**Findings and Rationale:** Implementation of this mitigation measure would reduce potential liquefaction impacts to a less than significant level because these engineering mitigations will either eliminate the liquefaction hazard or protect facilities and people from significant damage or injury. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**U) Impact GEO-3:** Lateral spreading during future earthquakes could cause severe damage to structures and threaten public safety. This is considered to be a significant impact. (2009 DEIR, p. 4.9-21)

**Mitigation Measure GEO-3:** Lateral spreading shall be mitigated by correcting the liquefaction hazard to which it is related. Corrective measures, which shall be included in the required design-level geotechnical report(s), shall include:

- Engineering and compaction of new fills.
- Removal or densification of liquefiable soils.
- Use of relatively rigid foundations.

(See 2009 DEIR, p. 4.9-21, as revised at FEIR, p. 3-86)

**Findings and Rationale:** Implementation of this mitigation measure would reduce potential lateral spreading impacts to a *less-than significant* level because these engineering mitigations will either eliminate the lateral spreading hazard or protect facilities and people from significant damage or injury. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**V) Impact GEO-4:** The existing fill and native marine sediments could undergo settlement that could cause damage to foundations and pavements. Settlements of the estuarine deposit could have adverse effects on site drainage, hardscape improvements, shallow foundations and transitions between ongrade and pile-supported structures. This is considered to be a significant impact. (2009 DEIR, p. 4.9-22.)

**Mitigation Measure GEO-4:** Poorly compacted fills shall be mitigated by excavation and/or additional compaction. Options to mitigate these effects include implementing a surcharge program, supporting structures with deep foundations that include drilled or driven piles and installing flexible connections for utilities. The geotechnical recommendations for mitigation of existing and proposed fills, and for settlement of native soils, that are contained in the applicant's geotechnical reports shall be implemented. These measures include removal and recompaction of preexisting loose fills, and proper engineering and compaction of all new fills. (See 2009 DEIR, p. 4.9-22, as revised at FEIR, p. 3-86)

**Findings and Rationale:** Implementation of this mitigation measure would reduce potential settlement impacts to a less than significant level because these engineering mitigations would protect facilities and people from significant damage or injury. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**W) Impact GEO-5:** Expansive soils could cause damage to foundations and pavements. This is considered to be a significant impact. (2009 DEIR, p. 4.9-23.)

**Mitigation Measure GEO-5:** As a part of final design, the project geotechnical engineer shall make specific recommendations to minimize or eliminate expansive soil under pavements and structures. Such measures for buildings may include use of appropriate foundations, by capping expansive soils with a layer of non-expansive fill, or by lime treatment. Such measures for pavements may include special pavement design and/or subexcavation of expansive soils. These

recommended measures shall be based on testing of the in-site fill materials. The recommendations shall be submitted to the County as a part of building and/or paving plan submittal prior to the issuance of building/construction permits. (See 2009 DEIR, p. 4.9-23, as revised at FEIR, p. 3-86)

Findings and Rationale: Implementation of this mitigation measure would reduce potential expansive soil impacts to a less than significant level because the recommended engineering mitigations would minimize or eliminate expansive soil movement and therefore would protect project facilities from expansive soil damage. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **HYDROLOGY AND WATER QUALITY**

**X) IMPACT HYDRO-2:** Impacts to groundwater are expected to be less than significant, however, a monitoring program is proposed to confirm the assumptions inherent in the analysis, to document the water level response in the aquifer, and to conform with the County's goals and policies. (Prior Impact HYDRO 5, 2009 DEIR, p. 4.10-74, as revised at FEIR, p. 3-100.) This measure would be implemented if the Project relies on groundwater as part of a conjunctive use program with the City of Napa or other surface water provider.

**Mitigation Measure HYDRO-2:** Prior to approval of the first final subdivision map, the project applicant shall prepare a Groundwater Monitoring and Mitigation Plan (GMMP) to allow for adaptive management of the aquifer. The GMMP shall be submitted for comment and approval by the County. The GMMP shall contain the following elements:

- Monitoring and reporting of extraction rate and water usage within the project area,
- Monitoring of groundwater levels in existing wells within the project area,
- Coordination with the County to collectively share water level data with neighboring users to evaluate regional groundwater trends,
- Identification of specific 'trigger points' at which water level response is deemed greater than expected in the Stetson analysis, and an outline of an action plan if those trigger points are exceeded; and,
- Additional aquifer testing as new wells are drilled.

Prior to each new phase of the project, and prior to discretionary approval of water users in the industrial area the results of the monitoring program will be summarized for review and approval by the County. If water usage in previously-approved phases exceeds estimated demand and if water level response in the aquifer due to project-related pumping is greater than anticipated, additional study will be performed to evaluate whether groundwater pumping from the project is causing or contributing to an adverse impact on the aquifer. If so, additional conservation measures will be implemented to reduce water use. Conservation measures may include reduction in irrigation with domestic water, increased use of treated wastewater, car washing bans, or other measures consistent with typical drought-related water rationing. If the additional conservation measures would not counter the exceeded demand, then future phases of the project shall not be permitted by the County, or the land use plans for such phases shall be alter such that water use for the entire project would be in line with that originally projected. (See prior Mitigation Measure HYDRO 5, 2009 DEIR, p. 4.10-74, as revised at FEIR, pp. 3-100 to 3-102)

Findings and Rationale: Although impacts to groundwater supplies and groundwater recharge are less than significant based on credible analysis, due to the lack of historic monitoring and observational data to document the variability in aquifer characteristics over time, the Board adopts this mitigation measure to confirm the assumptions in groundwater usage and to best manage the aquifer consistent with County goals. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which ensure the potential effect of this impact is **less than significant**.

**Y) Impact HYDRO-3:** The rerouting of drainage in the project area would potentially exceed the capacity of existing or planned stormwater drainage systems. (Prior Impact HYDRO 6, 2009 DEIR, p. 4.10-83, as revised at FEIR, p. 3-102)

**Mitigation Measure HYDRO-3:** Before the approval of grading plans and building permits, the project applicant(s) for all project phases shall submit final drainage plans to the County demonstrating that off-site upstream runoff would be appropriately conveyed through the project site, and that project-related on-site runoff would be appropriately detained to reduce flooding impacts. The plans shall adhere to the guidelines and requirements set forth for drainage in the Napa County Road & Street Standards. Design of BMPs for flood control shall comply with all regulations and be approved by the County. (See prior Mitigation Measure HYDRO 6, 2009 DEIR, p. 4.10-83, as revised at FEIR, p. 3-102)

Findings and Rationale: Design and construction of drainage facilities to County standards would reduce this impact to a *less-than significant* level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**Z) Impact HYDRO-4:** The project may result in significant impacts to water quality for both the construction and post-construction phases if appropriate measures are not taken to control pollutants. The following mitigation measure has been included to guide the preparation of the appropriate documents, and would result in a less than significant impact to surface water quality when implemented. (Prior Impact HYDRO 7, 2009 DEIR, p. 4.10-88, as revised at FEIR, p. 3-102)

**Mitigation Measure HYDRO-4:** Prior to approval of grading permits and improvement plans (for each project phase), the project applicant shall prepare and submit an Erosion and Sediment Control Plan (ESCP) for review and approval by the County. The ESCP shall include the locations and descriptions of control measures (BMPs), such as straw bale barriers, straw mulching, straw wattles, silt fencing, and temporary sediment ponds to be used at the project site to control and manage erosion and sediment, control and treat runoff, and promote infiltration of runoff from new impervious surfaces. The Applicant shall also submit a Notice of Intent (NOI) to the State Water Resources Control Board for coverage under the NPDES Construction General Permit and prepare and submit a Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the County prior to issuance of a grading permit. The SWPPP shall incorporate the ESCP and describe construction-phase housekeeping measures, such as spill prevention and cleanup measures, means of waste disposal, and best management practices training for on-site workers. The SWPPP



shall incorporate the monitoring requirements and other provisions in the recently updated SWRCB General Permit for Construction Activities (approved September 2, 2009). A Stormwater Runoff Management Plan (SRMP) shall also be prepared for review and approval by the County, as specified in the Napa County Post-Construction Runoff Management Requirements.<sup>94</sup> The SRMP shall include descriptions and designs of the post-construction BMPs to be implemented, such as bioswales, biofiltration features and stormwater retention basins, as well as non-structural BMPs, such as street sweeping and covered waste disposal areas. The SRMP shall also prescribe monitoring and maintenance practices for the BMPs to maintain treatment effectiveness. Where applicable, these BMPs shall be designed based on specific criteria from recognized BMP design guidance manuals, such as the California BMP Handbooks (available at [www.napastormwater.org](http://www.napastormwater.org)). (See prior Mitigation Measure HYDRO 7, 2009 DEIR, p. 4.10-88, as revised at FEIR, p. 3-102)

**Findings and Rationale:** Implementation of the ESCP, SWPPP and SRMP and the educational, operational and structural BMPs contained therein would reduce the project impacts to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**AA) Impact HYDRO-5:** Improperly-decommissioned, unused wells may provide a conduit for poor-quality water in the alluvial aquifer to enter the underlying Sonoma Volcanics aquifer. (Prior Impact HYDRO 8, 2009 DEIR, p. 4.10-92, as revised at FEIR, p. 3-102)

**Mitigation Measure HYDRO-5:** Prior to beginning of construction of the project, the applicant shall abandon all existing wells on the project site that are not planned for water supply or groundwater monitoring consistent with Napa County Environmental Health standards and the standards described in State of California Bulletin 74-81 (Water Well Standards). (See prior Mitigation Measure HYDRO 8, 2009 DEIR, p. 4.10-92, as revised at FEIR, p. 3-102)

**Findings and Rationale:** Application of Mitigation Measure HYDRO-5 will reduce the potential for on-site wells to draw poor-quality water to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**BB) Impact HYDRO-6:** The project would place housing within a 100-year flood hazard area as currently mapped on federal flood hazard delineation maps. (Prior Impact HYDRO 9, 2009 DEIR, p. 4.10-93, as revised at FEIR, p. 3-102)

**Mitigation Measure HYDRO-6:** Prior to approval of the final grading plan, the project shall submit a request for a Conditional Letter of Map Revision (CLOMR) for review and action by FEMA and/or their designated representative in order to remove the elevated parcels from the SFHA.<sup>103</sup> With the approved CLOMR and placement of fill as described, the project shall submit a request for a Letter of Map Revision (LOMR). (See prior Mitigation Measure HYDRO 9, 2009 DEIR, p. 4.10-93, as revised, at FEIR, p. 3-102)

Findings and Rationale: With FEMA approval and issuance of the LOMR, all homes within the project would be out of the SFHA, and this impact would be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**CC) Impact HYDRO-7:** The project would expose people to a potentially significant risk of loss, injury or death involving flooding in the low lying central parkway, at-grade crossings, and the wetland/nature area due to backwater flooding from the Napa River at 100-year flood stage. (Prior Impact HYDRO 10, 2009 DEIR, p. 4.10-97, as revised at FEIR, p. 3-103)

**Mitigation Measure HYDRO-7a:** The project proponents shall construct floodgates at either end of the railroad ROW as described in the PWA memorandum.<sup>2</sup> Operation and maintenance of the floodgates shall be established in an agreement authorized and approved by the Napa County Office of Emergency Services, (NCOES) and shall be the responsibility of the Home Owners Association (HOA) or such other responsible legal entity as determined in agreement with the NCOES.

**Mitigation Measure HYDRO-7b:** While the floodgates will provide protection for the area between them, the wetland area to the south and the adjacent park areas would remain vulnerable to potential flooding, as would the Northwest park area of the project site. The project proponents shall provide adequate public signage in the nature area, and wetland, and Northwest Park warning park patrons of the potential flood hazard. (See prior Mitigation Measure HYDRO 10, 2009 DEIR, p. 4.10-97, as revised at FEIR, p. 3-103)

Findings and Rationale: With incorporation of the floodgates and signage into the project, the potential to expose people to a significant risk due to backwater flooding from the Napa River at a 100-year flood stage would be reduced to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts these mitigation measures and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **CULTURAL RESOURCES**

**DD) Impact CULT-2:** Ground disturbing activities could damage buried archaeological deposits. (2009 DEIR, p. 4.11-22.)

**Mitigation Measure CULT-2:** Prior to any excavation on-site, an archaeologist shall review excavation plans in areas identified as archaeologically/geologically sensitive and shall develop a monitoring plan based on depth of the excavation and data from boring logs. The plan shall include observation of ground disturbing activities (such as grading, trenching and boring) to be focused in areas that are most likely to contain buried resources (see 2009 DEIR, Figure 4.11-1). The archaeologist shall limit on-site monitoring to only areas where depth of excavation and

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<sup>2</sup> / Philip Williams & Associates, Ltd, 2009, Railroad Track Flooding Hazards, August 4, 2009.

information from boring logs suggests that sensitive resources may be encountered. In addition, project personnel shall be made aware of the types of materials that denote possible archaeological sites. If archaeological materials are discovered accidentally during the course of construction, all work within 50 feet of the find shall stop while an assessment of the find is made by an archaeologist who is called in. If needed, a treatment plan shall be developed that takes into account the nature and scope of the find. This could range in complexity from a relatively brief investigation of a scatter of lithic materials, to a far more extensive recovery of human remains. (See 2009 DEIR, p. 4.11-22, as revised at FEIR, p. 3-105)

**Findings and Rationale:** Preservation of archaeological resources in situ will not be feasible due to the need to remediate hazardous materials in soil and groundwater on the site, but having an archaeologist on-site during excavation of areas most likely to contain buried resources allows for timely intervention if archaeological materials are unearthed. The archaeologist would be able to provide immediate feedback regarding the potential importance of the find and provide direction regarding the actions that should be taken, which may include analysis and/or recovery of significant resources. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**EE) Impact CULT-3:** Ground disturbing activities could damage buried Pleistocene fossil deposits. (2009 DEIR, p. 4.11-24.)

**Mitigation Measure CULT-3:** If paleontological deposits are discovered, all work within 50 feet of the find shall stop until a geologist who is called in can determine its significance. Specific recommendations for the treatment of paleontological materials would depend on the nature of the discovery and could range from brief investigation of a limited deposit of invertebrate remains to more extensive exposure and removal of large vertebrate fossils. (See 2009 DEIR, p. 4.11-24)

**Findings and Rationale:** Stopping work and notifying a geologist if paleontological materials are encountered will allow the importance of the find to be evaluated, and completion of the recommended treatment will reduce the impact to a less than significant level. Preservation of paleontological resources in situ will not be feasible due to the need to remediate hazardous materials in soil and groundwater on the site. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**FF) Impact CULT-4:** Ground disturbing activities could disturb human remains interred outside of formal cemeteries. (2009 DEIR, p. 4.11-24.)

**Mitigation Measure CULT-4:** Project personnel shall be briefed in the proper procedures to follow in the event that human remains are encountered during construction and an archaeologist is not on-site. If human remains are discovered by an archaeologist or by project personnel, all work shall stop within 50 feet of the find and the Napa County Coroner shall be notified. If it is determined that the remains are those of a prehistoric Native American, the Coroner shall notify the Native American Heritage Commission, which will identify the Most Likely Descendent to provide

tribal recommendations regarding the disposition of the remains. To the extent feasible and reasonable, recommendations of the Most Likely Descendent shall be implemented. (See 2009 DEIR, p. 4.11-25)

**Findings and Rationale:** This mitigation measure ensures that any previously unidentified human remains that might be encountered will be treated in an appropriate manner. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **PUBLIC SERVICES AND RECREATION**

**GG) Impact PS-1: Public Safety.** The project would place personnel and equipment demands on the Napa County Sheriff, for which adequate funding has not been identified. The project could also place unanticipated demands on the Napa City Police Department as a result of an existing mutual aid agreement. This is a significant impact. (2009 DEIR, p. 4.12-28.)

**Mitigation Measure PS-1:** In order to ensure adequate law enforcement staff and equipment, the County and the applicant shall complete the following based on an updated fiscal analysis:

1) Prior to, or concurrent with, the approval of the design guidelines, the County shall establish a Napa Pipe Community Facilities District (CFD) or use an alternative financing method if necessary to supplement expected property tax revenues and fund ongoing costs associated with law enforcement services at the Napa Pipe site. The County shall also require the applicant to provide an adequate level of interim financing for law enforcement services between project approval and when funding becomes available from the CFD (or other method) and property taxes.

2) Prior to the initiation of construction, the County and the project applicant shall consult with law enforcement personnel within the City of Napa as provided for by General Plan Policy SAF-34, and shall seek to renegotiate the terms of the automatic Mutual Aid Agreement between NPD and NCSD to address concerns of each agency regarding potential increases in service calls. (See 2009 DEIR, p. 4.12-28, as revised at FEIR, p. 3-107)

**Findings and Rationale:** The above measure would ensure that the proposed project is self-sufficient, and that adequate, long-term funding for the expansion of policing services would be made available. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**HH) Impact PS-2: Fire Services.** The proposed project would result in demand for 10 additional Department staff members, a new Type I Fire Engine and an Aerial Fire Apparatus, for which funding is not currently available and new funding sources are not identified. This is a significant impact. (2009 DEIR, p. 4.12-31.)

**Mitigation Measure PS-2:** In order to ensure adequate staff and equipment for fire services, the County and the applicant shall complete the following based on an updated fiscal analysis prior to or concurrent with approval of design guidelines:

1) The County shall establish a Napa Pipe Community Facilities District (CFD) or use an alternative financing method if necessary to supplement expected property tax revenues and fund increased fire protection services provided by the NCFD at the Napa Pipe site. The County shall also require the applicant to provide an adequate level of interim financing for fire services between project approval and when funding becomes available from the CFD (or other method) and property taxes.

2) The County shall seek to renegotiate the terms of the automatic Mutual Aid Agreement between NCFD and the City of Napa Fire Department to address concerns of each agency regarding increases in service calls. (See 2009 DEIR, p. 4.12-31 to 32, as revised at FEIR, p. 3-108)

Findings and Rationale: The above measure would ensure that the Napa Pipe project is self-sufficient, and that adequate, long-term funding for the expansion of fire protection services would be made available. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**II) Impact PS-4: Library Services.** The population increase associated with the proposed project could hinder adequate provision of services, given the current needs of the library system. This is a significant impact. (Prior Impact PS-3, 2009 DEIR, p. 4.12-38, as revised at FEIR, p. 3-109)

**Mitigation Measure PS-4:** In order to ensure that adequate library services are provided, the County and the applicant shall complete the following based on an updated fiscal analysis prior to, or concurrent with, the approval of design guidelines:

1) The County shall establish a Napa Pipe Community Facilities District (CFD) or alternative financing structure if necessary to supplement expected property tax revenues and fund increased library services needed to serve Napa Pipe residents. The County shall also require the applicant to provide an adequate level of interim financing, if necessary, between project approval and when funding becomes available from the CFD (or other method) and property taxes. (See prior Mitigation Measure PS-3, 2009 DEIR, p. 4.10-97, as revised at FEIR, p. 3-109)

Findings and Rationale: The measure would ensure that long-term funding for library services would be made available. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

## **UTILITIES**

**JJ) Impact UTIL-1:** The NSD has evaluated the capacity of its facilities to serve the mid-range density alternative with 2,050 dwelling units. The evaluations determined that some improvements already identified in the District's master plans may need to be accelerated as well as construction of additional projects. (FEIR, p. 3-118; the Board notes that the FEIR incorrectly states "The NSD has **not** evaluated ....")

**Mitigation Measure UTIL-1:** The project applicant shall pay connection fees and sewer service charges to the NSD in compliance with the NSD's Sewer Use Ordinance in effect at the time the building permit is issued for each structure. Additionally, the project applicant shall be responsible for the costs associated with the planned improvements as described in the 2011 studies by NSD, or as may need to be revised based on the level of approved development. These studies determined the mid-range density alternative project impacts on the District's collection, treatment, and water recycling systems resulting from the additional flow and loading from the portion of the project that exceeds the current County General Plan and are included in FEIR Appendix N. All costs associated with the mitigation of these impacts must be paid for by the project applicant. Before the final map for the project is recorded, the applicant and NSD shall prepare and execute an agreement defining the design and construction schedule, scope and estimated cost of the planned improvements. The applicant shall make payment in a manner such that funds are provided to NSD when they are needed to implement the projects (See FEIR p. 3-118 to 3-119)

**Findings and Rationale:** Prior to completion of the FEIR, the NSD completed an evaluation of the capacity of its facilities to serve the site with construction of a 2,050 unit project. The studies concluded that NSD has sufficient capacity to serve the site with the expansion of identified NSD facilities. Although these conclusions will need to be reevaluated based on the Developers Revised Proposal, because that proposal would include fewer residential uses but add a Costco, it can be expected that wastewater demand would be lower than for the 2,050 unit project, which would put less demand on NSD's facilities. Payment of fees to the NSD would contribute to the District's budget and ongoing planning activities. As described in Section 908 of District Ordinance 67, the District's Board of Directors may require connection fees over and above the standard fees established in Ordinance 67. Payment of fees in compliance with NSD's Sewer Use Ordinance would provide the District with a fair-share contribution toward the planning activities needed to adequately serve the project. Therefore, payment of fees under NSD's Sewer Use Ordinance would reduce this impact to a less than significant level. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**KK) Impact UTIL-2:** The NSD has fully evaluated the capacity of its facilities to serve the proposed project in combination with other cumulative projects. If the proposed project were to connect to the existing NSD sewer system, some improvements identified in the District's master plans may need to be accelerated as well as construction of additional projects. (FEIR p. 3-120)

**Mitigation Measure UTIL-2:** Implement Mitigation Measure UTIL-1. (See 2009 DEIR, p. 4.13-27)

**Findings and Rationale:** As explained above in the Significance After Mitigation statement above under Mitigation Measure UTIL-1, payment of fees to the NSD, as described in Section 908 of District Ordinance 67, would allow for District planning and improvements to receive and treat increased, cumulative wastewater volumes over time. As a result, cumulative impacts related to wastewater treatment requirements would be less than significant. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**LL) Impact UTIL-3:** As noted in the SEA, under the Developers Revised Proposal Project, potable water to the project may be provided by the City of Napa. In that event, the City may need to modify or construct new water treatment and storage facilities. Whether such facilities are conducted on or off-site, no new significant environmental effects are expected from such modifications or construction, implementation of Mitigation Measures HYDRO-2 and -5, and other measures as identified in the Brownstein Hyatt Farber Schreck Memorandum of February 6, 2012 would result in such activities having a less than significant effect on the environment. (See SEA, p. 2-22)

**Mitigation Measure UTIL-3:** If the City of Napa agrees to provide potable water to the project, the applicant shall:

- fund an updated study by the City’s Water Department to determine whether the storage, treatment, and pumping facilities identified in 2008 are still needed;
- reserve an area in the southeast corner of the site of sufficient size to accommodate storage, treatment, and pumping facilities necessary to serve the project, and construct the on-site treatment and storage facilities and an associated pumping station deemed necessary;
- if it is determined that treatment, storage, and pumping facilities are still necessary and should be constructed off-site, fund incremental increases in storage facilities and pumping capacity at the Westside Pump Station and the Jamieson Canyon Water Treatment Plant; and
- demonstrate that treated groundwater supplies shall be available to the site in dry years when City water is unavailable.

**Findings and Rationale:** The measure would ensure that impacts associated with the provision of potable water by the City of Napa to the site would have a less than significant effect. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect to a **less than significant** level.

**SECTION 9. Findings Associated With Significant Unavoidable Impacts Which Cannot Feasibly Be Mitigated To A Less Than Significant Level.**

**POPULATION, EMPLOYMENT, AND HOUSING**

**A) Impact PEH-1:** By constructing up to 700 dwelling units (or up to 945 with a State-required density bonus) consistent with the County’s Growth Management System, the Project would result in development in excess of regional projections. This is considered a significant impact. (2009 DEIR, p. 4.2-16)

No feasible mitigation

**Findings and Rationale:** The proposed project would still result in residential development in excess of regional projections, an impact which would remain significant and unavoidable, although the impact is more limited under the Developers Revised Proposal. There are no feasible mitigation

measures or alternatives that would reduce this impact to a less than significant level. Consequently, this impact is **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

## **AIR QUALITY**

**B) Impact AQ-1:** The project would result in development that results in population growth that exceeds the intensity anticipated in the latest clean air planning assumptions. BAAQMD is developing the 2009 Clean Air Plan that would include the latest Napa County General Plan and Housing Element assumptions. However, this update may not occur until after this project has been approved. This is considered to be a *significant* impact.

**Mitigation Measure AQ-1:** There are no measures available to mitigate this impact to a less than significant level. The latest clean air plan was updated in 2005. The impact would remain *significant and unavoidable*. (DEIR, p. 4.6-29.)

**Findings and Rationale:** There are no feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Consequently, this impact is **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby finds that specific economic, legal, social, technological and other benefits of the Project outweigh this significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**C) Impact AQ-2:** Construction activity during buildout of the proposed project would generate air pollutant emissions that could expose sensitive receptors to substantial pollutant concentration and would have a cumulatively considerable net increase of NO<sub>x</sub> emissions. This is a *significant* impact. (2009 DEIR, p. 4.6-37)

**Mitigation Measure AQ-2:** The following is a list of feasible control measures that the BAAQMD recommends to limit construction emissions of PM<sub>10</sub>, PM<sub>2.5</sub>, and NO<sub>x</sub>. These mitigation measures shall be implemented for all areas (both on-site and off-site) where construction activities would occur.

### Measures to Reduce Fugitive Particulate Matter (PM<sub>10</sub>, and PM<sub>2.5</sub>) Emissions

- All untreated exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probes.
- Limit traffic speeds on any unpaved roads to 15 mph.
- Suspend construction activities that cause visible dust plumes to extend beyond construction sites, especially during windy conditions.
- Vegetative ground cover (e.g. fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.



- Prohibit the visible tracking of mud, dirt, or material onto public streets. If necessary, all trucks and equipment, including their tires, shall be washed off prior to leaving the site. Any visible mud or dirt tracked onto public roadways shall be removed using wet power vacuum sweepers at least once per day.
- During remediation and grading/fill import phases, site accesses to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.
- During renovation and demolition activities, removal or disturbance of any materials containing asbestos or other hazardous pollutants will be conducted in accordance with the BAAQMD rules and regulations.
- Remediation activities will be conducted in accordance with BAAQMD rules and regulations.

#### Mitigation to Reduce NOx Emissions

- The project shall develop a plan for approval by the County or BAAQMD demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased, and subcontractor vehicles, will achieve a project-wide fleet average 20 percent NOx reduction and 45 percent particulate reduction compared to the most recent CARB fleet average for the year 2010.
- At least 80 percent of the equipment that will be used on-site for 40 hours or more shall meet current Tier 3 engine standards.
- The project applicant shall require the project developer or contractor to submit to the County or BAAQMD a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 horsepower, that will be used an aggregate of 40 or more hours during any portion of the construction project. The inventory shall include the horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory shall be updated and submitted monthly throughout the duration of the remediation and grading (fill import and grading) phase of the project, except that an inventory shall not be required for any 30-day period in which little or no construction activity occurs.
- Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- Diesel equipment standing idle for more than three minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were on-site and away from any residences. Clear signage indicating such idling restrictions shall be posted at construction site access points.
- The applicant shall consider alternative sites and methods to import fill material to the site to reduce NOx emissions. Alternative methods could include use of tug boats or trucks with newer engines that meet recent EPA emissions standards that result in lower emissions. The applicant shall provide an analysis of such alternatives, along with a calculation of emissions for each method. The analysis shall demonstrate that NOx

emissions from import of fill shall not exceed 15 tons/year. The County shall use this information to determine the acceptable method for importing fill material to the site. This may include a mix of methods and fill sites.

- Planned construction activities on Spare the Air days shall be reduced in an attempt to lower emissions. Emissions shall not exceed 54 pounds per day on each day that the BAAQMD forecasts a “Spare the Air Day” at least 24 hours prior. The County shall be provided a record of steps taken to reduce NOx emissions when Spare the Air Days were forecasted at least 24 hours prior.
- Designate a Disturbance Coordinator during construction activities. This coordinator will ensure that all air quality mitigation measures are enforced. In addition, the Disturbance Coordinator will respond to complaints from the public regarding air quality issues (e.g. dust and odors) within 48 hours. The contact information for this Coordinator shall be posted in plain view at the project site. A phone number for the Air District shall also be posted to ensure compliance with applicable regulations.
- Implementation of Mitigation Measure TRA-14 would require a construction management plan to avoid traffic congestion and specify truck routes.

(See 2009 DEIR, p. 4.37 to 39, as revised at FEIR, pp. 3-73 to 3-77)

Findings and Rationale: Changes or alterations have been required in, or incorporated into, the project that substantially lessen, but do not avoid, the potentially significant environmental effect associated with Impact AQ-2. No mitigation is available to render the effects less than significant. Thus, even with the implementation of these mitigation measures effects (or some of the effects) of on-site construction on air pollutant emissions would remain **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**D) Impact AQ-3:** The project would generate new emissions that would affect long-term air quality. A majority of the ROG emissions would be generated by the use of consumer products that cannot be controlled, while emission of NOx, PM10, and PM2.5 would be associated with vehicle travel. This would be a *significant* impact. (2009 DEIR, p. 4.6-45.)

**Mitigation Measure AQ-3:** The project applicant shall reduce air pollutant emissions from both traffic trips and area sources through the measures listed below.

- Bicycle amenities shall be provided for the project. This would include secure bicycle parking for retail employees, bicycle racks for retail customers, bicycle lockers, and bike lane connections. This vehicle trip reduction measure could reduce emissions by an additional 0.5 percent.
- Pedestrian facilities shall include easy access and signage to bus stops and roadways that serve the major site uses (e.g. retail and residential uses). This may reduce emissions by an additional 0.5 percent.
- Project site employers shall be required to promote transit use by providing transit information and incentives to employees. This measure may reduce emissions by about 0.5 percent.

- Provide exterior electrical outlets to encourage use of electrical landscape equipment at retail and residential uses.
- Prohibit idling of trucks at loading docks for more than five minutes and include signage indicating such a prohibition.
- Provide 110- and 220-volt electrical outlets at loading docks.
- Implement a landscape plan that provides shade trees along pedestrian pathways.
- Obtain LEED certification or achieve equivalent energy efficiency for new residential and commercial buildings, which would reduce the future energy demand caused by the project.
- Implementation of Mitigation Measure TRA-1b would require that the project applicant establish a transportation demand management (TDM) program which shall be funded and administered by the property owners association with the goal of reducing the forecasted auto trip generation from the project by 15 percent.
- The effectiveness of these required measures shall be monitored on a biannual basis, and traffic counts will be conducted to determine if the 15 percent reduction of forecasted traffic levels is being achieved. If additional measures are necessary to achieve the 15 percent reduction, the TDM coordinator shall implement other measures to enhance the TDM program.
- Implementation of Mitigation Measure TRA-17 would reroute the VINE Route #10 bus so that it would serve the proposed project's transit center.
- The Napa County Regional Park and Open Space District is in the process of obtaining permits for a 4,000-plus linear foot segment of the trail connecting the Project site to the City of American Canyon. The cost of constructing this segment is estimated to be \$350,000. The Applicant shall contribute its fair share towards the cost of constructing this segment of the trail. (See 2009 DEIR, p. 4.6-46, as revised at FEIR, pp. 3-77 to 3-78)

**Significance After Mitigation:** Implementation of these mitigation measures would reduce ROG emissions by about 3 percent and NO<sub>x</sub> and PM<sub>10</sub> emission by about 6 to 7 percent. This would be in addition to the 5 percent ROG, 16 percent NO<sub>x</sub> and 15 percent PM<sub>10</sub> emission reductions that would occur as a result of features included in the project. However, the measure would not reduce emissions below the BAAQMD thresholds. As a result, the air quality impact would be **significant and unavoidable**.

The Board finds it is appropriate to view this impact as it relates to the whole of the Project. Viewed as such, there are no feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Consequently, this impact is **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

## **GREENHOUSE GAS EMISSIONS**

**E) Impact GHG-1:** The project GHG emissions account for 2.4 percent of total 2020 countywide GHG emissions. The largest net impact in GHG is from project-related transportation GHG emissions at 22,836 metric tons CO<sub>2</sub>e. This equals 2.8 percent of total 2020 countywide

transportation-sector GHG emissions in year 2020. The residential sector equals 3.5 percent commercial/industrial/construction sector equals 1.0 percent, and the waste sector equals 0.9 percent of year 2020 countywide emissions in these respective sectors. (2009 DEIR, p. 4.7-19)

**Mitigation Measures:**

GHG-1a: As part of phase one, the applicant shall construct and lease retail space to an on-site market that also sells fresh, locally grown produce. The applicant shall provide for rental subsidies if needed to ensure long term tenancy of a market providing on-site access to fresh food, thereby reducing VMT for project site residents and from food distributors. (See 2009 DEIR, p. 4.7-24)

GHG-1b: The applicant shall provide long term funding for marketing proposed housing units to members of the local workforce and shall market units to businesses in the project vicinity (for employee housing). Both marketing programs shall include a monitoring component to measure their effectiveness and shall be adjusted as needed to maximize the sale and lease of housing units to members of the local workforce for a period of time to be determined by the County and developer. (See 2009 DEIR, p. 4.7-24)

GHG-1c: As a means of reducing global warming related impacts of a project, the project applicant shall incorporate additional measures to reduce the project's contribution to the countywide GHG emissions associated with development assumed under the County's General Plan. Such measures shall include the following additional items from the California Attorney General's Office (2008) list of suggested measures for reducing global warming related impacts of a project:

*Energy Efficiency*

- Design buildings to meet LEED certification requirements applicable as of the project approval date.
- Install light colored "cool" roofs and cool pavements.
- Install efficient lighting in all buildings (including residential). Also install lighting control systems, where practical. Use daylight as an integral part of lighting systems in all buildings.
- Install light emitting diodes (LEDs) or other high efficiency lighting for traffic, street and other outdoor lighting.
- Limit the hours of operation or provide minimally acceptable light intensities for outdoor lighting.

*Water Conservation and Efficiency*

- Design buildings and lots to be water-efficient. Only install water-efficient fixtures and appliances.
- Restrict watering methods (e.g., prohibit systems that apply water to nonvegetated surfaces) and control runoff. Prohibit businesses from using pressure washers for cleaning driveways, parking lots, sidewalks, and street surfaces unless required to mitigate health and safety concerns. These restrictions shall be included in the Covenants, Conditions, and Restrictions of the community.

*Solid Waste Measures*

- Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).

- Provide interior and exterior storage areas for recyclables and green waste at all buildings.
- Provide adequate recycling containers in public areas, including parks, school grounds, paseos, and pedestrian zones in areas of mixed-use development.

#### *Transportation and Motor Vehicles*

- Promote ride sharing programs at employment centers (e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading zones and waiting areas for ride share vehicles, and providing a web site or message board for coordinating ride sharing).
- At commercial land uses, all forklifts, “yard trucks,” or vehicles that are predominately used on-site at non-residential land uses shall be electric-powered or powered by biofuels (such as biodiesel [B100]) that are produced from waste products, or shall use other technologies that do not rely on direct fossil fuel consumption.
- At commercial land uses, limit idling time for commercial vehicles, including delivery and construction vehicles.
- Promote the use of alternative fuel vehicles and neighborhood electric vehicle programs through prioritized parking within new commercial and retail areas for electric vehicles, hybrid vehicles, and alternative fuel vehicles.
- Provide shuttle service from mixed-use and employment areas to public transit.
- Provide information on all options for individuals and businesses to reduce transportation-related emissions, including education and information about public transportation.
- Provide bicycle parking near building entrances to promote cyclist safety, security and convenience.
- Provide secure bicycle storage at public garage parking facilities. Locate facilities and infrastructure in all land use types to encourage the use of low or zero emission vehicles (e.g. electric vehicle charging facilities and conveniently located alternative fueling stations).

#### *Performance Standard*

- Demonstrate that, by implementation of the measures set forth above, the project achieves a reduction of greenhouse gas emissions, as compared to "Business As Usual," consistent with the target stipulated in the County's Climate Change Action Plan as adopted by the BOS on or before approval of the project. Incorporate additional measures, such as the installation of solar power or other renewable energy systems, if necessary to ensure this target is achieved. (See FEIR p. 3-82 to 3-84)

Findings and Rationale: Despite proposed project features aimed at reducing GHG emissions, implementation of the mitigation measures listed above, and regional, State and federal GHG emissions reduction policies listed in the regulatory discussion in this chapter, the Napa Pipe project would contribute to countywide increases in GHG emissions. This would constitute a **significant and unavoidable** impact. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts these mitigation measures and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

## CULTURAL RESOURCES

**F) Impact CULT-1:** Demolition of Basalt Shipyard buildings and structures (Basalt Shipyard District) would alter the significance of an historic resource. The project would retain the four dry docks and the railroad grade. The dry docks were an integral part of the shipyard and their continued presence would offer a glimpse of the property's history. However, by removing the majority of historical buildings and structures, the shipyard's ability to convey its importance to local and national history is virtually eliminated, and the resource could no longer meet criteria for inclusion on the California Register of Historical Resources or the National Register of Historic Places. (2009 DEIR, p. 4.11-20)

**Mitigation Measure CULT-1a:** Prior to the demolition of buildings and structures comprising the District, the Basalt Shipyard shall be documented to the Historic American Buildings Survey (HABS) documentation level III, as follows:

Documentation Level III

1. Drawings: sketch plan.
2. Photographs: photographs with large-format negatives of exterior and interior views.
3. Written data: architectural data form.

Documentation shall be completed by a qualified architectural historian and shall include large-format photography and historical documentation. These documents shall be provided to the Napa County Historical Society and to the Napa County Library, assuring that the public has access to the record of this historic resource. (See 2009 DEIR, p. 4.11-21)

**Mitigation Measure CULT-1b:** An interpretive display featuring the shipyard's history shall be incorporated into the project. This display shall be located in an area accessible to the public and shall provide information regarding the historical contributions of the Basalt Shipyard. The display will help to place the dry docks in context for the public. (See 2009 DEIR, p. 4.11-21)

**Findings and Rationale:** HABS documentation and interpretive display would lessen the impact to the Basalt Shipyard by preserving construction information, providing a photographic record of the district and its contributors, and providing archival access to the public. It should be noted that the project applicant has already undertaken several preservation-related activities, including photograph archiving and documented interviews, in an attempt to minimize the impact. However, demolition of a historical resource cannot be mitigated to a less-than-significant level, and the impact remains **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts these mitigation measures and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

### **SECTION 10. Findings Associated With Significant Unavoidable Impacts Due to Mitigation Measures within the Jurisdiction of Another Public Agency.**

Pursuant to Public Resources Code Section 21081(a)(2) and CEQA Guidelines Section 15091(a)(2), instead of adopting or rejecting a mitigation measure recommended in the EIR, a lead agency may make a finding that the measure is within another agency's responsibility and jurisdiction, and that the other agency has adopted the measure or can, and should, adopt it.

When the project being evaluated is a specific development project, it is the County's practice to require project developers and project managers to work with the affected agencies to implement the required measures (e.g., a project proponent would be required to fund and construct a turn lane on a state highway), as the County lacks the authority to implement mitigation measures in other agency's jurisdiction, or to require those agencies to do so. Thus, the following impacts and mitigation measures are identified as changes or alterations to the project that are within the jurisdiction of other public agencies that can and should adopt them:

**A) Impact TRA-5: Imola Avenue/Soscol Avenue.** The project contributes to existing LOS F conditions (647 AM peak hour trips and 485 PM peak hour trips). This is a significant impact. (2009 DEIR, p. 4.3-56)

**Mitigation Measure TRA-5:** Prior to issuance of building permits, the project applicant shall pay its fair share toward the construct of an additional through lane and left-turn lane on the eastbound approach, an exclusive right-turn lane on the westbound approach, and an additional through lane on Soscol Avenue in both directions. Provide protected phasing for the eastbound and westbound left-turn movements. (See 2009 DEIR, p. 4.3-56, as revised at FEIR p. 3-46 and as discussed above)

**Findings and Rationale:** The intersection would continue to operate at LOS E in both the AM and PM peak hours; however, it would operate better than it does under existing conditions. The project's impact would be reduced to a less than significant level. This is similar to recommendations from previous studies in the City of Napa. In determining whether to adopt this mitigation measure, consideration shall be given to the fact that such an extensive widening of roadways at this intersection would substantially increase pedestrian crossing distances and may not be consistent with the County's and City's desire to promote transit and bicycling as alternative transportation modes.

Implementation of Mitigation Measure TRA-5 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce the impact to a less than significant level, the mitigation contemplates action by other public agencies, Caltrans/City of Napa. A fair share payment would be considered to mitigate this impact to a less than significant level if Caltrans/City of Napa are able to demonstrate to the County's satisfaction that such a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans/City of Napa control what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of Napa and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of Napa can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of Napa do cooperate with the

County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**B) Impact TRA-6:** State Route 221 (Napa-Vallejo Highway)/Streblov Drive: The addition of project traffic is expected to cause this intersection to deteriorate from LOS D to LOS E in the AM peak hour. This is a significant impact. (2009 DEIR, p. 4.3-56)

**Mitigation Measure TRA-6:** Construct an additional northbound left-turn lane on State Route 221 (Napa-Vallejo Highway) and a receiving lane on Streblov Drive pursuant to Caltrans standards. The TDM program manager shall monitor project-generated traffic and operations of this intersection on an annual basis with the County's oversight after permits are issued the project. Monitoring shall be used to determine if and when the required improvement is warranted by conditions at the intersection. If warranted, the property owners association shall be responsible for implementing the required improvement to the intersection. (See 2009 DEIR, p. 4.3-56, as revised at FEIR, p. 3-47 and as discussed above)

**Finding and Rationale:** 95th percentile queues for the northbound left-turn lanes are expected to be served by the available storage, assuming that the additional turn-lane is the same length as the existing turn-lane. This would result in the impact becoming less than significant.

Implementation of Mitigation Measure TRA-6 has been required or incorporated into the project. Although the mitigation is imposed on the applicant by the County, the mitigation, if warranted, contemplates action by other public agencies, Caltrans/City of Napa. Because Caltrans/City of Napa control what occurs at the intersection, and because the County is uncertain as to whether the construction of the contemplated improvement can occur within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of Napa and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of Napa can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of Napa do cooperate with the County and is able to demonstrate to the County's satisfaction that the construction of the contemplated improvement will occur, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**C) Impact TRA-9:** State Route 12-State Route 29/State Route 221 (Napa-Vallejo Highway): The project is expected to contribute to existing LOS F conditions in the AM and PM peak hours (562 AM peak hour trips and 544 PM peak hour trips). This is a significant impact. (2009 DEIR, p. 4.3-58)



**Mitigation Measure TRA-9:** Prior to issuance of building permits, the project applicant shall pay its pro-rated fair share toward the construction of a flyover ramp for the traffic traveling from southbound State Route 221 (Napa-Vallejo Highway) to southbound State Route 12/State Route 29. (See 2009 DEIR, p. 4.3-58, as revised at FEIR, p. 3-48 and as discussed above)

Findings and Rationale: Implementation of this mitigation measure would reduce the impact to a less than significant level. This improvement has been contemplated previously by the County and Caltrans, and is likely to be needed with or without development of the project. For this reason, the project applicant shall pay its fair share to the construction of this project. Removing the southbound left-turning traffic from the signalized portion of this intersection would improve this intersection to acceptable LOS D in the AM and PM peak hours.

Implementation of Mitigation Measure TRA-9 has been required or incorporated into the project. Although the mitigation is imposed on the applicant by the County, the mitigation contemplates action by other public agencies, Caltrans/City of Napa. A fair share payment would be considered to mitigate this impact to a less than significant level, however, if Caltrans/City of Napa is able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements within a reasonable period of time (i.e., prior to the issuance of building permits). Because Caltrans/City of Napa control what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of Napa and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of Napa can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of Napa do cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**D) Impact TRA-10:** State Route 12/Airport Boulevard/State Route 29. The project would contribute to existing LOS F conditions in the AM peak hour and LOS E in the PM peak hour (509 AM peak hour trips and 517 PM peak hour trips). This is a significant impact. (2009 DEIR, p. 4.3-58)

**Mitigation Measure TRA-10:** Prior to issuance of building permits, the project applicant shall pay pro-rated its fair share toward the construction of a grade-separated interchange as proposed in the Napa County General Plan. This improvement has been contemplated previously by the County and Caltrans, and is likely to be needed with or without development of the project. (See 2009 DEIR, p. 4.3-58, as revised at FEIR, p. 3-49 and as discussed above)

Findings and Rationale: Implementation of Mitigation Measure TRA-10 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the

construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce the impact to a less than significant level, the mitigation contemplates action by another public agency, Caltrans. A fair share payment would be considered to mitigate this impact to a less than significant level if Caltrans is able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans controls what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans can and should cooperate with the County in implementing the mitigation. In the event that Caltrans does cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**E) Impact TRA-11: State Route 29/Napa Junction Road.** The project is expected to contribute to existing LOS F conditions in the AM peak hour (362 AM peak hour trips). This is a significant impact. (2009 DEIR, p. 4.3-59)

**Mitigation Measure TRA-11:** The Napa County General Plan calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described earlier in this report, the additional through lane on State Route 29 in the northbound and southbound directions shall be constructed at this intersection, as is currently proposed. This improvement has been contemplated previously by the County and Caltrans, and is likely to be needed with or without development of the project. For this reason, the project applicant shall pay its fair share to the construction of this project prior to the issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would improve to acceptable LOS C in the AM and PM peak hours. (See 2009 DEIR, p. 4.3-59, as revised at FEIR, p. 3-49 and as discussed above)

**Findings and Rationale:** Implementation of Mitigation Measure TRA-11 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce

the impact to a less than significant level, the mitigation contemplates action by other public agencies, Caltrans/City of American Canyon. A fair share payment would be considered to mitigate this impact to a less than significant level if Caltrans/City of American Canyon are able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans/City of American Canyon control what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of American Canyon and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of American Canyon can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of American Canyon do cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**F) Impact TRA-12: State Route 29/Donaldson Way.** The project is expected to contribute to existing LOS F conditions in the AM peak hour (362 AM peak hour trips). This is a significant impact. (2009 DEIR, p. 4.3-60)

**Mitigation Measure TRA-12:** The Napa County General Plan calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described earlier in this report, the additional through lane on State Route 29 in the northbound and southbound directions shall be constructed at this intersection, as is currently proposed. For this reason, the project applicant shall pay its fair share to the construction of this project prior to the issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would improve to acceptable LOS B in both the AM and PM peak hours. (See 2009 DEIR, p.4.3-60, as revised at FEIR, p. 3-50 and as discussed above)

**Findings and Rationale:** Implementation of Mitigation Measure TRA-12 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce the impact to a less than significant level, the mitigation contemplates action by other public agencies, Caltrans/City of American Canyon. A fair share payment would be considered to mitigate this impact to a less than significant level if Caltrans/City of American Canyon are able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans/City of American Canyon

control what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of American Canyon and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of American Canyon can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of American Canyon do cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**G) Impact TRA-13: State Route 29/American Canyon Road.** The project is expected to contribute to Existing LOS F conditions in the AM peak hour (279 AM peak hour trips) and to cause the intersection to deteriorate from LOS D to LOS E in the PM peak hour. This is a significant impact. (2009 DEIR, p. 4.3-60)

**Mitigation Measure TRA-13:** The City of American Canyon's General Plan recognizes that this intersection will likely operate at LOS E conditions during peak periods. The Napa County General Plan also calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described earlier in this report, the additional through lane on State Route 29 in the northbound and southbound directions shall be constructed at this intersection, as is currently proposed. For this reason, the project applicant shall pay its fair share to the construction of this project prior to the issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would continue to operate at LOS F in the AM peak hour (primarily due to the extremely heavy westbound right turn to northbound State Route 29), but would operate better than Existing conditions without the project. The intersection would improve to LOS D in the PM peak hour. (See 2009 DEIR, p. 4.3-60, 61)

**Findings and Rationale:** Implementation of Mitigation Measure TRA-13 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce the impact to a less than significant level, the mitigation contemplates action by other public agencies, Caltrans/City of American Canyon. A fair share payment would be considered to mitigate this impact to a less than significant level if Caltrans/City of American Canyon are able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans/City of American Canyon control what occurs at the intersection, however, and because the County is uncertain as to whether

the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of American Canyon and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of American Canyon can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of American Canyon do cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**H) Impact TRA-17:** A substantial portion of the Napa Pipe project would be located at a distance greater than what typical commuters are willing to walk to access transit, which would not be consistent with the County's goal of promoting transit use as a convenient option. This would be a significant impact. (2009 DEIR, p. 4.3-68)

**Mitigation Measure TRA-17:** Reroute the VINE #10 bus route through the project site to serve the proposed transit center as proposed in the project site plan and ensure that all development proposed would be within a reasonable walking distance to transit (less than 1/3-mile). The revised bus route through Napa Pipe could either be a loop, in which case existing stops along Napa Valley Corporate Drive would remain, or the route could be relocated. Under the latter option, the existing bus stop at Latour Court would be moved 450 feet to the north to Kaiser Road, the stop at Bordeaux Way would be moved 600 feet to the south to Anselmo Court, and the stop at Napa Valley Corporate Way would be eliminated. Stops at Napa Valley Corporate Drive's intersections with Kaiser Road and Anselmo Court will help maintain current patrons. Current ridership is expected to be maintained or surpassed by routing through the project. However, it should also be noted that the extension into the Napa Pipe site will lengthen the travel time from the City of Napa to the City of American Canyon, which may discourage current commuters. If the extension of the VINE #10 bus route is not feasible, the applicant shall include peak period shuttle service as included in Mitigation Measure TRA-1b. (See 2009 DEIR, p. 4.3-68, 69, as revised at FEIR, p. 3-54)

**Findings and Rationale:** Implementation of Mitigation Measure TRA-17 has been required or incorporated into the project and would reduce the impact to a less than significant level. Although the mitigation is imposed on the applicant by the County, the mitigation contemplates action by another public agency, the Napa County Transportation and Planning Agency. Because the Napa County Transportation and Planning Agency controls what occurs at the intersection, however, and because the County is uncertain as to whether the contemplated improvement can occur within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over the Napa County Transportation and Planning Agency and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that the Napa County Transportation and Planning Agency can and

should cooperate with the County in implementing the mitigation. In the event that the Napa County Transportation and Planning Agency does cooperate with the County and is able to demonstrate to the County's satisfaction that the contemplated improvements will occur within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

**I) Impact TRA-19:** Development of the proposed project would contribute to a cumulative deterioration on roadway and intersection level of service operations throughout the study area. This would be a significant impact. (2009 DEIR, p. 4.3-86)

**Mitigation Measure TRA-19:** In addition to Mitigation Measures TRA-1 through TRA-13 (as applicable), the project applicant shall pay a fair share contribution to other long-term planned roadway improvements in the Regional Transportation Plan (assumed under the Cumulative Planned roadway network) at locations where the proposed project would contribute to cumulatively significant traffic impacts. The following improvements have been identified under this plan:

- Realignment of Silverado Trail at Soscol Avenue to match alignment of proposed Gasser Drive extension
- Widening of State Route 29 to six lanes between Airport Boulevard and southern Napa County line
- Extension of Devlin Road south to Green Island Road

Each of these roadway improvements would improve intersection operations and general roadway circulation in the project study area under Cumulative conditions; however, most intersections would continue to operate unacceptably. A comprehensive list of roadway improvements that would be required to achieve acceptable intersection level of service under cumulative conditions has been developed and is presented in the Transportation Impact Analysis (2009 DEIR, Appendix E; See also, SEA, Attachment 3, Fehr & Peers Traffic Analysis, September 7, 2012 identifying the mitigation measures from the TIA that are applicable to the Developers Revised Proposal). Many of these improvements would require major roadway widening in a fashion that may not be consistent with the stated desires of many communities, through their General Plan documents, to maintain Napa County's rural atmosphere and promote pedestrian, bicycle, and transit as successful transportation modes. Many of the cumulative impacts would occur even without the project. (See 2009 DEIR, p. 4.3-90)

**Findings and Rationale:** Implementation of Mitigation Measure TRA-19 has been required or incorporated into the project, which requires the project applicant to pay its fair share towards the construction of the improvements. The Board revises this mitigation measure presented in the FEIR by requiring the County, based on studies funded by the project applicant, to create a Napa Pipe Traffic Mitigation Fee Program. The identified impact fee shall be paid to the County program at the time of building permit issuance. County shall disperse that fee to the responsible jurisdiction at the time the improvement is made. The Board finds that while this revised mitigation would reduce the project's contribution at most affected intersections to a less than significant level, the mitigation contemplates action by other public agencies, Caltrans/City of American Canyon/City of

Napa. A fair share payment would be considered to mitigate the project's contribution at most affected intersections to a less than significant level if Caltrans/City of American Canyon/City of Napa are able to demonstrate to the County's satisfaction that such that a fair share payment will actually result in construction of the contemplated improvements. Because Caltrans/City of American Canyon/City of Napa control what occurs at the intersection, however, and because the County is uncertain as to whether the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the Board conservatively concludes that the impact shall be treated as significant and unavoidable, given that the County has no control over Caltrans/City of American Canyon/City of Napa and thus cannot take for granted that the improvements contemplated by the mitigation will get implemented. Consistent with Public Resources Code Section 21081(a)(2) and CEQA Guidelines section 15091, subdivision (a)(2), the County concludes, however, that Caltrans/City of American Canyon/City of Napa can and should cooperate with the County in implementing the mitigation. In the event that Caltrans/City of American Canyon/City of Napa do cooperate with the County and is able to demonstrate to the County's satisfaction that the fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time, the impact of the project would be rendered less than significant, though at present, as noted above, the Board considers the impact **significant and unavoidable**. The Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below. Furthermore, at four intersections where the project would contribute traffic in the cumulative scenario (First Street/Soscol Avenue; Third St/Soscol Ave; Imola Ave (SR 121) / Soscol Avenue; Imola Ave. (SR 121)/ Soscol Ave; and State Route 29/State Route 37 Westbound Off-Ramp) there are no feasible means of achieving acceptable operations. The only potential improvements would be large-scale intersection treatments, such as grade separation, continuous-flow intersections, or approach realignment, which are undesirable options for the affected communities and are therefore infeasible. Thus, even with the improvements described above, the project's contribution to cumulative impacts in the study area would remain significant and unavoidable. There are no feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Consequently, this impact is **significant and unavoidable**. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby adopts this mitigation measure and finds that specific economic, legal, social, technological and other benefits of the Project outweigh the remaining significant impact, as further set forth in the Statement of Overriding Considerations in Section 13 below.

## **SECTION 11. Rejection of Infeasible Mitigation Measures**

CEQA does not require that a lead agency adopt every mitigation measure recommended in an EIR. However, when an agency rejects any of the mitigation measures identified in the EIR for a significant impact, it must make specific findings that the rejected measures are infeasible. These findings must show the agency's reasons for rejecting the mitigation measures that the EIR recommends. An agency may reject a mitigation measure recommended in an EIR if it finds that it would be infeasible to implement the measure because of "specific legal, economic, social, technological, or other considerations, including the provision of employment opportunities for highly trained workers." (Public Resources Code Section 21081(a)(3); 14 CCR Section 15091(a)(3).)

The Board rejects Mitigation Measure TRA-1a, which provides: "Construct a new eastbound right-turn lane prior to the occupancy of the project." The Board concurs with finding in the FEIR that this Mitigation Measure is infeasible, in that it would require widening of the recently completed bridge structure over the Napa River, and that it would be infeasible due to the cost, physical constraints of the site, and lack of community support for changes to the new bridge.

In several comments on the 2009 DEIR and Supplement to the 2009 DEIR, commenters suggested additional mitigation measures and/or modifications to the measures recommended in the 2009 DEIR and Supplement to the 2009 DEIR. As is evident from the FEIR, the County modified several of the original proposed measures in response to such comments, as set forth in the FEIR in response to such comments. The Board commends staff for its careful consideration of those comments, agrees with staff in those instances when staff did not accept proposed language, and hereby ratifies, adopts, and incorporates staff's reasoning on these issues.

In considering specific recommendations from commenters, the County has been cognizant of its legal obligation under CEQA to substantially lessen or avoid significant environmental effects to the extent feasible. The County recognizes, moreover, that comments frequently offer thoughtful suggestions regarding how a commenter believes that a particular mitigation measure can be modified, or perhaps changed significantly, in order to more effectively, in the commenter's eyes, reduce the severity of environmental effects. The County is also cognizant, however, that the mitigation measures recommended in the 2009 DEIR and Supplement to the 2009 DEIR represent the professional judgment and long experience of the County's expert staff and environmental consultants. The County therefore believes that these recommendations should not be lightly altered. Thus, in considering commenters' suggested changes or additions to the mitigation measures as set forth in the 2009 DEIR and Supplement to the 2009 DEIR, the County, in determining whether to accept such suggestions, either in whole or in part, has considered the following factors, among others: (i) whether the suggestion relates to a significant and unavoidable environmental effect of the Project, or instead relates to an effect that can already be mitigated to less than significant levels by proposed mitigation measures in the 2009 DEIR and Supplement to the 2009 DEIR; (ii) whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace; (iii) whether the proposed language is sufficiently clear as to be easily understood by those who will implement the mitigation as finally adopted; (iv) whether the language might be too inflexible to allow for pragmatic implementation; (v) whether the suggestions are feasible from an economic, technical, legal, or other standpoint; and (vi) whether the proposed language is consistent with the project objectives.

As is often evident from the specific responses given to specific suggestions, County staff and consultants spent large amounts of time carefully considering and weighing proposed mitigation language, and in many instances adopted much of what a commenter suggested. In some instances, the County developed alternative language addressing the same issue that was of concern to a commenter. In no instance, however, did the County fail to take seriously a suggestion made by a commenter or fail to appreciate the sincere effort that went into the formulation of suggestions.



## **SECTION 12.        Project Alternatives.**

### **A)     Legal Requirements.**

Public Resources Code section 21002, a key provision of CEQA, provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.”

Where a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as mitigated, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. Although an EIR must evaluate this range of *potentially* feasible alternatives, an alternative may ultimately be deemed by the lead agency to be “infeasible” if it fails to fully promote the lead agency’s underlying goals and objectives with respect to the project. (*City of Del Mar, supra*, 133 Cal.App.3d at p. 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *CNPS, supra*, 177 Cal. App. 4th at p. 1001.) Thus, even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible.

Section 15126.6(f) of the CEQA Guidelines requires that an EIR include a “reasonable range of alternatives to the project, or to the location of the project, which would avoid or substantially lessen any significant effects of the project.” Under CEQA Guidelines section 15126.6, the alternatives to be discussed in detail in an EIR should be able to “feasibly attain most of the basic objectives of the project[.]” Based on the analysis in FEIR the proposed Project would be expected to result in significant and unavoidable impacts to Population/Employment/Housing, Traffic/Transportation, Air Quality, Greenhouse Gas Emissions, and Cultural Resources. The FEIR alternatives were designed to avoid or reduce the significant unavoidable impacts, and to further reduce impacts that were found to be less than significant. The Board has reviewed the significant impacts associated with the reasonable range of alternatives as compared to the Project as originally proposed, and in evaluating the alternatives has also considered each alternative’s feasibility, taking into account a range of economic, environmental, social, legal and other factors. In evaluating the alternatives, the Board has also considered the important factors listed in the Statement of Overriding Considerations in Section 13 below.

Public Resources Code Section 21081(b)(3) provides that when approving a project for which an EIR has been prepared, a public agency may find that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

**B) Range of Alternatives.**

Section 5.0 of the Supplement to the 2009 DEIR describes the alternatives considered and compares their impacts to the originally proposed Project's impacts. The four categories of alternatives to the proposed Project that were evaluated are: The No Project Alternatives, Reduced Development Alternatives, Project Variation Alternatives, and Off-Site Alternatives. Each alternative category and subsets thereof are discussed below.

The Board finds that that a good faith effort was made to evaluate all feasible alternatives in the EIR that are reasonable alternatives to the Project and could feasibly obtain the basic objectives of the Project, even when the alternatives might impede the attainment of the Project objectives and might be more costly. As a result, the scope of alternatives analyzed in the EIR is not unduly limited or narrow. The Board also finds that all reasonable alternatives were reviewed, analyzed and discussed in the review process of the EIR and the ultimate decision on the Project.

**C) Significant, Unavoidable Impacts of the Project.**

The Project will result in the significant and unavoidable impacts discussed in Sections 9 and 10, above.

**D) Scope of Necessary Findings and Considerations for Project Alternatives.**

As noted above, these findings address whether the various alternatives substantially lessen or avoid any of the significant unavoidable impacts associated with the Project and (though not legally necessary) also consider the feasibility of each alternative. Under CEQA, "(f)feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines § 15364.) As explained earlier, the concept of feasibility permits agency decision makers to consider the extent to which an alternative is able to meet some or all of a project's Objectives. In addition, the definition of feasibility encompasses "desirability" to the extent that an agency's determination of infeasibility represents a reasonable balancing of competing economic, environmental, social, and technological factors supported by substantial evidence. In identifying potentially feasible alternatives to the Project, the Project Objectives discussed in Section 3, above, were considered.

**E) Description of Project Alternatives.**

The 2009 DEIR and Supplement to the 2009 DEIR examined the project alternatives in detail comparing the alternatives to the originally proposed Project. The following findings compare the Alternatives to the Developers Revised Proposal.

**1) The No Project Alternatives.**

CEQA Guidelines Section 15126.6(e)(1) states that a "no project" alternative shall be analyzed. The purpose of describing a "no project" alternative is to allow decision makers to compare the impacts of approving a proposed project with the impacts of not approving the proposed project. The "no project" alternative analysis is not the baseline for determining whether the environmental impacts of a proposed project may be significant, unless the analysis is identical

to the environmental setting analysis, which does establish that baseline. Here, the No Project Alternatives are identified and analyzed consistent with the requirements of CEQA Guidelines Section 15126.6(e)(2), which provides the analysis shall discuss the existing conditions at the time the notice of preparation is published, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

**Description:** Two No Project Alternatives are analyzed, the Existing Uses Alternative and the Industrial Uses/Business Parks Alternative.

**a) Existing Uses Alternative.**

Under the Existing Uses Alternative, the site would remain in its existing condition. This alternative includes reuse of the existing structures on the site but assumes that no new structures would be constructed. The project site would remain in its current Study Area General Plan land use designation and would maintain its current Industrial zoning with the Airport Compatibility Combination District overlay zoning. The project site would be utilized for industrial related uses or other uses that would not require the redevelopment of the site, although some remediation of the site would occur consistent with likely commercial and industrial uses. This alternative is not analyzed in detail because it is generally represented by the existing environmental setting described in Chapter 4, Environmental Evaluation of the 2009 DEIR and Supplement.

**Finding:** The Supplement to the 2009 DEIR pages 5-11 through 5-12 provides a description of this alternative and the impact effects of this alternative. As noted therein, this alternative would result in slight improvements in certain resources areas, but increased impacts in the areas of Traffic and Transportation, Greenhouse Gases and Aesthetics, as compared to the Project. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Existing Uses Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

- 1) It is unreasonable and therefore infeasible to expect a private property owner to maintain a 154-acre parcel in limited use and not to pursue development under existing zoning and general plan designations if a rezoning and general plan amendment is not approved.
- 2) This alternative would not allow the County to fulfill its obligations under General Plan Housing Program H-4e rezone 20 acres of the Napa Pipe site to allow housing development at a minimum density of 20 dwelling units per acre for 304 dwelling units with associated public open space.
- 3) It would make it infeasible to for the property owner to fund site remediation and infrastructure improvements.
- 4) This alternative would not provide for public access to and through the site to the Napa River.

For the reasons stated above, the Board finds the Existing Uses Alternative to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

**b) Industrial Uses/Business Park Alternative**

Under the Industrial Uses/Business Park Alternative, the project site would be redeveloped under its current General Plan and zoning designations to include new industrial and business park uses, but no residential uses. The total amount of development onsite would be 2,000,000 square feet of office, R&D, light industrial, distribution center and warehousing uses. This alternative would also include a waterfront park area providing access to the Napa River. The site would be remediated, but only to the level necessary for industrial uses, and the site would be raised via the placement of fill. This alternative assumes that the City of Napa would continue to provide potable water and that the site would continue to rely in part on on-site groundwater, and that the Napa Sanitation District would continue to provide wastewater treatment. The Napa County Fire Department and Napa County Sheriff would continue to provide public safety services.

**Finding:** The Supplement to the 2009 DEIR pages 5-11 through 5-23 provides a detailed description of this alternative and the impact effects of this alternative. The Developers Revised Proposal would allow for development of the same uses as the Industrial Uses/Business Park Alternative on the 91 acre portion of the site, but a condition of approval would cap the developable square footage on the 91 acre portion of the site at 319,000 gross square feet. As such, in comparing the impacts of the Industrial Uses/Business Park Alternative, the Industrial Uses/Business Park Alternative would have similar impacts to the Developers Revised Proposal in the areas of Land Use and Public Policy, Population/Employment/Housing, Air Quality, Hazards and Hazardous Materials, and Cultural Resources. This alternative would also result in slight improvements in certain resources areas, including Noise, Geology/Soils/Seismicity, Hydrology and Drainage, Public Services and Recreation, and Utilities. The Industrial Uses/Business Park Alternative would result also result in increased impacts in the areas of Biological Resources, Traffic and Transportation, Greenhouse Gases, and Aesthetics, as compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Industrial Uses/Business Park Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

- 1) This alternative would not allow the County to fulfill its obligations under General Plan Housing Program H-4e rezone 20 acres of the Napa Pipe site to allow housing development at a minimum density of 20 dwelling units per acre for 304 dwelling units with associated public open space.
- 2) It would result in more traffic than any other alternative, or the proposed Project.
- 3) Remediation of the site for industrial uses would be to lower cleanup levels.
- 4) It would provide less open space than other alternatives.

For the reasons stated above, the Board finds the Industrial Uses/Business Park Alternative to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

## 2) **Reduced Density Development Alternatives**

### a) **Low Density Development Alternative I**

Under the Low Density Development Alternative I, the Napa Pipe site would be redeveloped with 650 housing units in a residential subdivision of single-family, detached housing units at a density of approximately 11 units per acre. Twenty percent of the units would be affordable. This alternative would also include 190,000 square feet of office/R&D/light industrial/warehousing uses in ALUCP Zone D and 200,000 square feet in ALUCP Zone E, a 215-unit senior housing facility, a 150-suite hotel with associated uses and 38 acres of open space. This alternative would also include a 19-acre reserve area that would be left undeveloped and reserved for future uses. No public restaurant or retail uses would be included in this alternative.

**Finding:** The Supplement to the 2009 DEIR pages 5-25 through 5-37 provides a detailed description of this alternative and the impact effects of this alternative. This alternative would have similar impacts to the Developers Revised Proposal in the areas of Population/Employment/Housing, Biological Resources, Noise, Hazards and Hazardous Materials, Cultural Resources, and Aesthetics. This alternative would also result in slight improvements in certain resources areas, including Traffic and Transportation, Air Quality, Greenhouse Gases, Geology/Soils/Seismicity, Hydrology and Drainage, Public Services and Recreation, and Utilities. But this alternative would result in increased impacts in the area of Land Use and Public Policy, as compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Low Density Development Alternative I is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

- 1) This alternative would produce a conventional subdivision, not a "walkable" neighborhood in conformance with the Applicant's and County's project objectives.
- 2) By not producing multi-family housing, it would only partially address the County housing objectives by only deed restricting 130 single family homes as affordable.
- 3) Other housing on the site would not count towards the County's RHNA requirements for moderate, low, or very low units because it would not achieve densities of 20 dwelling units per acre in conformance with General Plan Housing Program H-4e and State law.
- 4) This alternative would not include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

For the reasons stated above, the Board finds the Low Density Development Alternative I to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

### b) **Low Density Development Alternative II.**

Under the Low Density Development Alternative II, the project site would be redeveloped with 950 housing units, primarily consisting of single-family detached houses, with limited townhouses, at a density of approximately 14 units per acre. This alternative would also include 190,000 square feet of office/R&D/light industrial/warehousing uses in ALUCP Zone D, as well as

a 215-unit senior housing facility, a 150-suite hotel with associated uses and 38 acres of open space. This alternative would also include a 19-acre reserve area that would be left undeveloped and reserved for future uses.

**Finding:** The DEIR pages 5-37 through 5-47 provides a detailed description of this alternative and the impact effects of this alternative. This alternative would have similar impacts to the Developers Revised Proposal in the areas of Population/Employment/Housing, Biological Resources, Noise, Hazards and Hazardous Materials, Cultural Resources, and Aesthetics. This alternative would also result in slight improvements in certain resources areas, including Traffic and Transportation, Air Quality, Greenhouse Gases, Geology/Soils/Seismicity, Hydrology and Drainage, Public Services and Recreation, and Utilities. But this alternative would result in increased impacts in the area of Land Use and Public Policy, as compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Low Density Development Alternative II is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

1) While this Alternative would resemble the staff recommendation of the Developers Revised Proposal in terms of the total number of units, it would use a greater portion of the site and would not include densities of 20 dwelling units per acre in conformance with General Plan Housing Element Program H-4e and State law.

2) This alternative would not include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

For the reasons stated above, the Board finds the Low Density Development Alternative II to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

**c) Mid-Range Density Alternative.**

Under the Mid-Range Density Alternative, the project site would be redeveloped with a mix of detached and attached housing types at a density of approximately 41 units per acre. With up to 2,050 housing units, this would enable a walkable, transit-oriented development. This alternative would include 190,000 square feet of office/R&D/light industrial/warehousing uses in ALUCP Zone D. In addition, this alternative would include 40,000 square feet of retail and restaurants, a 150-unit senior housing facility, a 150-suite hotel with associated uses and 53 acres of open space. This alternative would also include a 19-acre reserve area that would be left undeveloped and reserved for future uses.

**Finding:** The Supplement to the 2009 DEIR pages 5-47 through 5-57 provides a detailed description of this alternative and the impact effects of this alternative. This alternative would have similar impacts to the Developers Revised Proposal in many areas, but would result in slight deteriorations in certain resources areas. In particular, this alternative would have similar impacts to the Modified 63-Acre/Costco Project in the areas of Land Use and Public Policy, Biological Resources, Hazards and Hazardous Materials, Cultural Resources, Hydrology and Drainage, and Aesthetics. In the areas of Population/Employment/Housing, Traffic and Transportation, Noise, Air Quality, Greenhouse Gases, Public Services and Recreation, and Utilities, the Originally Proposed Project Alternative would represent a slight deterioration

compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Mid-Density Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

1) This alternative is the modified project currently proposed by the Applicant and would be feasible as an alternative to the Developers Revised Proposal recommendation. However, this alternative would:

- a) Amend the County's growth management system to provide more growth at a faster pace than the Developers Revised Proposal;
- b) Would reserve less of the site for non-residential uses in the future; and
- c) Would not include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

2) The Board also does not believe this alternative adequately takes into account changes to the housing market since 2007, and the reduced RHNA requirements the County expects to receive in the future.

For the reasons stated above, the Board finds the Mid-Range Density Alternative to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

### **3) Originally Proposed Project Alternative.**

Under the Originally Proposed Project Alternative, the project site would be redeveloped with a mix of housing types, with up to 2,580 housing units, which would enable a walkable, transit-oriented development. This alternative would include 140,000 square feet of office/R&D/light industrial/warehousing uses in ALUCP Zone D. In addition, this alternative would include 40,000 square feet of retail and restaurants, a 150-unit senior housing facility, a 150-suite hotel with associated uses and 56 acres of parks and open space. This alternative would also include a 19-acre reserve area that would be left undeveloped and reserved for future uses.

**Finding:** The SEA provides a detailed description of this alternative and the impact effects of this alternative in comparison to the Developers Revised Proposal. As noted therein, the Originally Proposed Project Alternative would have similar impacts to the Developers Revised Proposal in the areas of Land Use and Public Policy, Biological Resources, Hazards and Hazardous Materials, Cultural Resources, Hydrology and Drainage, and Aesthetics. In the areas of Population/Employment/Housing, Traffic and Transportation, Noise, Air Quality, Greenhouse Gases, Public Services and Recreation, and Utilities, the Originally Proposed Project Alternative would represent a slight deterioration compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Originally Proposed Project Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

1) This alternative would amend the County's growth management system to provide more growth at a faster pace than the Developers Revised Proposal.

2) This alternative would reserve less of the site for non-residential uses in the future.

3) This alternative would not include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

4) The Board also does not believe this alternative adequately takes into account changes to the housing market since 2007, and the reduced RHNA requirements the County expects to receive in the future.

For the reasons stated above, the Board finds the Originally Proposed Project Alternative to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

#### **4) Project Variation Alternatives**

The Project Variation Alternatives described below consist of similar project components as the proposed project, and would be developed according to the site plan included as Figure 3-6 in this EIR. These alternatives consider variations in aspects of the proposed project that are intended to provide environmental benefits.

##### **a) Reduced Carbon Emission Alternative.**

Under the Reduced Carbon Emission Alternative, the project would be developed as proposed, but would include additional measures for reducing greenhouse gas outputs, with the goal of reaching a carbon neutral status. Greenhouse gas emission reduction measures would include implementation of passenger rail service between the site, Green Island Road (to the south) and Trancas Street (to the north). Other measures would include alternative energy generation on-site and carbon offsets, wherein the applicant would pay to improve energy conservation in existing buildings to offset new energy that is used on-site.

**Finding:** The DEIR pages 5-57 through 5-70 provides a detailed description of this alternative and the impact effects of this alternative. This alternative would have similar impacts to the Developers Revised Proposal in the areas of Biological Resources, Hazards and Hazardous Materials, Cultural Resources, Hydrology and Drainage, and Aesthetics. This alternative would provide an improvement over the Developers Revised Proposal in the areas Air Quality and Greenhouse Gases. In the areas of Land Use and Public Policy, Population/Employment/Housing, Traffic and Transportation, Noise, Public Services and Recreation, and Utilities, this alternative would represent a slight deterioration compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Reduced Carbon Emission Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

1) This alternative includes substantial investments in rail service and other measures that are deemed infeasible at this time due to the lack of public support, detailed planning and environmental analysis, and funding.

2) This alternative would not include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.



For the reasons stated above, the Board finds the Reduced Carbon Emission Alternative to be infeasible and rejects it as a viable alternative to the originally proposed Project and the Developers Revised Proposal.

**b) City Water Alternative**

Under the City Water Alternative, the project would rely upon the City of Napa's water supply rather than groundwater. There are two options for the City Water Alternative. Under City Water Alternative-A, the project would rely exclusively on the City of Napa's water supply rather than groundwater. Under City Water Alternative-B, groundwater resources could be utilized to supplement City water during drought years, under a "conjunctive use" arrangement that could be a benefit to the City's water system. Under a conjunctive use arrangement, surface water and groundwater are utilized based on drought conditions. During wet years, surface water can be utilized, which allows for groundwater recharge; during dry years, groundwater can be utilized, thereby reducing strain on surface water supplies. By diversifying the water supply, conjunctive use arrangements allow for a flexible approach to water management.

**Finding:** The Supplement to the 2009 DEIR pages 5-70 through 5-76 provides a detailed description of this alternative and the impact effects of this alternative. Option B of this alternative would have similar impacts to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the City Water Alternative is less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

1. Option A would be infeasible because City UWMP demonstrates the City does not have sufficient water to serve planned uses within the City in dry years (See Section 1.5.4 of WSA).
2. Option B resembles the Developers Revised Proposal, and is generally subsumed by that project although it would require consent of the City. Necessary improvements to the City's water supply system were described in the study undertaken by West Yost during the City-County Study Group Process in 2007-2008.

For the reasons stated above, the Board finds the City Water Alternative – Option A to be infeasible and rejects it as a viable alternative to the Developers Revised Project (which includes Option B – City water + conjunctive use).

**4) Off-site Alternatives - Regional Housing Needs Allocation Transfer Alternative**

Under a Regional Housing Needs Allocation (RHNA) transfer, Napa County would enter into an agreement or agreements with one or more incorporated jurisdictions wherein the County would transfer all of its RHNA allocations for the next two (Option A) or three (Option B) housing cycles to the cities.

**a) Option A of the RHNA Transfer Alternative**

Under Option A of the RHNA Transfer Alternative, a 20-acre portion of the project site would be re-zoned to allow for high-density multi-family housing (up to 304 units), with associated open space. The remainder of the site would be developed as described under the Industrial

Uses/Business Park Alternatives. In addition, the County would negotiate one or more RHNA transfer agreements for approximately 1,000 to 1,200 housing units over two future housing cycles.

**b) Option B of the RHNA Transfer Alternative**

Under Option B of the RHNA Transfer Alternative, the County would transfer approximately 1,300 to 1,500 units to cities in the county for the current housing cycle as well as two future cycles. The project site would be developed as described under the Industrial Uses/Business Park Alternatives.

Although there are subtle variations between each of the RHNA Transfer Options, both with respect to on-site and off-site environmental effects, the FEIR came to the following conclusions with respect to overall environmental effects of this alternative compared to the originally proposed Project, which would also apply to a comparison of this alternative to the Developers Revised Proposal based on the analysis in the SEA . This alternative would have similar effects in the areas of Population/Employment/Housing, Noise, Air Quality, Hazards and Hazardous Materials, Geology/Soils/Seismicity, Cultural Resources, Public Services and Recreation, Aesthetics. This alternative would result in a slight improvement with respect to Public Services and Recreation. Compared to the originally proposed project, this alternative would be slight deterioration with respect to Land Use and Public Policy, Biological Resources, Hydrology and Drainage, and Aesthetics. Finally, with respect to Traffic and Transportation, it is expected this alternative would result in a substantial deterioration compared to the originally proposed project.

**Finding:** The Supplement to the 2009 DEIR pages 5-76 through 5-93 provides a detailed description of this alternative and the impact effects of this alternative both on-site and off-site. This alternative would have similar effects to the Developers Revised Proposal in the areas of Population/Employment/Housing, Noise, Air Quality, Hazards and Hazardous Materials, Geology/Soils/Seismicity, Cultural Resources, Public Services and Recreation, Aesthetics. This alternative would result in a slight improvement with respect to Public Services and Recreation. Compared to the Developers Revised Proposal, this alternative would be slight deterioration with respect to Land Use and Public Policy, Biological Resources, Hydrology and Drainage, and Aesthetics. Finally, with respect to Traffic and Transportation, it is expected this alternative would result in a substantial deterioration compared to the Developers Revised Proposal. In addition, pursuant to Public Resources Code Section 21081(b)(3) and CEQA Guidelines Section 15091(a), the Board finds that the Off Site RHNA Alternatives are less desirable and infeasible because of specific economic, legal, social, technological, or other considerations, including:

- 1) While Option A of the RHNA Alternative would implement the County's Housing Element Program H-4e, it would not result in a "walkable" neighborhood in conformance with the Applicant's and the County's objectives. Additionally, this alternative would necessitate revisions to the clean-up plan for the site, and may mean that a 20 acre residential area would be located adjacent to an industrial area that would not be remediated to desired cleanup levels. Open space and infrastructure improvements would not be extensive.
- 2) Under Option B of the RHNA Alternative, an inconsistency with the County's Housing Element would result, and the findings associated with the Industrial Uses/Business Park Alternative would remain.

3) Neither Option A nor Option B would include development of a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

For the reasons stated above, the Board finds the RHNA Transfer Alternatives to be infeasible and rejects it as a viable alternative to the Developers Revised Proposal.

**SECTION 13. Statement of Overriding Considerations.**

In approving the Developers Revised Proposal, the Board makes the following Statement of Overriding Considerations in support of its findings on the FEIR. The Board has considered the information contained in the FEIR (the 2009 DEIR and Supplement to the 2009 DEIR, and Comments and Responses to those documents, Supplemental Environmental Assessment, and all other public comments, responses to comments, and accompanying technical memoranda and staff reports included in the public record between February 21, 2012 through \_\_\_\_\_, 2012).

The Board has carefully balanced the benefits of the Developers Revised Proposal against any adverse impacts identified in the FEIR that could not be feasibly mitigated to a level of insignificance and determines that several of the unavoidable impacts would occur regardless of the alternative that is adopted and implemented at the Napa Pipe site. For example:

Impact TRA-19 is considered significant and unavoidable because development on the site would contribute to increased traffic volumes and congestion in the region. Yet no matter what is developed on the Napa Pipe site, this congestion is expected to occur.

Impact AQ-1 is only considered significant and unavoidable because the BAAQMD's Clean Air Plan is based on the County's current general plan and the project would require a general plan amendment.

Impact GHG-1 is considered significant and unavoidable because development on the site would make it more difficult for the County to achieve the policy goals of AB 32 and the County's General Plan. If the project's emissions were compared to the BAAQMD's significance threshold of 4.6 metric tons per capita per year, its impacts would be considered less than significant.

Notwithstanding the identification and analysis of impacts that are identified in the FEIR as being significant and which have not been eliminated, lessened or mitigated to a level of insignificance, the Board, acting pursuant to CEQA Guidelines Section 15092 and 15093, hereby determines that remaining significant effects on the environment found to be unavoidable in Sections 9 and 10 above, are acceptable due to overriding concerns described herein. Specifically, the benefits of the Developers Revised Proposal outweigh the unmitigated adverse impacts and the Developers Revised Proposal should be approved.

Based on the objectives identified in the FEIR and administrative record, and through extensive public participation, the Board has determined that the Developers Revised Proposal should be approved, and any remaining unmitigated environmental impacts attributable to the Developers Revised Proposal are outweighed by the following specific environmental, economic, fiscal, social, housing and other overriding considerations, each one being a separate and independent basis upon which to approve the Developers Revised Proposal. Substantial evidence in

the record demonstrates the County would derive the following benefits from approval of the Project:

- 1) The Developers Revised Proposal incorporates all feasible mitigation measures to reduce potential environmental impacts to the greatest extent feasible.
- 2) The Developers Revised Proposal would result in the remediation of hazardous materials on the entire Napa Pipe site consistent with a clean-up plan approved by the Regional Water Quality Control Board.
- 3) The Developers Revised Proposal would make a substantial contribution towards meeting the County's Regional Housing Needs Allocation (RHNA), by developing multifamily housing at densities of 20 dwelling units per acre or more, including units that are designated affordable housing categories.
- 4) The Developers Revised Proposal would integrate affordable housing within the market-rate housing development area.
- 5) The Developers Revised Proposal would reduce the pressure for residential development of properties within the County's Agricultural Preserve and the existing neighborhoods of the incorporated Cities by redeveloping County industrial lands as residential.
- 6) The Developers Revised Proposal would locate housing in proximity to jobs to reduce commuting traffic to and from the jobs within a 4-mile radius of the project.
- 7) The Developers Revised Proposal would recycle one of the County's largest urbanized and underutilized properties into a compact walkable neighborhood, promoting walking, biking, transit use and other environmental benefits when compared to traditional residential subdivisions.
- 8) The Developers Revised Proposal would provide river-front access, regional trail connections, and publicly accessible open space to residents and visitors, including regional trail connections if feasible.
- 9) The Developers Revised Proposal would generate more than sufficient revenues through increased property taxes, transient occupancy taxes, and other sources to pay for required services.
- 10) The Developers Revised Proposal would develop a Costco, which is expected to generate significant sales tax revenue, which would be available to fund local services.

Based on the foregoing, the Board believes the Project benefits outlined above override the significant and unavoidable environmental costs associated with the Project and hereby adopts this Statement of Overriding Considerations.

**SECTION 14. Adoption of a Mitigation Monitoring and Reporting Program.**

In accordance with CEQA Guidelines Section 15097, the Board adopts the Mitigation Monitoring and Reporting Program attached as Exhibit "B."

**SECTION 15. Adoption of Water Supply Assessment.**

The Board finds that the Water Supply Assessment (prepared by Brownstein, Hyatt, Farber and Scherk, dated August 2011, and included in Appendix I of the FEIR) complies with the requirements of Public Resources Code section 21151.9 and Water Code sections 10910 et seq., and adopts the same. The Board finds, based on substantial evidence in the record, that there are sufficient water supplies available during normal, single-dry and multiple-dry years during a at least a 20-year projection which will meet the projected water demand associated with the Developers Revised Proposal, in addition to existing and planned uses.

**SECTION 16. Government Code Section 65589.5 Findings.**

By approving the Developers Revised Proposal, the Board is denying the Napa Pipe Project as previously proposed by the project applicant. The applicant's previous proposal, as refined to 2,050 dwelling units, includes 20% of the dwelling units deed restricted as affordable to low and very low income households. In relation to the denial of the applicant's proposal, the Board makes the following findings pursuant to Government Code Section 65589.5(d)(5) and Section 65589.5(j):

Based on substantial evidence in the record:

1. The Board finds that the proposed Napa Pipe Project was inconsistent with both the County's zoning ordinance and General Plan land use designation for the site as of (February 3, 2012), the date the Napa Pipe Project application was deemed complete. On that date, the General Plan Land Use Element designated the site as a "Study Area," permitting only industrial uses (such as warehouses, manufacturing, wineries and food processing facilities, and research and development) and multifamily uses to the extent provided in the Housing Element (304 units) until a development plan was approved and a General Plan amendment adopted. The County's zoning ordinance designated the site "Industrial," permitting only industrial, agricultural, and limited ancillary uses.

The Napa Pipe Project proposal was inconsistent both the County's zoning ordinance and General Plan land use designation on February 3, 2012. The proposed Napa Pipe Project included 2,580 units, a continuing care retirement center, 40,000 sq. ft. of neighborhood-serving retail and restaurants, 50,000 sq. ft. of offices, and a 150-room hotel, all of which were inconsistent with the industrial uses and 304 units permitted by the Study Area designation. Further, these uses were inconsistent with the Industrial zoning district because none were permitted in the Industrial district. The Napa Pipe Project proposal requested a General Plan redesignation of the site from "Study Area" to "Napa Pipe Mixed Use" and a rezoning of the site to a newly created Napa Pipe Zoning District.

2. The Board finds that the County adopted a revised Housing Element on June 23, 2009 in accordance with Government Code Section 65588 (requiring adoption by June 30, 2009). Based on substantial evidence in the record of the Housing Element adoption, the Housing Element

is in substantial compliance with Article 10.6 of Chapter 3, Division 1, Title 7 of the Government Code and has identified an inventory of land that can be developed for housing within the planning period that is sufficient to provide for the County's share of the regional housing need for all income levels pursuant to Government Code Section 65584. (The Napa County Superior Court has upheld the adequacy of the County's Housing Element in a Statement of Decision issued February 1, 2012 in the case of *Latinos Unidos Del Valle De Napa Y Solano, et al. vs. County of Napa, et al.*, NCSC Case No. 26-50568.)

3. The Board finds that approval of the Developers Revised Proposal includes the approval of residences on the portion of the Napa Pipe site that was identified as suitable for lower income housing in the County's Housing Element and permits the 304 units specified in the County's Housing Element.

The Board additionally finds, based on substantial evidence in the record, that the proposed Napa Pipe Project is not a "housing development project" as defined in Government Code Section 65589.5(h)(2), in that the proposed Napa Pipe Project is not a project that consists of residential units only (Section 65589.5(h)(2)(A)), nor is the Napa Pipe Project a mixed-use development where nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or three stories high (Section 65589.5(h)(2)(B)). The proposed Napa Pipe Project includes a 150-room hotel, 50,000 sq. ft. of offices, and 140,000 sq. ft. of research and development, industrial, and warehouse uses (Final EIR Page 3-5), none of which are "neighborhood commercial" uses consisting of small-scale general or specialty stores that furnish goods and services primarily to neighborhood residents (Section 65589.5(h)(2)(B)).

#### **SECTION 17. Recirculation is Not Required.**

In the course of responding to comments received during the public review and comment period on the 2009 DEIR and Supplement to the 2009 DEIR, certain portions of those documents have been modified and some new information amplifying and clarifying information in the 2009 DEIR and Supplement EIR has been added to the Final EIR. Also, as part of the final approval package for the Developers Revised Proposal, the County prepared an analysis of the modifications to the originally proposed contained in the *September 19, 2010 Supplemental Environmental Assessment* ("SEA") and has assessed whether those modifications trigger the thresholds for recirculation as identified in Public Resources Code Section 21092.1 and in Section 15088.5 of the CEQA Guidelines. Recirculation is required under CEQA only when significant new information added to an EIR results in a disclosure showing, in relevant part, that:

- A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(See Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1130 (*Laurel Heights II*).)

The SEA demonstrated that the Developers Revised Proposal adopted by the Board falls within the scope of the 2009 DEIR and Supplement. Adoption and implementation of the Developers Revised Proposal will not result in any significant environmental impacts not identified in the Draft EIR or result in a substantial increase in the severity of a significant environmental impact identified in the 2009 DEIR and Supplement that cannot be mitigated to a less-than-significant level. There are no substantial changes in the Project as modified or the circumstances under which the Project as modified is being undertaken that necessitate revisions of the 2009 DEIR and Supplement than the significant new information analyzed in the Supplement, and no other significant new information has become available. “Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” (CEQA Guidelines 15088.5(b).) The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.)

Notably, CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) Thus, none of these changes involves “significant new information” triggering recirculation because the changes did not result in any new significant environmental effects or any substantial increase in the severity of any previously identified significant effects that could not be mitigated to a less-than-significant level, or otherwise trigger recirculation. Instead, the modifications were either environmentally benign or environmentally neutral, and thus represent the kinds of changes that commonly occur as the environmental review process works towards its conclusion. The Board of Supervisors hereby determines, based on the standards provided in Public Resources Code Section 21092.1 and Section 15088.5 of the CEQA Guidelines, that recirculation of the 2009 DEIR and Supplement is not required prior to adoption of the Developers Revised Proposal.

#### **SECTION 18. Record of Proceedings.**

The environmental analysis provided in the 2009 DEIR, Supplement to the 2009 DEIR, the Final EIR and the Findings provided herein are based on and are supported by the following document, materials and other evidence, which constitute the Administrative Record for the Developers Revised Proposal:

- 1) The NOP, comments received on the NOP and all other public notices issued by the County in relation to the Napa Pipe EIR (e.g., Notice of Availability).
- 2) The 2009 DEIR and Supplement to the 2009 DEIR, and associated appendices to those documents and technical materials cited in those documents.
- 3) The Final EIR, including comment letters, oral testimony, changes to the text of the 2009 DEIR and Supplement, technical materials cited in the document, responses to comments, as

well as all of the comments and staff responses entered into the record orally and in writing between February 21, 2012 and \_\_\_\_\_, 2012, as well as accompanying technical memos or evidence entered into the record.

4) All non-draft and/or non-confidential reports and memoranda prepared by the County and consultants related to the EIR, its analysis and findings.

5) All findings and resolutions adopted by the Board in connection with the Project and all documents cited or referred to therein.

6) Minutes and transcripts of the discussions regarding the Project and/or Project components at public hearings or scoping meetings held by the Planning Commission and the Board of Supervisors.

7) Staff reports associated with Planning Commission and Board Meetings on the Napa Pipe Project and supporting technical memoranda.

8) Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

**SECTION 19.**            **Location and Custodian of Records.**

The documents and other materials that constitute the record of proceedings on which the Board's findings regarding the mitigation measures and statement of overriding considerations are based are located at the office and in the custody of the Napa County Department of Conservation, Development and Planning, at 1195 Third Street, Suite 210, Napa, California. The location and custodian of these documents is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 Cal. Code of Regulations section 15091(e).

**SECTION 20.**            **Adoption of Conforming Amendments to the General Plan.**

The Board hereby adopts the Conforming Amendments to the Napa County General Plan as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

**SECTION 21.**            **Filing Notice of Determination.**

The Board hereby directs the Conservation, Development and Planning Department to file a Notice of Determination regarding the proposed Project within five business days of adoption of this Resolution.

**SECTION 22.**            **Effective Date.**

This resolution shall take effect immediately upon its adoption.



The foregoing resolution was read, considered, and adopted at a regular meeting of the Board of Supervisors of the County of Napa, State of California, on the \_\_\_\_ day of

\_\_\_\_\_, 2012, by the following vote:

AYES: SUPERVISORS \_\_\_\_\_

NOES: SUPERVISORS \_\_\_\_\_

ABSENT: SUPERVISORS \_\_\_\_\_

KEITH CALDWELL, Chairman  
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

Attachments: Exhibit A - Conforming Amendments to the General Plan  
Exhibit B - Mitigation and Monitoring Reporting Program

cc\D\PL\Napa Pipe\DevelopersRevisedProposal\Reso BOS CEQA Findings(10.3.12)

**APPROVED AS TO FORM**  
Office of County Counsel  
By: (by e-signature)  
Deputy County Counsel  
Date:

**APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS**  
Date:  
Processed by:  
\_\_\_\_\_  
Deputy Clerk of the Board

## EXHIBIT A

The text and illustrations in the existing Napa County General Plan are amended as shown below via tracked changes.

### A. INTRODUCTION AND SUMMARY

1. p. SV-2, revise the first bullet about the 2008 General Plan Update to read as follows:
  - Re-designated about 230 acres of Industrial land immediately south of the City of Napa as a “Study Area,” indicating the need for additional study to determine the appropriateness of the area for nonindustrial uses. (Approximately ~~20~~ 135 acres ~~at the Napa Pipe site~~ were subsequently ~~identified as a housing site in the 2009 Housing Element Update~~ re-designated Napa Pipe Mixed Use.)

2. p. SV-5 – Modify the last paragraph under the “Housing Element” heading to read as follows:

The 2004 Housing Element Update provided the information and analysis required by statute, identified 14 sites that were zoned for high density multi-family housing, and memorialized agreements with the cities of Napa and American Canyon whereby the two cities accepted some of the County’s state-mandated housing requirements in exchange for annexations and/or other considerations. The Housing Element was the only element that was not updated in the course of the 2008 General Plan Update, and was instead updated in 2009. The 2009 Housing Element Update eliminated three of the sites identified for high density housing in the prior version, and instead identified 20 acres of the approximately 150-acre Napa Pipe site as a location for high-density housing. Subsequent amendments to the Agricultural Preservation & Land Use Element identified a portion of the Napa Pipe site property as the location for high-density housing consistent with the Napa Pipe Mixed Use designation.

### B. AGRICULTURAL PRESERVATION & LAND USE ELEMENT

1. p. AG/LU-2 – Revise the table of contents to reference the Napa Pipe Mixed Use policies.
2. p. AG/LU-18 – Revise Policy AG/LU-25 to read as follows:

The County opposes the creation of new special districts planned to accommodate new residential developments outside existing urbanized areas, except as specified in the Housing Element or as permitted within the Napa Pipe Mixed Use designation.

3. p. AG/LU-21 – Revise the heading preceding Policy AG/LU-36 to read as follows:

COMMERCIAL, INDUSTRIAL, NAPA PIPE MIXED USE, AND STUDY AREA  
LAND USE POLICIES

4. p. AG/LU-21 – Add a new Policy AG/LU-41 as follows:

Notwithstanding any other standard to the contrary, the following standards shall apply to lands designated as Napa Pipe Mixed Use on the Land Use Map of this General Plan. Lands designated Napa Pipe Mixed Use are identified as Assessor’s Parcel Numbers

046-412-005 and 046-412-005, with the exception of a 19 acre area within Assessor's Parcel Number 046-400-030, which is designated Study Area.

- a) Intent: The designation provides for flexibility in the development of land, allowing either industrial, or commercial and residential uses. This designation is intended to be applied only to the Napa Pipe site in the unincorporated area south of the city of Napa where sufficient infrastructure may be available or readily constructed to support this type of development.
- b) General Uses: Uses allowed in the Urban Residential, Commercial, and Industrial land use categories may be permitted. Office, open space and recreational uses may also be permitted as principal uses.
- c) Minimum Parcel Size: Parcel sizes shall be as set forth in an approved development plan for the Napa Pipe Mixed Use designation, provided that the County shall allow 202 owner-occupied or rental units by right pursuant to Housing Element Program H-4e.
- d) Maximum Residential Density: No more than 700 total dwelling units (945 with state required density bonus) shall be allowed within the Napa Pipe Mixed Use designation, with an estimated population of 1,540 (or 2,079) persons.
- e) Maximum Non-Residential Building Density: No more than a total gross floor area of 319,000 gross square feet of enclosed non-residential uses shall be allowed east of the railroad track within the Napa Pipe Mixed Use designation. No more than 50,000 square feet of enclosed non-residential uses shall be allowed west of the railroad track within the Napa Pipe Mixed Use designation. In addition, on the parcel west of the railroad track, one hotel with no more than 150 suites and associated uses such as meeting space and spa, and up to 150 total units within continuing care retirement and assisted living or similar special use facilities for seniors shall be permitted, and shall not be included in the calculation of total gross floor area or total dwelling units.

5. p. AG/LU-28 – Revise Policy AG/LU-52 as follows:

The following standards shall apply to lands designated as Study Area on the Land Use Map of this General Plan.

**Intent:** This designation allows industrial uses to continue pursuant to existing zoning, but signals the need for further site- or area-specific planning to assess the potential for a mix of uses in this area, ~~including multi-family housing. Zoning to allow multi-family housing shall be permitted in this designation only to the extent provided for in the Housing Element until further planning and amendment of this section of the General Plan is undertaken to revise the list of permitted uses, densities, and intensities provided below.~~ The Study Area designation is intended to be applied only to the portion of the Napa Pipe site that is not designated Napa Pipe Mixed Use and to the Boca/Pacific Coast parcels in the unincorporated area south of the City of Napa, where sufficient infrastructure may be available to support mixed-use development.

**General Uses:** All uses allowed in the Industrial land use category may be permitted. ~~(Multi-family housing is permitted on sites identified in the Housing Element.)~~

**Minimum Parcel Size:** Parcel sizes shall be as established for the Industrial designation, ~~except on sites identified for multifamily housing in the Housing Element, where no minimum parcel sizes shall apply.~~

**Maximum Minimum Building Density:** Maximum building intensity shall be as established for the Industrial designation. ~~(Multi-family housing shall be permitted at a density of 20 dwelling units per acre on sites identified in the Housing Element.)~~

6. p. AG/LU-52 – Amend the map of South County Industrial Areas to show the new Napa Pipe Mixed-Use designation at Napa Pipe (except on the portion that remains Study Area).
7. p. AG/LU-53 – Modify the paragraph about the Napa Pipe Property as follows:

Napa Pipe Property – Napa Pipe is ~~located on~~ an approximately 150-acre site that ~~was purchased by new owners who filed and application is proposed~~ for a mixed-use development with a substantial residential component, including affordable housing. ~~Current tenants on the Napa Pipe site are principally involved in storage, distribution, and light assembly, and there are few heavy industrial users.~~ Napa Pipe is subject to airport overflights and is bordered by the Napa River, wetlands, and the Napa Valley Corporate Park (in the City of Napa). The site is accessible via Kaiser Road and Napa Valley Corporate Drive.
8. p. AG/LU-66 – Modify Table AG/LU-B General Plan & Zoning: For Use in Considering Changes in Zoning, to include the Napa Pipe Mixed Use designation with the following corresponding zoning designations: Napa Pipe Mixed Use Residential Waterfront, Napa Pipe Industrial/Business Park Waterfront, Napa Pipe Industrial/Business Park, and Industrial.
9. p. AG/LU-67 of the General Plan (Figure Ag/LU-3: Land Use Map), show the Napa Pipe Mixed Use designation at Napa Pipe (except on the portion that remains Study Area) and adjust the boundaries of incorporated cities to reflect any annexations that have occurred since the last time the map was revised.