FINAL

ENVIRONMENTAL IMPACT REPORT

THE INSTITUTE GOLF COURSE

City of Morgan Hill

May 2004

INTRODUCTION

This document, together with the Revised Draft Environmental Impact Report (RDEIR), constitutes the Final Environmental Impact Report (FEIR) for the proposed Institute Golf Course in Morgan Hill, California. The RDEIR was circulated to affected public agencies and interested parties for a 45-day review period. This document includes comments received by the Lead Agency, the City of Morgan Hill, on the RDEIR, responses to those comments, and revisions to the text of the RDEIR.

Purpose of the Final EIR

In conformance with the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR can be used by the City and Responsible Agencies in making decisions regarding the project. The CEQA Guidelines require that, while the information in the FEIR does not control an agency's ultimate discretion on the project, when approving the project the agency must respond to each significant effect identified in the RDEIR by making written findings for each of those effects. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which will 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, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technical, or other benefits of the project outweigh the significant effects on the environment.

Availability of Documents

All documents referenced in this EIR are available for public review in the office of the Planning Department, in Morgan Hill, California, on weekdays during normal business hours.

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I. LIST OF AGENCIES AND INDIVIDUALS WHO RECEIVED THE RECIRCULATED DRAFT EIR

Office of Planning & Research State Clearing House P.O. Box 3044 Sacramento, CA 95812-3044	Bay Area Air Quality Management Board 939 Ellis Street San Francisco, CA 94109
Mr. Ed Wylie U.S Army Corp of Engineers San Francisco District 333 Market St San Francisco, CA 94105-2197	Mr. Craig Breon Santa Clara Valley Audubon Society 22221 McClellan Rd. Cupertino, CA 95014
Mr. Steve Kinsella Gavilan College 5055 Santa Teresa Blvd. Gilroy, CA 95020	Mr. Michael Murdter, Director Santa Clara County Roads and Airports Department 101 Skyport Drive San Jose, CA 95110
Santa Clara Valley Transportation Authority Congestion Management Program 3331 North First Street San Jose, CA 95134-1906	City of Gilroy Planning Department 7351 Rosanna Street Gilroy, CA 95020
Santa Clara County Planning Department 70 West Hedding Street, East Wing, 7th Floor San Jose, CA 95110	City of San Jose Planning Department 801 North First Street City Hall Annex Rm 400 San Jose, CA 95110
Ms. Yvonne Arroyo Community Projects Review Unit Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118-3686	Mr. David Marzouk, Land Agent Land Rights Office Pacific Gas and Electric Company 111 Almaden Boulevard, Room 814 San Jose, CA 95113
Ms. Martha Schauss, Associate Wildlife Biologist California Department of Fish and Game P.O. Box 459 Gilroy, CA 95021	Ms. Kimberly Gonzalez State of California Regional Water Quality Control Board / Central Coast Region 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401-7906
Morgan Hill Public Library 17575 Peak Avenue Morgan Hill, CA 95037	Morgan Hill Unified School District 15600 Concord Circle Morgan Hill, CA 95037

Deputy Chief Dirk Mattern Santa Clara County Fire Department 14700 Winchester Blvd. Los Gatos, CA 95030	State of California Division of Forestry 15670 Monterey Road Morgan Hill, CA 95037
Mr. Dan Buford U.S. Fish & Wildlife Service Federal Building 2800 Cottage Way, Room W-2606 Sacramento, CA 95825-1846	Mr. Robert W. Floerke California Department of Fish and Game Central Coast Region P.O. Box 47 Yountville, CA 94599
Mr. Brian Schmidt Committee for Green Foothills 3921 East Bayshore Road Palo Alto, CA 94303	Mr. Dave Johnston California Department of Fish and Game 20 Lower Ragsdale Drive, Suite 100 Monterey, CA 93940
Denise and Bruce Matulich 14810 Bartlett Court San Martin, CA 95046	Ms. Annette Zuck 14705 Foothill Avenue San Martin, CA 95046
Mr. Keith R. Anderson South Valley Streams For Tomorrow P.O. Box 1409 San Martin, CA 95046	Mr. Steve Sorenson The Institute LLC 14830 Foothill Avenue Morgan Hill, CA 95037
Mr. Randall Long RCL Ecology 329 Mt. Palomar Place Clayton, CA 94517	Mr. Leonard Sabatini Frey's Electronics 600 East Brokaw Road San Jose, CA 95112

II. LIST OF AGENCIES AND INDIVIDUALS COMMENTING ON THE RECIRCULATED DRAFT EIR

Below is a list of agencies, organizations, and individuals commenting on the Draft EIR. The table below also identifies the date of the letter email received, the date on which the letter or email arrived at the Office of the Morgan Hill Planning Department, and whether the comments submitted require substantive responses in the Final EIR. Comments that raise questions regarding the adequacy of the EIR or analyses in the EIR, or which provide information about the environmental impacts or analyses, require substantive responses. Comments that contain only opinions regarding the proposed project do not require substantive responses. Complete copies of all of the letters and emails are included in Appendix A of this Final EIR.

Letters Z through AH on the list below contain only opinions on the proposed project itself. They do not raise any issues related to the EIR or to the environmental analysis. As indicated, copies of these letters are attached in Appendix A, but no response is provided.

Comment Received From	Date of Comment	Date Received	Response Required?
Public Agencies			
Federal Government Agencies			
A. Department of the Army/Corps of Engineers	1/30/04	2/2/04	Yes
B. Department of the Interior/Fish & Wildlife Service	2/4/04	2/5/04	Yes
State Government Agencies			
C. Department of Transportation	1/22/04	1/26/04	Yes
Regional Government Agencies			
D. California Regional Water Quality Control Board	2/4/04	2/4/04	Yes
E. Santa Clara Valley Water District	2/4/04	2/4/04	Yes
County Government Agencies			
F. Santa Clara County Roads and Airports Department	1/21/04	1/23/04	Yes
G. Santa Clara County Planning Office	2/11/04	2/11/04	Yes
H. Santa Clara County Parks and Recreation Department	2/13/04	2/13/04	Yes
Public Utilities			
I. Pacific Gas & Electric Company	2/4/04	2/4/04	Yes

Comment Received From		Date of Comment	Date Received	Response Required?
Organizations				
J.	South Valley Streams for Tomorrow	1/29/04	1/30/04	Yes
K.	San Martin Neighborhood Alliance	2/3/04	2/4/04	Yes
L.	California Native Plant Society	2/4/04	2/4/04	Yes
M.	Committee for Green Foothills/Santa Clara Valley Audubon Society	undated	2/4/04	Yes
Individuals and Companies				
N.	Sheila Flodberg	1/30/04	2/2/04	Yes
O.	Annette Zuck/Eric Sjoberg	2/3/04	2/3/04	Yes
P.	Kenneth Brown	2/2/04	2/4/04	Yes
Q.	Kevin McCurley	2/3/04	2/3/04	Yes
R.	Peter Keesling, DVM	2/3/04	2/4/04	Yes
S.	Robert J. Benich	2/3/04	2/4/04	Yes
T.	Kenneth M. Harp, CGCS	2/3/04	2/4/04	Yes
U.	Richard & Sue Gamboa	2/4/04	2/4/04	Yes
V.	G. Reid Fisher	2/4/04	2/4/04	Yes
W.	Dawn Peru	2/4/04	2/4/04	Yes
X.	Denise & Bruce Matulich	undated	2/4/04	Yes
Y.	Dana C. Ditmore	2/5/04	2/5/04	Yes
Z.	David Cohen	1/30/04	1/30/04	No
AA.	Bernd Sturmfels	1/30/04	1/30/04	No
BB.	William Duke	1/30/04	1/30/04	No
CC.	Mary Smathers	1/31/04	1/31/04	No
DD.	Jonathan Keating	1/31/04	1/31/04	No
EE.	Steven G. Krantz	2/1/04	2/1/04	No
FF.	Douglas Lind	2/1/04	2/1/04	No
GG.	Mary Jane Grover	2/1/04	2/1/04	No
HH.	Dr. Steve Gonek	2/2/04	2/2/04	No
JJ.	Jeffrey D. Vaaler	2/2/04	2/2/04	No
KK.	Robert E. Megginson	2/2/04	2/2/04	No
LL.	Carolyn S. Gordon	2/2/04	2/2/04	No
MM.	William Jaco	2/2/04	2/2/04	No
NN.	Jeff Hawkins	2/2/04	2/2/04	No
OO.	Stephen E. Fienberg	2/2/04	2/2/04	No
PP.	Sharon Sousa	2/2/04	2/2/04	No
RR.	Michelle Helvey	2/2/04	2/2/04	No
SS.	Richard Schoen	2/2/04	2/2/04	No
TT.	Andrew Granville	2/2/04	2/2/04	No
UU.	Roger Heath-Brown	2/2/04	2/2/04	No

Comment Received From	Date of Comment	Date Received	Response Required?
VV. Ronald Graham	2/2/04	2/2/04	No
WW. Bruno A. Olshausen	2/3/04	2/3/04	No
XX Brad Jones	2/3/04	2/3/04	No
YY. Donald Richards	2/3/04	2/3/04	No
ZZ. Jeffrey D. Adams	2/3/04	2/3/04	No
AB. Dinakar Ramakrishnan	2/3/04	2/3/04	No
AC. Trevor Wooley	2/3/04	2/3/04	No
AD. Dale Shipley	2/3/04	2/3/04	No
AE. Dr. Francis E. Su	2/3/04	2/3/04	No
AF. Brian Conrey	2/4/04	2/4/04	No
AG. Drs. Kevin and Pamela Stuart	2/4/04	2/4/04	No
AH. Reed Smith	2/3/04	2/3/04	Yes
Project Proponent			
AI. The Institute LLC	1/29/04	2/4/04	Yes

III. RESPONSES TO COMMENTS RECEIVED ON THE RECIRCULATED DRAFT EIR

This section includes all of the comments contained in letters received during the 45-day review period advertised for this RDEIR and responses to those comments. The comments are organized under headings containing the source of the letter and its date. The letters have been grouped into the following categories:

- Public Agencies
- Organizations
- Public Utility
- Individuals and Businesses

The specific comments from the letters are presented as "Comment" with each response directly following. Copies of the actual letters received are found in their entirety, with any attachments that was included with the letter, in Appendix A of this Final EIR.

The CEQA Guidelines, in §15086, require that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this Final EIR lists all of the recipients of the RDEIR.

Comment letters were received from eight public agencies, four of whom may be Responsible Agencies for the proposed project or Trustee Agencies for resources impacted by the project. The CEQA Guidelines require that:

> A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

The RDEIR lists (on page 16) the public agencies that may have permitting or other authority for some aspect of this project.

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state:

> Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate readily available guidelines or reference documents concerning mitigation measures. If the responsible agency or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

A. RESPONSES TO LETTER FROM DEPARTMENT OF THE ARMY RECEIVED FEBRUARY 2, 2004:

COMMENT A-1: This letter is in response to a request for comments on the Revised Draft Environmental Impact Report (RDEIR) for the Institute Golf Course that was received on December 19, 2003 by a notice from City of Morgan Hill Community Development Department dated December 18, 2003. Your course is located at 14830 Foothill Avenue near Corralitos Creek in the City of Morgan Hill, Santa Clara County, California.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

While the proposed work for the renovation of the existing restaurant building and other structures on site, as presented in the RDEIR, does not appears to be within a water of the U.S., any future construction activity or course modifications/maintenance within Corps jurisdiction may require a permit. It is the recommendation of the Corps that the Institute Golf Course obtain a Jurisdictional Determination verified and endorsed by the Corps, based on Appendix C-I of the RDEIR, to determine what areas of the property might require future permit applications.

In addition, we are aware that there may be endangered or protected plant and animal species on the course. Any work or construction that might impact these area, including those waters not found to be under the jurisdiction of the Corp of Engineers, will need to be coordinated through the appropriate state and federal agencies.

Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the File Number at the top of this letter into Item No. 1. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your work, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

If an individual permit is required, it will be necessary for you to demonstrate to the Corps that your proposed fill is necessary because there are no practicable alternatives, as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines. A copy is enclosed to aid you in preparation of this alternative analysis.

RESPONSE A-1: The Corps' recommendation that a jurisdictional determination be obtained prior to any further grading or construction is acknowledged. The proposed text revisions (Section IV of this Final EIR) reflect this recommendation. Since the project does not presently include a proposal to have a jurisdictional determination made on the property, the requirement may be included as a condition of approval by the City of Morgan Hill.

B. RESPONSES TO COMMENTS FROM THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, RECEIVED FEBRUARY 5, 2004:

COMMENT B-1: The U.S. Fish and Wildlife Service (Service) has reviewed the Revised Draft (Environmental Impact Report (RDEIR) for the Institute Golf Course, which was released -for review in December 2003. The Service obtained the revised DEIR from the City of Morgan Hill's web site on January 29, 2003. The RDEIR addresses activities completed without environmental review, including the 1997 reconstruction of the pre-existing 9-hole golf course to an 18-hole course and the renovation of the existing restaurant onsite. The RDEIR also addresses the continued operation and maintenance of the golf course. The RDEIR indicates which avoidance and minimization measures the applicant has committed to implementing to conserve sensitive species and habitats. In making these comments, we assume that all measures described in the RDEIR under Mitigation Measures Not Currently Incorporated Into the Proposed Project will, in fact, be incorporated into the project description.

RESPONSE B-1: As reflected in the letter from the project proponent included as Subsection II.AI. in this Final EIR, the project proponent has not, at this time agreed to implement all of the mitigation measures necessary to reduce project impacts to less than significant (and identified in the RDEIR as "Mitigation Measures Not Currently Incorporated Into the Proposed Project".) The City may make the "Mitigation Measures Not Currently Incorporated Into the Proposed Project" part of the Conditions of Approval" for the project.

A point of clarification – the restaurant building which presently exists on the subject site has not yet been renovated, and is presently proposed for demolition and replacement with a structure of similar size.

COMMENT B-2: We believe the reconstruction of the Institute Golf Course in 1997 resulted in take of the threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog) and endangered bay checkerspot butterfly (*Euphydryas editha bayensis*) and damage or destruction of many federally listed plants including Tiburon paintbrush (Castilleja affinis ssp. neglecta), coyote cealaotlaus (*Ceanothus ferrisae*), Santa Clara Valley dudleya (*Dudleya setchellii*), and Metcalf Canyon jewelflower (*Streptanthus albidus ssp. albidus*), in violation of section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). In addition, reconstruction likely resulted in damage or destruction of red-legged frog habitat. We believe 1997 reconstruction also resulted in impacts to the California tiger salamander (*Ambystoma californiense*) (tiger salamander), which is proposed for listing as threatened.

Section 9 of the Act prohibits "take" of listed fish and wildlife without a special exemption. The term "take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to a listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Although take of listed plants is not prohibited, section 9(2)(b) of the Act prohibits damage or destruction of listed plants in knowing violation of any law or regulation of any state.

RESPONSE B-2: The Service's opinions as to the species that were harmed by the work on the project site is incorporated into the EIR text in Section IV, Revisions to the Text of the Draft EIR (shown as revisions to text on RDEIR pages 107 and 110).

COMMENT B-3: In an August 9, 2002, telephone conversation with the City, we stated that we would exercise our prosecutorial discretion and not pursue a law enforcement action against the golf course if we concluded the impacts to listed species were adequately addressed by the applicant. We also stated that we would attempt to address resolution of this potential violation during the CEQA process.

The Service, in a letter dated April 4, 2003, provided initial comments to the City of Morgan Hill on the first draft of the Environmental Impact Report. On July 15, 2003, the Service sent a letter to the City of Morgan Hill clarifying both the off-site and on-site mitigation measures and agreements that had been reached between the applicant and the Service.

RESPONSE B-3: A copy of the July 15th letter is included in the RDEIR as Appendix C-6. Per Section 15088.5(f)(1) of the CEQA Guidelines, no individual response was provided to the April 4th letter from the service, or to other letters commenting on the previous DEIR.

COMMENT B-4: The Service has reviewed the RDEIR and is submitting the following comments:

1) The project proponent's proposed mitigation measures, taken alone, fall short of adequately addressing project related impacts to California red-legged frogs and bay checkerspot butterfly.

2) Red-legged Frog Mitigation Measure Package I adequately addresses impacts to redlegged frogs from the project and provides protection of red-legged frog habitat in perpetuity. The Service supports this package. However, Red-legged Frog Mitigation Measure Package II does not adequately compensate for the loss of California redlegged frog habitat. Though more on-site habitat would be preserved in this package than in Package I, the need still exists to preserve off-site red-legged frog habitat in perpetuity. At no time, has the Service stated that the creation and preservation of onsite habitat alone would sufficiently address adverse impacts to California-red legged frogs.

RESPONSE B-4: The opinion expressed in this comment is acknowledged.

The mitigation scenario identified as "Red-legged Frog Mitigation Measure Package II" has not been proposed by the project proponent, and is similar to the mitigation program discussed in the DEIR circulated previously for this project. The consulting biologists believe that the size of the population of Red-legged Frogs found on this site indicate the population could survive at this location if adequately protected from adverse impacts associated with operating and maintaining the golf course. Red-legged Frog Mitigation Measure Package II includes measures to protect the Red-legged Frogs from impacts associated with the golf course.

The RDEIR states that either Mitigation Package I (which includes the off-site habitat identified in the draft USFWS agreement) or Mitigation Package II will fully mitigate project impacts to Red-legged frogs.

While the project proponent has indicated (in Subsection II.AI. of this Final EIR) that they are prepared to implement the recommended USFWS mitigation program , the City of Morgan Hill had not, as of the date of preparation of this Final EIR, received a copy of a signed agreement to do so. Therefore, to date it is unknown what the exact agreement between the USFWS and the project proponent will be or if there will be one.

COMMENT B-5: 3) The RDEIR does not analyze project related impacts to the federally endangered bay checkerspot butterfly, *Euphydryas editha bayensis*. Bay checkerspot butterflies are found in association with serpentine soil habitats. Though bay checkerspot butterflies are not likely to be present on the project site now, suitable habitat for this species probably existed on the site prior to grading and impacts to this species habitat should be disclosed in the EIR.

RESPONSE B-5: The RDEIR reflects the belief of the Trustee Agencies, and the consulting biologists that assisted the City in preparing the RDEIR, that serpentine habitat existed on the site and was destroyed by construction of the existing golf course (see page 107 *et seq* of the RDEIR). More than just the presence of serpentine habitat is necessary for a viable population of bay checkerspot butterfly to survive. The previous uses on the site and the lack of specific knowledge as to the conditions that may have existed there at the time the golf course was constructed limit the biologists' ability to conclude that the golf course construction impacted bay checkerspot butterflies. The text amendments in Section IV of this Final EIR reflect that the butterfly may have been present on the site.

COMMENT B-6: 4) In our April 4, 2003, letter the Service recommended that mechanized equipment used to maintain the grounds should only be used during the daylight hours, This measure was previously proposed by the applicant in the Habitat Improvement Plan, dated July, 2002. Though the RDEIR states, on page 43, that individual red-legged frogs (and California tiger salamanders) could be destroyed as a result of the operation of vehicles or by foot traffic particularly at night (as well as early morning and late evening), the Service has been unable to find a mitigation measure in the RDEIR which would restrict the use of mechanized equipment to daytime hours. We encourage the inclusion of this protective measure in the final EIR.

RESPONSE B-6: The restriction on mechanized equipment was inadvertently omitted from the RDEIR. While it is not clear at this time whether the restriction is still proposed by the project proponent part of the proposed project, it is included as part of both mitigation packages in the Text Revisions in Section IV of this Final EIR.

COMMENT B-7: 5) In our April 4, 2003, letter the Service also recommended that annual surveys for redlegged frogs and tiger salamanders be conducted for five consecutive years to determine whether protection and restoration measures have been effective. This monitoring has not been proposed as mitigation in the RDEIR.

RESPONSE B-7: Monitoring of the mitigation program would not itself provide mitigation. The monitoring and reporting requirements for this project must be reflected in the Mitigation and Monitoring Plan adopted by the City prior to approving the project. Language has been added in the text revisions proposed in this Final EIR to reflect the need for such monitoring.

COMMENT B-8: 6) The discussion of special status plant (serpentine soil) habitat loss should be moved from the secondary impacts section (page 107) to the direct impacts section. Serpentine habitat was lost as a direct result of grading activities; this is not an indirect (secondary) effect.

RESPONSE B-8: This comment is not consistent with the requirements of the California Environmental Quality Act. The RDEIR identifies direct impacts that would affect existing conditions and secondary impacts that would occur in the City does not require the project proponent to restore conditions that existed on the site prior to construction. As discussed on page 4 of the Draft EIR,

> "CEQA requires that an EIR evaluate the impacts that a project would have on physical conditions that exist "...at the time environmental analysis is commenced." [Section 15126.2 of the CEQA Guidelines]"

The on-site serpentine habitat is gone, and was gone prior to the preparation of the report on the biological resources in Appendix C of the RDEIR. The absence of serpentine habitat is therefore the "existing condition" against which direct project impacts can be measured. As stated on the same page of the RDEIR, CEQA only applies to physical impacts that could occur as a result of governmental action.

If the City of Morgan Hill chooses to not approve the project as proposed, the land owner could be required to return the land to the condition it was in prior to the illegal grading, including restoration of the serpentine habitat to the extent that can be accomplished. The RDEIR section entitled Secondary Impacts (beginning on page 107) therefore evaluates the secondary effects that would occur if the City approves the proposed project and declines to require that previously existing conditions, including serpentine habitat, be restored.

COMMENT B-9: In summary, we recommend that the City of Morgan Hill incorporate into the EIR the comments the Service provided in our letters dated April 4, 2003 and July 15, 2003, and the new comments provided above. In addition, we strongly encourage the City of Morgan Hill to choose the California Red-legged Frog Mitigation Measure Package I. Mitigation Measure Package II does not provide adequate compensation for the loss of red-legged frog habitat, nor does it provide for the protection of habitat in perpetuity. The Service also encourages the City of Morgan Hill to adopt all other mitigation measures that were proposed in the DEIR that are not presently incorporated into the proposed project.

RESPONSE B-9: The July 15, 2003 letter is in Appendix C-6 of the RDEIR. The April 4, 2003 letter was commenting on the previously circulated DEIR, which was superseded by the current RDEIR. As stated on page IV of the RDEIR, the City requested that new comments be submitted. The RDEIR states that either

Mitigation package I or Mitigation Package II will fully mitigate the project impacts to the California red-legged frog, California tiger salamander, or western pond turtle. Additional changes to the EIR text have been made, as reflected in individual responses to comments above. The recommendations relative to the two mitigation programs are acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

C. RESPONSES TO LETTER FROM CALIFORNIA DEPARTMENT OF TRANSPORTATION, RECEIVED JANUARY 26, 2004:

COMMENT C-1: Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the revised DEIR and have the following comments.

1. Section D. Hydrology and Water Quality and Appendix D. Hydrology, Water Quality and Water Supply, Pages 60-62: indicate that there are several shortcomings on the Hydrology/ Hydraulics Analysis of the project under preproject and post-project conditions. The report also indicates that the peak runoff, to the Foothill Avenue drainage and southerly to San Martin Creek, will increase after project development due to re-configuration of the on-site drainage patterns. The increased runoff from the project will exacerbate previous flooding conditions in this downstream area causing more frequent flooding problems. This may also affect the flow on Llagas Creek, which flows parallel to and just east of Route 101 downstream of San Martin Creek. U.S. 101 and S.R. 25 right of way are downstream of the development site. The proposed project development has the possibility of increasing flooding of the adjacent State facilities. A revised Hydrology and Hydraulics Analysis should be submitted by the developer to the Santa Clara Valley Water District (SCVWD) and the City of Morgan Hill for their review and approval. The Department suggests that the analysis include the effects on the flows to Llagas Creek, which may affect the flooding of State facilities. The Department also requests that a copy of the SCVWD and the City of Morgan Hill's review, comments and approval of the analysis and the proposed project be submitted for our review.

RESPONSE C-1: The RDEIR does not indicate that peak runoff from the project site has increased compared to preproject conditions. There have been substantial changes in site drainage. The net result of those changes is reflected in the RDEIR statement on page 60 that:

> "The conversion of the site to a golf course is estimated to have little effect on the overall rate of storm water runoff from the site as compared to pre-development conditions."

The analysis in this section of the RDEIR goes on to explain that the site's drainage has been modified to divert some of the site runoff from Corralitos Creek, which runs through the golf course, into a drainage ditch that runs adjacent to the golf course along Foothill Avenue. The drainage ditch eventually drains to San Martin Creek (page 60 of the RDEIR). While there are localized drainage and flooding impacts associated with this change, both San Martin Creek and Corralitos Creek ultimately drain to Llagas Creek (see Existing Setting discussion on page 54 of the RDEIR). The quantity of runoff to Llagas Creek would not, therefore, be substantially altered by the on-site changes made in constructing the golf course.

The impact statement at the bottom of page 62 of the RDEIR has been revised to clarify the impact of the redirected runoff. The revisions are included in Section IV of this Final EIR.

COMMENT C-2: 2. Pages 72-79, Mitigation and Avoidance Measures, Mitigation Measures not presently incorporated into the proposed project: The Department requests that

mitigation efforts be made to redesign the golf course drainage system to reduce the peak runoff flows to levels that are equal to or less than predevelopment conditions; to mitigate soil erosion resulting from construction activity and on-going maintenance of the golf course that may involve excavation, drainage and grading work; and to mitigate non-point source runoff pollutants to protect the water quality in the creeks.

RESPONSE C-2: As with Comment C-1 above, no increased runoff will impact Llagas Creek; the runoff impacts discussed in the RDEIR result from localized redirection of runoff to the San Martin Creek drainage instead of the Corralitos Creek drainage. Both creeks, however, drain to Llagas Creek. The recommendation relative to mitigation of project impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

The mitigation measure at the top of page 73 of the RDEIR has been revised to clarify that it is the redirection of runoff that is resulting in downstream flooding impacts.

COMMENT C-3: 3. Pages 118-119, Cumulative Impacts, Cumulative Increase in Surface Water Runoff Impacts and Water Quality Impacts: The proposed project will result in a significant cumulative impact on surface water runoff and quality. As a downstream property owner this is unacceptable to the Department. The mitigation measures identified in this revised DEIR for surface water runoff and water quality should be incorporated into the proposed project.

RESPONSE C-3: Please see responses C-1 and C-2 regarding increased runoff. The recommendation mitigation of project water quality impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT C-4: 4. Pages 124-125, Reduced Impact On-Site Alternative, Hydrology and Water Quality Impacts: As a downstream property owner, the Department suggests that all of the mitigation elements should be included to reduce Hydrology and Water Quality Impacts.

RESPONSE C-4: The recommendation relative to mitigation of project impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT C-5: 5. Page 128, Significant Unmitigated Impacts, Hydrology and Water Quality: As a downstream property owner, the proposed project's "significant unmitigated impacts" as described on pages 63-71 are unacceptable to the Department.

RESPONSE C-5: The comment is acknowledged. Although not currently proposed, mitigation measures have been identified for all project impacts, except for the cumulative loss of farmland. These "Mitigation Measures Not Currently Incorporated Into the Proposed Project" may be required by the City as "Conditions of Project Approval".

COMMENT C-6: 6. Appendix D, Hydrology, Water Quality and Water Supply: The report should be revised in accordance with final revised calculations and analyses related to surface water

hydrology, ground water, water quality and water supply. Relevant calculations or analyses should be included in the report as attachments. The report should be submitted to the City of Morgan Hill and SCVWD for their approval. Please submit a copy of their approval letter.

The revised draft EIR of the already completed part of the golf course development indicates that the facilities within the state right of way near U.S. 101 may be impacted. The Department requests that the mitigation efforts mentioned above also be implemented for this part of the golf course. We ask that you provide the information stated in these comments for our review. We look forward to receiving the information at least ten days prior to certification of the EIR pursuant to Section 21092.5 (a) of the California Environmental Quality Act (CEQA).

RESPONSE C-6: Any additional information or future project modifications that may affect Caltrans property will be provided to Caltrans. As noted in Response C-1 above, it is not anticipated that the total volume of runoff to Llagas Creek will be increased by the ongoing operation of the golf course. (Please see also responses to comments from the project proponent in Section III.AI.)

D. RESPONSES TO LETTER FROM CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD RECEIVED FEBRUARY 4, 2004:

COMMENT D-1: On December 22, 2003, Central Coast Regional Water Quality Control Board (Regional Board) staff received a copy of the Institute Golf Course Revised Draft Environmental Impact Report (Draft EIR). Regional Board staff has the following comments:

1. Proposed Project - The Regional Board, as a responsible agency, does not support approval of the proposed project. The Draft EIR lists at least twenty-seven significant unmitigated impacts or significant cumulative impacts associated with the proposed project and states a feasible alternative exists (Reduced Impact Alternative) that would avoid or reduce almost all identified impacts in the proposed project to a less than significant level.

2. Reduced Impact Alternative - The Regional Board, as a responsible agency, concurs with the Revised Draft EIR that the Reduced Impact Alternative is a feasible and environmentally superior alternative to the proposed project, as it will avoid or substantially lessen almost all the significant impacts associated with the proposed project and meet the project proponent's objectives.

3. City of Morgan Hill Conditions for Project Approval - Regional Board staff supports many of the City's General Plan Policies, as they parallel our Basin Plan objectives, recommendations, and requirements. The identified Reduced Impact Alternative appears to address many of the City's stated policies. We encourage the City to adopt the Reduced Impact Alternative water quality-related mitigation measures identified in the Draft EIR as conditions for project approval.

RESPONSE D-1: This comment summarizes information that is in the RDEIR, and expresses a recommendation that the City adopt the Reduced Impact Alternative. The comment is acknowledged. No response is required.

COMMENT D-2: 4. Specific Draft EIR Comments - Regional Board staff has the following specific comments about the Draft EIR and Reduced Impact Alternative:

a. Phase II Storm Water Regulations (Draft EIR page 8) - Phase II Storm Water regulations took effect in March 2003. Please make this correction on Draft EIR page 8 and any other references to Phase II commencement.

RESPONSE D-2: The correction is included in Section IV of this Final EIR, Revisions to the Text of the Draft EIR.

COMMENT D-3: b. Water Quality Certification (Draft EIR page 16) - The Draft EIR mentions "Clean Water Certification;" however, the Regional Board does not have such a requirement. Instead, perhaps the Draft EIR should indicate "Section 401 Water Quality Certification."

RESPONSE D-3: The correction has been made to the text in Section IV of this Final EIR.

COMMENT D-4: c. Biotic Habitats Map (Draft EIR page 29) - It is difficult to distinguish between Coast Live Oak Woodland areas and Ruderal/Bare Ground areas on the map due to the similarity of the colors used to represent these two areas. Please consider changing the colors and/or patterns to clearly identify various vegetated areas.

RESPONSE D-4: The graphic has been slightly modified to more clearly distinguish between the two designations. Please see Figure 6 (Revised) in Section IV of this Final EIR.

COMMENT D-5: d. NPDES Permit Requirement,-, (Draft EIR page 70) - Although the Regional Board would likely regulate the subject discharge through enrollment in the General Permit Order No. 01-119, the Regional Board reserves the right to regulate the discharge with a site/discharge-specific permit or other general permit. For clarification, please change the text to specify that the golf course's discharges may be subject to Order 01-119..., another general permit, or a site/discharge-specific permit. The Draft EIR should require the project proponent to apply for a NPDES permit if their golf course is designed to discharge to surface waters.

RESPONSE D-5: The additional language requested has been added to the text in Section IV of this Final EIR. The RDEIR states, in this same paragraph, that the project discharges to Corralitos Creek and a drainage that leads to San Martin Creek. Since the golf course is designed to discharge to surface waters, it is required to apply for an NPDES permit. It is the City of Morgan Hill's understanding (as stated in the previous paragraph on the same page of the RDEIR) that the project proponent has already prepared a SWPPP and is in the process of achieving compliance with NPDES requirements.

COMMENT D-6: e. Fertilizer and Chemical Management Plans - Regional Board staff supports the idea of the project proponent addressing surface water and groundwater quality impacts associated with use of fertilizers and pesticides. However, we would prefer that these issues be addressed together in a single plan (such as a "Golf Course Management Plan") instead of multiple plans as proposed in the Draft EIR. The Plan should be submitted to Regional Board staff for review and comment; however, the Regional Board does not formally 'approve' such documents. The Draft EIR should state that a Plan should be developed, implemented, and sent to the Regional Board for review (and to any other agencies for their review and approval, as appropriate). Regional Board staff may submit comments and/or recommendations and request more information and/or changes to the Plan.

RESPONSE D-6: The RDEIR identifies the need for a single integrated "Chemical Application Management Plan" (CHAMP) to document the use of pesticides, fertilizers and all other chemicals used on the golf course (see page 76 *et. seq.*). The project proponent has also suggested that a single plan is preferable (see Comment AI-31).

Although the Regional Board may not have a formal process for approving the report (as in approving a permit), the RDEIR identifies the need for the Regional Board to be satisfied with the adequacy of the CHAMP. If the Regional Board were to accept regulatory authority for this process, the City of Morgan Hill and the Water District would then only need to be informed of the adequate implementation of the program (see page 78). Language clarifying the need for the Regional Board to concur that the CHAMP is adequate and complete is included in Section IV. If the RWQCB needs changes or additions in order to agree that the CHAMP is adequate, the City will require that the changes or additions be made.

COMMENT D-7: f. Monitoring Requirements - The Draft EIR contains several recommended monitoring programs associated with the Reduced Impact Alternative. Please summarize all recommended water quality monitoring in one table. For example:

Recommended Mitigation Water Quality Monitoring

Water Type	Constituents	Frequency
Supply Water	Nitrates, TKN	At least month
Receiving Water	Nutrients, Pesticides	At least monthly during rainy season
Storm Water Runoff	Nitrates, Ammonia, TKN, TDS, Chemicals	When there is a discharge
Etc...		

RESPONSE D-7: This comment is not clear and may be based on a misunderstanding. The "Reduced Impact On-Site Alternative" (Section V.B. starting on page 123 of the RDEIR) includes all of the "Mitigation Measures Not Currently Incorporated Into the Proposed Project" that can be incorporated on the project site. There are no recommended monitoring programs included in the "Reduced Impact On-site Alternative". The Mitigation, Monitoring, and Reporting Program that must be completed prior to approval of a project will reflect the monitoring that is appropriate to the project that is, ultimately, approved by the City.

COMMENT D-8: 5. Preferred Project - Regional Board staff recommends designation of the Reduced Impact Alternative as the preferred project.

RESPONSE D-8: The recommendation in this comment is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

E. RESPONSES TO LETTER FROM SANTA CLARA VALLEY WATER DISTRICT, RECEIVED ON FEBRUARY 4, 2004:

COMMENT E-1: Message: The Santa Clara Valley Water District (District) has reviewed the Revised Draft Environmental Impact Report (DEIR) for the subject project, received on December 22, 2003. The District has the following comments on the DEIR:

Pages 51,52 and 53 - The District agrees with the proposed "water quality setback" of 50 feet from the centerline of Corrallitos Creek and its tributaries for Red-Legged Frog Mitigation, as well as the proposed mitigations for the Riparian Habitat and recommends that the mitigations proposed by the City's consultant be adopted as part of the final Environmental Impact Report (EIR).

The District recommends that proposed mitigation measures also include: requirements for restoring portions of Corrallitos Creek or its tributaries which were filled in at some time back to their original grades. The Corrallitos Creek Restoration Plan that the applicant has been working on should include and address all the proposed mitigation measures.

RESPONSE E-1: The District's recommendation for inclusion of mitigation measures identified in the RDEIR are acknowledged. The "Corrallitos Creek Restoration Plan", dated April 12, 2004 is currently being reviewed by the USFWS and the City. The Water District is also referred to possible alternative mitigations for reductions in the identified riparian habitat setbacks and for the water quality setbacks which are identified in the text revisions in Section IV of this Final EIR (see revisions proposed for pages 53, 75 and 78 of the RDEIR). This variation would allow the water quality setbacks to be reduced below 50 feet if it can be verified that the surface of the land within 50 feet of the creek channels slopes away from the waterway.

COMMENT E-2: Pages 60, 61, 62 and 73, Offsite Flooding and Drainage Issues - The District's Hydrologic Engineering Unit has reviewed the post construction hydrologic and hydraulic analysis prepared by Mattern & associates, dated May 24, 2002. The analysis was deemed incomplete in addressing the hydrology issues. The report lacked the following:

A clear watershed map showing watershed boundaries, existing hydrology structures, flood inundated areas, pre-development and post development conditions, etc.

Inflow hydrograph, routing, outflow hydrograph, resultant storage, outlet works and spillway, operating procedures manual, and maintenance: and management safety information for each of the ponds.

The HEC-1 input file was not provided and the maps were unclear.

The District recommends that the mitigation measures proposed by the City's consultant be adopted as part of the final EIR. The DEIR should include a timeline of when this issue will be completely addressed (including modifications to the drainage system, if needed), preferably prior to the onset of the next winter Season.

RESPONSE E-2: These comments on the drainage report provided by the project proponent are similar to some of the issues raised in the Draft EIR (pages 61-62). A revised

report prepared by Mattern & Associates was provided to the City of Morgan Hill as part of the project proponents' comments on the RDEIR (see Subsection III.AI. of this Final EIR). A copy of the revised report was also provided to the Water District staff for review and comment.

There is, at this time, no time line proposed for completion of mitigation measures necessary to avoid or reduce project impacts. The EIR must be completed before the City of Morgan Hill can consider approval of the project. If and when the project is approved, a time line will be completed as part of the Mitigation, Monitoring, and Reporting Program. The Water District will be notified if the project is approved, and informed of any conditions of approval that may be required.

COMMENT E-4: Pages 63 and 74, Soil Erosion - The DEIR should also include impacts from and mitigation measures for the existing outfalls into the drainage ditches along Foothill Avenue. The DEIR should address whether adequate energy dissipators were provided to prevent erosion of the drainage swales and consequential deposition of sediment into San Martin Creek.

The DEIR should be revised to reflect that a National Pollutant Discharge Elimination System permit for general construction is required for any land disturbance of more than 1 acre, not 5 acres. Since the entire project has already totaled more than the previously 5 acre requirement, and additional work may be necessary, the project proponent will need to maintain and update their permit accordingly and Storm Water Pollution Prevention Plan.

RESPONSE E-4: The RDEIR identifies that, in order to reduce drainage impacts on the project site to less than significant, the on-site drainage system must be modified to eliminate the outflow pipe from Pond D to the Foothill Avenue drainage (page 73), and a revised drainage analysis for the site must be reviewed and approved by the Water District and the City. Additionally, the RDEIR states that future maintenance must include removal of sediment and maintenance of the various culverts and energy dissipaters that are or will be part of the drainage system (page 74 of the RDEIR).

The text has been modified to reflect the points of clarification about the need for adequate energy dissipaters, and the need for an NPDES permit (see Section IV of this Final EIR).

COMMENT E-5: Pages 74 through 79, Water Quality - The DEIR identified the significant impacts of the lake/pond water on surface water. However, the District believes the water runoff into the unlined lake/pond system is also a concern for groundwater quality by percolation of the take/pond water into the groundwater. Water from the lakes/ponds could contain runoff from parking and maintenance area, nitrates, pesticides and herbicides. The chemicals used to make the lake/pond water clear have the potential to pose a significant impact to groundwater and groundwater quality. Thus, the District recommends that an additional mitigation measure be proposed to line the lakes/ponds with impermeable barriers to prevent the lake/pond water from percolating into the groundwater.

RESPONSE E-5: A recent inspection done by City staff found that all of the ponds have been lined.

COMMENT E-6: Pages 75 and 76, Nitrogen Loading - The DEIR list several mitigation measures proposed by the City's consultant related to Nitrogen loading. The District has comments on the following mitigation measures:

Mitigation Measure—"Annual accounting of nitrogen application rates to the golf course, including both fertilizer applications and nitrogen content of irrigation water." The District believes that the nitrogen content of grass clippings should be accounted as well.

RESPONSE E-6: The project proponent has stated that grass clippings are presently removed from the turf and composted on-site. Language is included in Section IV of this Final EIR to reflect the need to include any clippings left on the course in the nitrogen accounting.

COMMENT E-7: Mitigation Measure---"Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD." Spatial and temporal variability of soil nitrogen is large. Soil quick test procedures may do the job, but in view of the amount of sampling necessary for reliable information, a procedure using large area sampling is better. Tissue sampling rather than soil sampling is indicated. Suggest investigating catching grass clippings from one set of mower blades doing one pass down the fairway, and pulling a sample from the catch. Soil sampling can then be limited to situations where tissue sampling reveals a lack of response to applied fertilizers.

RESPONSE E-7: The mitigation measure is specifically keyed to reflecting recommendations from the Water District. The text is clarified in Section IV of this Final EIR to include tissue sampling.

COMMENT E-8: Mitigation Measure—"The nitrogen fertilizer shall be slow release or less soluble form, whenever possible." District records indicate the Institute Golf Course is fertilized monthly. Slow release nitrogen fertilizer is an unnecessary refinement with a monthly fertilization schedule. It is also more expensive, and the delayed response complicates interpretation.

RESPONSE E-8: Information provided by the project proponent, including testimony at public hearings, indicate that fertilizer application schedules vary by season and are substantially more frequent during the summer months. As quoted in this comment, the condition states "...slow release or less soluble form, whenever possible".

COMMENT E-9: Mitigation Measure--- "Irrigation of the golf course shall be limited to the: calculated evapotranspiration rate, plus mineral dilution requirement. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application." The District recommends clarification be provided here. "Evapotranspiration rate" should be defined as either crop evapotranspiration or potential evapotranspiration. If the latter, that amount of water is excessive. Irrigation according to calculation of crop evapotranspiration changes in soil moisture content to ensure calculations are in order. Some soil moisture monitoring equipment is called for on at least one index fairway. Portable equipment is an option.

RESPONSE E-9: The text is modified to reflect that the standard should be crop evapotranspiration. The revised language is included in Section IV of this Final EIR, Revisions to the Text of the Revised Draft EIR.

COMMENT E-10: Mitigation Measure—"The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements." The reduction of turf area does not necessarily minimize total fertilizer requirements. Inappropriate rates of fertilization may continue on a reduced area, and this would continue to result in transport of nitrogen to groundwater. Increased management should be emphasized.

RESPONSE E-10: The mitigation measure quoted is only one in a list of 14 measures that are considered necessary to reduce nitrogen loading. The clause "as needed" reflects the need to consider the total list of mitigations together in calculating the adequacy of a final mitigation scenario.

COMMENT E-11: The District also supports the City consultant's proposed mitigation measures for Water Quality, Flooding, and Soil Erosion.

RESPONSE E-11: The concurrence with the listed mitigation measures is acknowledged.

COMMENT E-12: Pages 81 through 85, Water Supply - Groundwater supply resource depletion has been identified as a significant unmitigated impact. The mitigation measures proposed by the City's consultant appear to address groundwater resource depletion, with the exception of the detailed groundwater investigation. While the District recommends that a detailed groundwater investigation be performed to determine the impacts of the increased pumping for golf course irrigation, we believe the results of the investigation would determine the mitigation measures needed. The groundwater investigation itself is not a mitigation measure, but a means to determine whether mitigation is necessary. We recommend mitigation measures be provided in the event the detailed groundwater investigation identifies significant impacts to local groundwater resources. In addition, since the golf course is currently operating and irrigating, the DEIR should discuss the potential impacts of allowing the golf course to continue increased pumping for irrigation prior to identifying the extent of its effects on local groundwater resources.

RESPONSE E-12: Based on new information provided by the project proponent and reviewed the City's consulting hydrologist, the reduction of irrigated areas on the project site from 178 acres to between 85 and 100 acres, or other measures to decrease irrigation water demand by approximately 50 percent, is necessary to reduce groundwater depletion impacts resulting from the proposed project to a less than significant level (refer to Response AI-64).

The ongoing operation of the golf course is identified as having a significant unmitigated water supply impact (see conclusion statement on page 83 of the RDEIR). As discussed above, decreasing irrigated areas or otherwise reducing irrigation on the project site by approximately 50 percent is necessary to reduce this impact to a less than significant level.

The RDEIR also identifies on page 84 that a detailed groundwater investigation can be completed to further refine the mitigation described above. If the groundwater investigation is to be completed, the mitigation

described above (reduction of on-site water use by approximately 50 percent) should be required while the groundwater investigation is conducted. This interim reduction of water use is necessary to avoid significant impacts to adjacent properties.

Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District, the water usage on the project site can be adjusted based on the results of the investigation (i.e., either increased or decreased).

The mitigation measures for groundwater depletion impacts identified on page 84 and 85 of the RDIER have been revised to clarify the process described in this response (refer to the text amendments in Section IV of this Final EIR).

COMMENT E-13: The western boundary of the project site is along Foothill Avenue, just east of the area being investigated by the District, the Central Coast Regional Water Quality Control Board and the Olin Corporation for the presence of perchlorate. This should be evaluated as it may impact the use of groundwater for domestic water supply on the proposed project site.

RESPONSE E-13: The RDEIR concludes (on page 82) that the groundwater in the project area cannot be used for domestic purposes due to high nitrate concentrations. The presence of perchlorate would not change this conclusion.

COMMENT E-14: Page 116, Cumulative Water Supply Impacts - The DEIR indicates that there are significant unmitigated impacts to groundwater supply. The cumulative impacts section should include discussion of other proposed golf courses or other development (possibly induced by the project) which may require substantial water use and subsequently deplete groundwater supplies when considered cumulatively with the project.

RESPONSE E-14: The discussion of cumulative water supply impacts on page 116 reflects the City's understanding of the cumulative impacts likely to result from implementation of the projects identified in Table 5. Most of the anticipated development, including other future golf courses and "induced" growth, will occur on land that is currently in active agricultural use and/or is land designated as "Prime Farm Land" or "Farmland of Local Importance". Land designated as "Prime Farmland" has been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. Irrigated land use is determined by Farmland Mapping and Monitoring Program staff during examination of current aerial photos, local comment letters and field verification. Most urban uses would not use more water than agricultural uses; most would use less water. While the project itself is identified as having substantial water supply impacts, other pending and foreseeable projects would not be cumulatively significant. The pending projects listed on page 117 of the RDEIR are estimated to use approximately 207 acre-feet of water per year when development is complete. Most of these projects are occurring on "Prime Farmland" or "Farmland of Local Importance". Agricultural uses on these same properties (which are allowed by right) would use an estimated 241 acre-feet of water per year under pre-development conditions.

According to Elish M. Ryan of the Santa Clara County staff, the Board of Supervisors approved a future golf course at Harvey Bear Park with the proviso that it would not have significant water demands; the golf course will use native plants and may be delayed until recycled water is available from the Gilroy/Morgan Hill Wastewater Treatment Plant.

The text on page 116 of the RDEIR has been modified to include the above information and Table 5 have been revised (refer to the text amendments in Section IV of this Final EIR).

F. RESPONSES TO LETTER FROM SANTA CLARA COUNTY ROADS AND AIRPORTS DEPARTMENT, RECEIVED JANUARY 23, 2004:

COMMENT F-1: Please submit for our review and comment, the revised drainage analysis to mitigate the localized and downstream flooding problems at Foothill Ave. caused or exacerbated by this project.

RESPONSE F-1: No revised drainage analysis that identifies mitigation for flooding on Foothill Avenue has been provided at this time (see also response to comments from project proponent in Section III.AI of this Final EIR.

COMMENT F-2: The DEIR does not include a Traffic Impact Report (TIR) of Charity Golf Tournaments that might occur at the site. It is important that a TIR be prepared to assess traffic impact on County roads and recommend mitigation measures. Submit the TIR for our review and comments.

RESPONSE F-2: On page 7 of the RDEIR is a discussion of states that a cursory review of the idea of holding golf tournaments on the site could include traffic impacts. Therefore, the RDEIR states:

> "This EIR does not address the use of the project site for golf tournaments at all. Under CEQA, the City cannot approve the proposed golf tournaments unless future CEQA analysis is done that addresses the impacts of holding the tournaments at this location. The City will have to deny the use of the property for golf tournaments without additional CEQA review."

The project proposes to limit golf play to no more than 36 rounds per day. The traffic generated by the proposed project, including the Math Institute and the golf course, is addressed in Section II.F of the RDEIR.

COMMENT F-3: Provide us a copy of the Final Environmental Impact Report for our review and comments.

RESPONSE F-3: A copy of the Final EIR will be sent to the County Roads and Airports Department.

G. RESPONSES TO LETTER FROM COUNTY OF SANTA CLARA PLANNING OFFICE, RECEIVED FEBRUARY 11, 2004:

COMMENT G-1: The Santa Clara County Planning Office has received and reviewed the Draft EIR dated December 18, 2003. In general, the County has several concerns regarding the project with respect to regional impacts on wildlife habitat and groundwater supply.
Specifically, our comments / and questions are be as follows:

(1) Land Use: A listed Threshold of Significance in the Land Use section is "conflict with any land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, or zoning ordinances adopted for the purpose. of avoiding or mitigating an environmental effect."

Previous discussion of consistency between the proposed project and several Morgan Hill General Plan policies adopted to protect rare and endangered animals and their habitat (Page 13, Policy 6a to 6e,) shows that the project would conflict with these policies (without mitigation). By virtue of this conflict, the proposed project would also have significant land use impacts, which have not been disclosed in the EIR.

RESPONSE G-1: In the interest of clarity and to avoid an excessively long document, impacts that are discussed elsewhere in the RDEIR were not also identified in the land use section. The RDEIR does identify the project's lack of conformance with General Plan policies (see pages 10-16), including lack of conformance with policies for protecting rare and endangered species and their habitat. Language is included in the proposed text revisions (Section IV of this Final EIR) to clarify this point. These impacts can be mitigated by measures identified in the EIR, if they are adopted as conditions of approval.

COMMENT G-2: Agriculture: Discussion of impacts and mitigation states that the current Williamson Act contract for the property will be canceled as part of the approval of the project. Cancellation of a Williamson Act contract requires that the board / council makes several findings with respect to discontinguous patterns of urban development and the absence of noncontracted lands which could be used for the project. Is the Morgan Hill City Council prepared to approve the cancellation and adopt these findings prior to approval of the PD Rezoning of the project?

RESPONSE G-2: The City Council cannot consider any discretionary action until after the EIR is found complete. Notice of Non-renewal or Cancellation of the Williamson Act contract has been added to the list of discretionary approvals that must be given in order to implement the project as proposed.

It would not be appropriate to speculate in an EIR about what the City Council is prepared to approve.

COMMENT G-3: Water Supply: The County Planning Office is concerned about the possible impacts to water supply for surrounding properties which would result from the project . The EIR States that the project may substantially deplete groundwater resources in the area, including groundwater supplying neighboring off-site wells. In discussing feasible mitigation, the EIR implies that reduction of the amount of irrigated turf could reduce this possible significant impact to a less than significant level. The EIR goes on to state that "While the information currently available

indicates that the project could substantially impact groundwater levels, much more detailed studies could modify that information."

The County is concerned that water pumping for the project will adversely impact water supply to surrounding properties under the County's jurisdiction several of which are in commercial agricultural operation or under Williamson Act. This in turn impacts the viability of agriculture in the region, for which much of this area is currently zoned. The City should fulfill its obligations under CEQA to provide adequate analysis of this matter in order to provide the substantial evidence necessary to make a significance determination (with respect to groundwater depletion).

The mitigation suggested (reduction of irrigated turf) may appear adequate, but is speculative since no modified site plans which include this approach are included with the document.

RESPONSE G-3: The mitigation measure identified on page 84 of the RDEIR, to reduce the amount of irrigated turf by approximately 50 percent or otherwise reduce water use by 50 percent, is not speculative. It has not been proposed (and therefore has no been designed), but it could be required as a condition of project approval. The mitigation measure states that:

> Reduction of the maintained turf areas by this amount [50 percent] will bring the water demand into an approximate balance with the local groundwater recharge conditions, thereby reducing the potential effect on groundwater levels by an equivalent amount.

This statement is a summary of information contained in Appendix D – Hydrology, Water Quality and Water Supply. Subsection 2(c) of the Water Supply discussion includes a more detailed discussion of the amount of water being withdrawn to irrigate the golf course turf, and the amount of water that is being recharged into the groundwater basin. The section also discusses the reduction that could be achieved by reducing the golf course size. This information is summarized in Table WS2 on page 46 of the Appendix, a *Water Balance Estimate for Proposed Project and Reduced Golf Course Size*.

It should be noted that the RDEIR also states that a study may be undertaken by the project proponent to verify or disprove the conclusions in the EIR about groundwater depletion.

COMMENT G-4: Biology / Secondary Impacts: While the EIR does propose mitigation measures to compensate for the wildlife habitat, wetlands, and riparian which was lost with the initial grading, it does not appear to address the intervening temporal loss. For example, restoration of the Riparian habitat lost is recommended at a ratio of 3:1. While this ratio is commonly used by resource agencies, it does not account for the fact that the riparian was removed over 6 years ago. In order to account for the lost biological value associated with those intervening six years plus the any additional years until revegation begins and is established, it is advised that these replacement ratios (for habitat, wetlands, and riparian) be increased.

RESPONSE G-4: The statement that the riparian habitat was removed over six years ago cannot be confirmed by the City. The replacement ratio of 3:1 is intended to compensate for the temporal loss of the habitat. Also, please note that the text

revisions in Section IV of this Final EIR identifies an alternative approach to minimum riparian setbacks, which could include creation of new riparian habitat.

COMMENT G-5: In addition, while replacement wetlands, wildlife habitat, and riparian have been recommended, there are no plans which show where and how these will be implemented. These should be included in order to demonstrate that the mitigation is in fact "feasible".

RESPONSE G-5: The plans have not been prepared to identify mitigation habitats because these mitigations are not proposed by the project. This is reflected in the conclusions on pages 49-50, which identify impacts to these resources as significant and unmitigated. The consulting biologists, based on their surveys of the project site, believe that the identified mitigations are feasible.

Preparation and implementation of the plans could required as conditions of project approval.

COMMENT G-6: Mitigation Monitoring & Reporting: The County has found that in situations which require extensive long-term habitat restoration, it is highly advantageous for the lead agency to develop an in-house post approval monitoring program in order to ensure that the mitigation is in fact implemented. While this responsibility has historically been given to the resource agencies, the lack of funding and staffing has severely limited the amount of oversight they can provide.

RESPONSE G-6: The recommendation is acknowledged.

COMMENT G-7: The Santa Clara County Planning Office has prepared the Environmental / Design Guidelines and Standard Development Requirements for Golf Courses which have been used in permitting Golf Course facilities. The approaches listed in this document address many of the environmental issues that are being encountered with the proposed project. I have enclosed a copy of these Guidelines for your use in evaluating the proposed project.

RESPONSE G-7: The guidelines are acknowledged and are referenced on page 74 of the RDEIR. As reflected in the text revisions in Section IV of this Final EIR, the project will require review and approval of the specific building, site, and landscaping plans by the City's Site, Architectural and Landscape Plan Review Board. The County guidelines will be used as part of that review process.

H. RESPONSES TO LETTER FROM COUNTY PARKS AND RECREATION DEPARTMENT, RECEIVED FEBRUARY 13, 2004:

COMMENT H-1: The Santa Clara County Parks Department thanks you for the opportunity to comment on the Revised Draft EIR for the above referenced project. Per our letter to you dated February 5, 2004, we had requested an extension of time to review the document, as we had not received it until two weeks prior to the close of the review period.

Santa Clara County Parks finds that the Revised Draft EIR for the Institute Golf Course is inadequate because mitigations are not proposed for twenty-four Significant Unmitigated Impacts identified as a result of analysis of Soils and Geology, Vegetation and Wildlife, Hydrology and Water Quality, Water Supply and Hazardous Materials for the proposed project. Significant unmitigated impacts will have a significant adverse impact on the environment and a wide range of local users, including Santa Clara County Parks.

Impacts to Water Supply

As identified in the Revised Draft EIR for the Institute Golf Course, nearly all local potable water supplies for residential uses within the greater San Martin, Morgan Hill and Gilroy area rely on private and municipal wells that tap into a common aquifer; the Llagas Groundwater Basin. This aquifer is also the principal source of agricultural water supply for the region. As identified in the Revised Draft EIR, the Institute Golf Course project has significant impacts on water supplies for the local region beyond the confines of the project area and no mitigations are proposed as part of the project. Without mitigations addressing impacts to water supply as a result of the Institute Golf Course and accompanying conference facility project, potential significant impacts to ground water supply currently serving Coyote Lake-Harvey Bear Ranch County Park could occur.

Existing wells and springs located at Coyote Lake-Harvey Bear Ranch County Park, a public parkland located one half mile south of the Institute Golf Course on Foothill Blvd., are fed by the Llagas Groundwater basin. These water sources are vital to the continuation of cattle grazing operations on over 4,000 acres of the open grassland in this park. Potential reduction in the availability of water to support grazing cattle could severely impact the use of cattle as a natural resource and fire management tool. Without adequate water supplies to support cattle grazing in the park, the reduction of fuel loading would be impacted. The incidence of potential fire hazard will increase. As a result, there would be potential safety impacts to park facilities and to the residents in the locality.

The existing wells and springs, in conjunction with other on and off site water sources, have also been identified as viable water sources for future development of the 4,448 acre Coyote Lake-Harvey Bear Ranch County in the recently approved park Master Plan. The Revised Draft EIR for the Institute Golf Course states that monitoring results from off-site wells has identified a significant amount of draw down in aquifer associated with the pumping of water for the Institute Golf Course. The Revised Draft EIR for the Institute Golf Course has not addressed the potential off site impacts as a result of draw down in the aquifer. If this impact continued without mitigation, it will become significantly greater and cumulative impacts to a wide geographical area will occur.

RESPONSE H-1: The RDEIR does identify the likelihood that continued pumping from the groundwater basin of the quantities of water currently used to irrigate the golf course would cause the water table serving surrounding properties to decline. This is identified as a significant impact (pages 82-83). Section IV of this

Final EIR includes additional language on the uses of the water table that would be impacted. The RDEIR acknowledges (on page 81) that the decline in groundwater will affect adjacent properties (which includes Harvey Bear Ranch), and that the aquifer is unconfined and the decline will be slow as a result. This is a project impact, however, no a cumulative impact. It is not clear upon what information, the conclusion in this comment that cumulative impacts to a wider geographic area will occur, is based. The FEIR prepared for the Harvey Bear Ranch Park did not identify a significant increase in water use resulting from the implementation of the park's Master Plan, and it is therefore assumed that the park will not contribute to or cause a cumulatively significant impact on groundwater (this issue is also addressed in Response V-1).

COMMENT H-2: The Revised Draft EIR states that average daily use of ground water for irrigation purposes is 427,500 gallons per day. This information is incomplete and the Revised Draft EIR is inadequate because no average daily use projections for water use for domestic purposes related to the Institute Gold Course conference facilities are included. In addition, the information provided for average daily use does not include the impact of seasonal spikes of up to 1.3 million gallons per day in summer months when demands on ground water supplies are highest. (Daily use figures for June as stated in Questa Engineering's report in Table WS1, Appendix C of the Draft EIR, January 2003.)

Such impacts to existing local sources are potentially avoidable. Mitigation measure discussed in the Revised Draft EIR but not currently incorporated into the project could be adopted. In addition, the Santa Clara Valley Water District recommends that a detailed groundwater investigation be performed to determine the impacts of pumping large quantities of ground water for use in the project and should be included as a part of the EIR. It is recommended that the project proponents work closely with interested water management agencies, complete an adequate groundwater impact analysis, and offer mitigation measures to reduce the impact to the Llagas Groundwater Basin. In addition, we recommend that the project adhere to the County of Santa Clara Golf Course Design Guidelines for responsible and sustainable golf course development of this site.

RESPONSE H-2: As stated on page 82 of the RDEIR, groundwater in the project area cannot be used by the project for drinking water. To proceed as proposed, the project will need to connect to a public water system. The project proponent has submitted an application for a public water supply to the State of California Department of Health Services. The application was deemed incomplete. It is the State's preference not to permit small, individual public water supplies.

The amount of water that would be required to serve the proposed Institute facilities is unlikely to be a substantial quantity relative to the overall demands of the project. Based on the data provided by the project proponent in response to the RDEIR, the amount of water drawn from the aquifer by the golf course totals approximately 445 acre-feet per year (which is approximately 145 million gallons per year). A wastewater engineering handbook estimates that a country club serving transients (as opposed to permanent residents) would use between 15.85 and 26.42 gallons of water per person per day. This would equate to approximately three-quarters of an acre-foot of water (or about 241,000 gallons) per year, if it is assumed that the 24

employees are on site 260 days per year, and that they use the dining facilities. The City staff will use the County of Santa Clara Golf Course Design Guidelines as a resource document in reviewing the permits for the proposed project. The guidelines would not replace specific mitigation measures identified in this EIR.

COMMENT H-3: Cumulative Water Supply Impacts

Santa Clara County Parks disagrees with the conclusion in the Cumulative Section of the Revised Draft EIR where it states that the proposed project will not contribute to a significant cumulative impact to ground water supply because it converts former agricultural land to an urban land use and urban land uses typically have a lesser demand for ground water. Per the average daily water use figures stated in the Report, the project will use 427, 000 gallons per day or almost 156 million gallons per year on the course alone. As stated in the Draft EIR, only 57 acres of the project site have been identified as Prime Agricultural Land and would have potential for irrigated row crop farming. The balance of the 192 acre site would most likely be "dry farmed" or used as grazing land if it were to remain in agricultural uses. Thus, it is inaccurate to state that the proposed land use would have a lesser demand on water supply than continuing agricultural use.

RESPONSE H-3: The RDEIR does not state that the project will not contribute to a significant cumulative impact to groundwater supply because the project converts agricultural land to an urban land use; neither does the RDEIR say that the proposed land use would have less demand on water supply than continuing agricultural use. The RDEIR does identify the project's own impacts on groundwater as significant (page 82). The RDEIR says (on page 116) that the project would not contribute to a cumulatively significant increased demand on groundwater. This is because most of the other future development that will occur in the project area will convert agricultural land to urban uses. The projects used in the cumulative analysis and listed on page 117 of the RDEIR are estimated to use approximately 207 acre-feet of water per year when development is complete. Most of these project sites are "Prime Farmland" or "Farmland of Local Importance". Agricultural uses on these same properties would use an estimated 241 acre-feet of water per year under pre-development conditions.

I. RESPONSES TO LETTER FROM PACIFIC GAS AND ELECTRIC COMPANY, RECEIVED FEBRUARY 4, 2004:

COMMENT I-1: PG&E has the following comments to offer:

PG&E owns and operates gas and electric facilities which are located within and adjacent to the proposed project. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access and prevent easement encroachments that might impair the safe and reliable maintenance and operation of' PG&E's facilities.

The developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocation's require long lead times and are not always feasible, the developers should be encouraged to consult with PG&E as early in their planning stages as possible.

Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.

RESPONSE I-1: Any future construction that occurs on the project site, including the demolition of the existing vacant restaurant and construction of a future Institute building, will be coordinated with PG&E, consistent with City of Morgan Hill Building Code and other relevant ordinances.

COMMENT I-2: We would also like to note that continued development consistent with City's General Plans will have a cumulative impact on PG&E's gas and electric systems and may require on-site and off-site additions and improvements to the facilities which supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas or electric transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.

Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing substation and transmission line equipment, expanding existing substations to their ultimate buildout capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions needed to accommodate additional load on the gas system could include facilities such as regulator stations, odorizer stations, valve lots, distribution and transmission lines.

We would like to recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments and any potential environmental issues associated with extending utility

service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays, to the project schedule.

RESPONSE I-2: As reflected in the Draft EIR discussion on pages 104 and 105, the proposed project will not increase electric and gas utility demand beyond the capacity of the existing systems that serve the site.

The project will not have a cumulatively considerable impact on pubic utilities. The incremental increase of demand is not cumulatively considerable.

COMMENT I-3: We also encourage the Planning Office of the City to include information about the issue of electric and magnetic fields (EMF) in environmental documents. It is PG&E's policy to share information and educate people about the issue of EMF.

Electric and Magnetic Fields (EMF) exist wherever there is electricity--in appliances, homes, schools and offices, and in power lines. There is no scientific consensus on the actual health effects of EMF exposure, but it is an issue of public concern. If you have questions about EMF, please call your local PG&E office. A package of information which includes materials from the California Department of Health Services and other groups will be sent to you upon your request.

RESPONSE I-3: This RDEIR does not discuss impacts from EMF because the project does not propose activities that are anticipated to expose people to excessive levels of EMF.

COMMENT I-4: PG&E remains committed to working with City to provide timely, reliable and cost effective gas and electric service to the planned area. We would also appreciate being copied on future correspondence regarding this subject as this project develops.

The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

RESPONSE I-4: No response is required for this comment because it does not raise any issue related to the environmental analysis or the adequacy of the EIR.

J. RESPONSES TO LETTER FROM SOUTH VALLEY STREAMS FOR TOMORROW, RECEIVED JANUARY 30, 2004:

COMMENT J-1: We submit the following comments for consideration by the City of Morgan Hill (City) regarding the Revised Draft Environmental Impact Report (DEIR) for The Institute Golf Course (Project).

The DEIR identifies mitigation measures for the potentially significant direct and indirect (secondary) environmental impacts of the proposed Project. Some of these measures are not presently proposed by the Project proponent and are not formally incorporated into the project. Therefore, numerous impacts are not mitigated by the Project as currently proposed. The project would result in numerous unmitigated impacts.

As Lead Agency pursuant to the California Environmental Quality Act (CEQA), the City has the responsibility to ensure that all identified significant impacts are mitigated to a less than significant level. Under CEQA, the City may not approve projects with significant unmitigated impacts (such as the proposed Project) if feasible mitigation measures or feasible alternatives are available that would substantially lessen the project's significant environmental effects. CEQA imposes a substantive duty on the City to avoid or mitigate, to the extent feasible, a project's significant environmental impacts.

The mitigation measures proposed in the DEIR, but not yet incorporated into the project, are presented as feasible mitigations which, if adopted and implemented, would avoid or reduce impacts to a less than significant level. Therefore, to comply with the CEQA substantive duty to avoid or mitigate impacts where feasible mitigations are available, the City should require as "conditions of project approval" those mitigation measures proposed in the DEIR for impacts presently significant unmitigated impacts.

RESPONSE J-1: The California Environmental Quality Act (Public Resources Code §21002) states the following:

> The Legislature finds and declares that it is the policy of the state 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, and that the procedures required by this division 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. The Legislature further finds and declares that in the event 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.

COMMENT J-2: We advocate that the proposed mitigation measures for significant, unmitigated direct and indirect (secondary) impacts be required by the City as conditions of project approval.

Because the existing golf course (Project) was illegally constructed in violation of City permit requirements (more than tripling the disturbance footprint of the original authorized work area) and constituted a violation of CEQA at the time of unlawful grading and construction, the City should now hold the project proponent to a high level of impact mitigation and CEQA compliance. This would be accomplished by requiring mitigation for all impacts presently identified in the DEIR as significant and unmitigated.

RESPONSE J-2: The comments and recommendation relative to mitigation of project impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT J-3: Alternative mitigation measures are identified for direct impacts to red-legged frog, California tiger salamander, and western pond turtle (DEIR page 50 - 53, Package I and Package II) and for secondary (indirect) impacts to red-legged frog and California tiger salamander (DEIR page 112 – 115). The basic distinction between the alternative measures in both cases is the choice of "on-site" or "off-site" mitigation.

In our opinion, adoption and implementation of either alternative in each case would reduce the subject impact (direct or secondary) to a less than significant level. The paramount need is for the City to select one of the alternative mitigation scenarios for direct impacts and one of the alternative mitigation scenarios for secondary impacts as conditions of project approval to comply with the City's CEQA duty to mitigate project impacts.

In general, "on-site" mitigation has higher acceptability because it provides benefits to those local habitats and wildlife populations actually impacted by project development, and usually provides more certainty that the impacted habitats and Wildlife populations will remain viable. "Off-site" mitigation becomes acceptable in the circumstance where on-site mitigation would result in demonstrably inferior habitat conditions or limited benefit to local wildlife. Off-site mitigation benefits the habitat types and the wildlife species affected by the project, and assists in maintaining species population levels. The major drawback for off-site mitigation is that it does not assure retention and viability of the local habitats and wildlife populations actually impacted by the project.

Typically, we would be a strong advocate for the inclusion of on-site mitigation into the design of a proposed project. Unfortunately, this is not a typical project: the golf course has been built and the opportunity to influence the original design has been lost. As a consequence, there has been loss and degradation of local sensitive species habitats and direct and indirect impacts to local sensitive species populations.

The proposed on-site mitigation for sensitive species, Package II, includes a habitat protection buffer measuring 200 feet from the edge of ponds and centerline of creeks. Such a requirement would take a huge amount of land from golf use and probably make the existing course infeasible. Such action would appear to be contrary to the project objective of operating an 18-hole golf course (DEIR page 7) and the substantial desire in the community to retain the existing course.

Thus, for this atypical project, we advocate the City adopt Package I, the off-site alternative. Along with other essential measures, this would implement the mitigation recommendations of the U.S. Fish and Wildlife Service, which includes purchase and management of 51.2 acres of off-site sensitive species habitat.

To mitigate identified secondary impacts to sensitive species, we advocate the City adopt the off-site mitigation alternatives for California red-legged frog habitat/aquatic habitat: Measures 2, 3, 4, and 5 (DEIR page 112-114) and California tiger salamander aestivation/breeding habitat: Measure 4 (DEIR page 114-115).

RESPONSE J-3: The comments and recommendations relative to the appropriate mitigation for specific categories of project impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT J-4: The DEIR identifies that the proposed project will result in significant cumulative impacts to special-status plant species, special-status animal species and surface water runoff. Specific mitigation measures have been identified that would reduce corresponding project-level impacts to a less than significant level; however, the measures are not proposed by project proponents. The DEIR concludes that these same project-level measures also would reduce the subject cumulative impacts.

This determination may be correct, but the public and decision-makers cannot make a "leap of faith" to accept such a determination without supporting evidence, analysis or rationale. As presented, this is a conclusory statement without support.

Although the proposed mitigation measures may reduce, minimize or compensate for impacts at an individual project level of assessment, no evidence is presented that these same measures will reduce the project's contribution to cumulative impacts to less than significant level. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

The City has an obligation pursuant to CEQA to examine reasonable, feasible options for mitigating the Project's contribution to cumulative impacts.

The draft Final EIR should provide supporting evidence for the City's stated conclusion that the project-level mitigations identified in the DEIR would also mitigate cumulative impacts to a less than significant level. Such evidence would allow the public and decision-makers to discern the analytic approach the City employed in connecting evidence to the conclusion, and to determine whether the conclusion is, in fact, correct. Supporting evidence, analysis, or rationale should be provided in the draft Final EIR.

RESPONSE J-4: The CEQA Guidelines define "Cumulative Impacts" as:

> "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.
>
> (a) The individual effects may be changes resulting from a single project or a number of separate projects.
>
> (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result

from individually minor but collectively significant projects taking place over a period of time.

The Cumulative Impacts section starting on page 116 evaluates the impacts of the proposed project in conjunction with reasonably foreseeable future projects. The list of reasonably foreseeable projects in the project area is provided in Table 5 on page 117 of the RDEIR. Based on this list of projects, the RDEIR states that the proposed project will not contribute to a significant groundwater supply or groundwater quality impact, but will contribute to a significant unavoidable loss of agricultural land. The RDEIR also states that the proposed project will also contribute to a significant cumulative loss of Special-Status Plant and Animal Species Habitat and to the significant cumulative degradation of surface water quality and the significant cumulative increase of surface water runoff.

The RDEIR states that mitigation measures have been identified for the project's impacts to Special-Status Species, surface water quality, and surface water runoff, but they are not proposed by the project. If the mitigation measures identified for the project's impacts to Special-Status Species, surface water quality, and surface water runoff are required as "Conditions of Project Approval", the project's impacts to Special-Status Species, surface water quality, or surface water runoff would be reduced to a negligible level of significance, and the project will not contribute to a significant cumulative impact. These identified mitigation measures are not proposed; therefore, the RDEIR states that the proposed project will contribute to significant Special-Status Species, surface water quality, and surface water runoff cumulative impacts. Each issue is addressed below.

Special-Status Plant Species: Subsequent review of the projects listed on Table 5 found no evidence that the projects would impact Special Status Plant Species (Serpentine) habitat. The mitigation measures identified for project impacts, which include the proviso of off-site habitat recommended by the USFWS will fully mitigate the loss of serpentine habitat that occurred as a secondary impact of this project. The project's contribution to cumulative impacts on special status plant species would therefore be negligible. This is clarified in the text amendments in Section IV of this Final EIR.

Special Status Animal Species: The serpentine habitat lost as a result of the project is a secondary impact that physically occurred when the project was constructed but could be mitigated if and when on-site restoration were required. The USFWS mitigation for that impact, which is replacement with other (and in this case superior) habitat, is designed to full mitigate the impact.

The USFWS mitigation for animal species only relates to red-legged frogs, which are the only federally listed species impacted by the proposed project. Additionally, the only aspect of the project's impacts to animal species that triggers a federal nexus is the loss of habitat. USFWS does not identify mitigation for ongoing impacts to any of the special status animal species populations.

The RDEIR does identify mitigation for all of the project's impacts (primary and secondary) to special status animal species. The implementation of either of the mitigation packages for red-legged frog, California tiger salamander, and western pond turtle would fully protect the species populations on the project site. The project would not, therefore, contribute to adverse cumulative impacts on regional populations of these species.

In addition, the RDEIR identifies mitigation scenarios that could fully mitigate all of the secondary impacts to the same three species, which are primarily due to loss of habitat, in addition to (and instead of) the off-site red-legged frog habitat mitigation identified by USFWS.

If the project were to be revised to incorporate a set of mitigations that would fully mitigate all of its impacts on these three species, both primary and secondary, then the project would no longer result in cumulatively significant impacts to these special status animal species. Alternatively, the City of Morgan Hill could require such mitigations of the project as conditions of project approval.

As stated in the RDEIR on page 119, conformance with the City's Citywide Burrowing Owl Mitigation Plan would reduce the project's contribution to cumulative impacts to less than significant because the Mitigation Plan was designed to mitigate cumulative impacts within Morgan Hill's Sphere of Influence.

Surface Water Quality: The mitigation measures identified in the RDEIR for impacts to surface water quality include measures to minimize chemical use to what is actually needed to maintain the golf course, and the use of buffers and grading to protect on-site waterways. The combination of these measures would reduce the project's effects on the quality of surface water runoff from the site to a negligible level, thereby reducing the project's contribution to cumulatively significant impacts to less than significant. Language clarifying this is included in the text revisions in Section IV of this Final EIR.

Surface Water Runoff: The project's contribution to cumulative surface water runoff impacts result from the grading which diverted runoff from the Corralitos Creek drainage into the Foothill Avenue/San Martin Creek drainage. The mitigation identified in the RDEIR for this impact is to redirect the runoff back into Corralitos Creek. With this mitigation, runoff would be at pre-project quantities. There would be no contribution by the project to cumulative impacts with this mitigation.

COMMENT J-5: As previously stated, the City has a duty pursuant to CEQA to avoid or mitigate the project's significant environmental impacts. The Project as proposed in the DEIR has numerous significant unmitigated impacts. However, according to the DEIR, feasible mitigation measures have been identified for all of the project's identified significant unmitigated direct, indirect (secondary) and cumulative impacts, with the exception of cumulative loss of agricultural land. On its face, the DEIR has determined that identified impacts, with one exception, can be mitigated to a

less than significant level. Therefore, there is no justification in the DEIR for the City declining to adopt feasible mitigations for one or more impacts and approving a project that may cause significant impact(s), other than the cumulative loss of agricultural land. There are no overriding considerations in the DEIR.

RESPONSE J-5: It is not the purpose of an EIR to provide justification for not adopting feasible mitigation. The decision making body for the project may consider information that is not included in the EIR in adopting a statement of overriding considerations. The CEQA Guidelines state that "The statement of overriding considerations shall be supported by substantial evidence in the record." [§15093(c)]

COMMENT J-6: At the January 27, 2004 Planning Commission Workshop on the DEIR, the project proponent stated an intent to provide "new information" to the City regarding certain impacts and currently proposed mitigation measures. Obviously, this information has not yet been reviewed by the City, nor Included in the DEIR, nor reviewed by the public.

If significant impacts currently identified in the DEIR are redefined as less-than-significant and/or new mitigation measures are included in the draft Final EIR as a result of the proponents "new information", the draft Final EIR must explain, supported by substantial evidence, why these modifications were made, why original mitigation measures are less desirable, and why new measures are equivalent or better than the original.

If substantial new information, including new mitigation measures, is included in the draft Final EIR, the City may be required to recirculate the new portion of the document for public review and comment pursuant to CEQA Guidelines Section 15088.5. Since the City has already gone through one recirculation process for this project EIR, we hope the City will take great care in acting upon any "new information" submitted by the project proponent. Actions that would trigger the CEQA EIR recirculation requirement should be avoided.

RESPONSE J-6: The new information provided by the project proponent is reflected in Section III. AI. of this Final EIR, which contains the letters and additional technical analysis submitted. The information does not contain any substantive new information requiring recirculation under §15088.5.

K. RESPONSES TO LETTER FROM SAN MARTIN NEIGHBORHOOD ALLIANCE, RECEIVED FEBRUARY 4, 2004:

COMMENT K-1: As representatives for the San Martin community, The San Martin Neighborhood Alliance (S.M.N.A.) is actively working towards protecting the rural atmosphere, vitality, and quality of life for San Martin residents. Although we support positive controlled growth, we are concerned with projects that may adversely impact the lives of the community at large.

We have reviewed the recent release of the DEIR for the American Mathematics Institute Golf Course, dated December 2003, and we are writing to address the proposed AIM project and its impact to the community. The proposed AIM project is surrounded by San Martin property owners who will bear the direct brunt of its impact.

The San Martin Neighborhood Alliance finds the following impacts deeply concerning and requests the City of Morgan Hill address, mitigate and monitor each for compliance prior to the issuance of any further permits or zoning changes. They are as follows:

1. Off-site Flooding and Drainage
The DEIR concludes that the AIM project will exacerbate existing flood conditions, causing worse and more frequent flooding problems on the roadway and on other nearby properties. In order to mitigate the localized and downstream flooding problems at Foothill avenue caused or exacerbated by the project, the City of Morgan Hill should require the project proponent to re-design the drainage systems for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions. The city of Morgan Hill needs to require that the project proponent make all of the necessary adjustments and changes as specified in the DEIR dated December 2003 on page 73 so as to alleviate the impact to the surrounding community.

Without full mitigation, this finding would be inconsistent and in conflict with the community development goal #22 (Minimal local drainage problems), the public Health and safety goal #4 (The least possible damage to persons and property from flooding) and the Economic Development goal #1 (policy IH) in the City of Morgan Hill's General Plan dated July 2001.

RESPONSE K-1: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for flooding and drainage impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-2: 2. Soil Erosion
The DEIR dated December 2003 concludes that erosion and sedimentation impacts from the proposed project would result from construction on the site. Also noted, is that it is likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. The city of Morgan Hill needs to require that the project proponent be required to implement all of the mitigation measures as stated on pages 73-74 in the DEIR dated December 2003 for soil erosion. The city of Morgan Hill must also require on-going inspections so as to verify full compliance of these procedures by the project proponent.

Failure to mitigate these findings will result in a conflict of Open Space and Conservation goal #6 of the City of Morgan Hill General Plan dated July 2001.

RESPONSE K-2: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for soil erosion impacts (including inspections) is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-3: 3. Water Quality

It is vitally important that the City of Morgan Hill preserves and protects the ground water supply because of the nature of the area in which the surrounding properties obtain their sole source of water through private wells. Numerous significant impacts to water quality are noted throughout the DEIR dated December 200 3. Any factor contributing to the degradation of water quality needs to be addressed and fully mitigated. The city of Morgan Hill must require the project proponent to fully implement all of the mitigating processes and procedures as stated on pages 74-78 of the DEIR dated December 2003. The cit y of Morgan Hill must also require on-going inspections so as to verify full compliance of these procedures by the project proponent.

Failure to fully mitigate the findings would be inconsistent and in direct conflict with the Public health and safety goals #5 and #6 and the Regional Coordination Goal #2 of the City of Morgan Hill General Plan dated July 2001.

RESPONSE K-3: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for water quality impacts (including inspections) is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-4: 4. Groundwater Resource Depletion

The city of Morgan Hill needs to warrant that the project proponent will not deplete the groundwater supply. Based on data supplied by the project proponent and stated in the DEIR dated December 2003, water demand for golf course irrigation is estimated to average approximately 437,500 gallons per day. It is stated also that the combined yield of the existing three on-site wells is sufficient to meet the irrigation demand of the proposed project but it will however substantially increase the amount of water extracted from the groundwater basin as compared with the pre-development conditions and will greatly exceed the amount of groundwater recharge that occurs locally. Therefore, the city of Morgan Hill needs to require that the project proponent implement the measures so as to warrant adequate water supply to the surrounding community now and in the future. The city of Morgan Hill must also require on-going inspections so as to verify full compliance of theses procedures by the project proponent.

Failure to fully mitigate these finds would be in conflict with Community development Goal #21 and the Open Space and Conservation goal #7.

RESPONSE K-4: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for groundwater depletion impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT J–5: 5. Traffic Impacts
The means of arriving at the level of impact to road traffic in the area is inadequate. The surrounding area is comprised of quiet rural residential property with very little traffic. Traffic impacts need to be studied based on increased traffic flow compared to predevelopment traffic flow and the quality of life impacts on the surrounding property owners.

Additionally, the DEIR dated December 2003 does not take into account the increase in traffic flow from numerous deliveries for services that travel to and from the project that are associated with conventions and affairs. The City of Morgan Hill needs to warrant that project proponent will not be permitted to hold large-scale activities such as golf tournaments at the site.

RESPONSE K-5: The significance of traffic impacts is a function of the amount of traffic generated relative to the capacity of the existing transportation system. Traffic impacts may also be considered significant if they interfere with the operation of alternative transportation facilities or might create a safety hazard (see Thresholds of Significance on pages 86-87.

The amount of traffic that would be generated by the proposed use would not exceed the capacity of the existing roadway system, nor would it impede the function of pedestrian or bicycle facilities or create a safety hazard. Traffic associated with the proposed use (including deliveries to the site) would generally occur throughout the day, would be noticeable in the area, but would still not exceed the capacity of the roadway system.

As stated in the EIR (on pages 7 and 87), the EIR does not address the impacts of charity golf tournaments and the City of Morgan Hill cannot approve a PD zoning that allows such tournaments without conducting additional CEQA review.

COMMENT K-6: 6. Construction Noise
Since the project is located in a quiet rural residential area, the city of Morgan Hill needs to adopt and require the project proponent strictly adhere to the measures set forth on page 91 in the DEIR dated December 2003 during all phases of construction.

RESPONSE K-6: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for construction noise impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-7: 7. Odors
The city of Morgan Hill must not allow the piling of grass clippings and debris on the property so as to not produce any foul odors for the surrounding community residents.

RESPONSE K-7: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for odor impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-8: 8. Views
The project proponent has planted thousands of trees along the berm on Foothill Avenue, which obstructs the hillside view from the nearby property owners and may cause a loss in property values. The city of Morgan Hill should require the project proponent to thin the tree density along Foothill Avenue to restore the view for the surrounding property owners. Failure to fully mitigate this concern would result in a conflict with the ideology regarding hillsides in Morgan Hill General Plan (page 86) that states, "The slopes that flank Morgan Hill have played a major role in shaping the city. They have kept development primarily on the valley floor, provided a scenic backdrop for the community and open areas in residential projects below them, and generally have enhanced property values. Maintaining open views of the hillsides, as well as preserving their important resources, are city priorities".

RESPONSE K-8: The planting of numerous trees on and around the perimeter of the project site is discussed on pages 21 and 22 of the RDEIR. The planting of trees in association with an allowed use and, therefore, is not identified in the EIR as a significant environmental impact. Furthermore, the policies of the General Plan do not identify tree planting as a significant adverse visual impact (this issue is also addressed in Response M-9). This suggested visual enhancement is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT K-9: It is important that the city of Morgan Hill require the project proponent to follow all local, county, state and federal laws and ordinances and hold it accountable in order to maintain harmony within the community it is impacting. The San Martin Neighborhood Alliance looks forward to working with the city of Morgan Hill and the American Mathematics Institute Golf Course towards the betterment of our communities.

RESPONSE K-9: This comment is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

L. RESPONSES TO LETTER FROM CALIFORNIA NATIVE PLANT SOCIETY, RECEIVED FEBRUARY 4, 2004:

COMMENT L-1: The Santa Clara Valley Chapter of the California Native Plant Society has reviewed the Revised Environmental Impact Report for "The Institute Golf Course," located in the City of Morgan Hill. We appreciate the opportunity to comment on this revised document- Our concerns are as follows:

Special-status plant species: Since the grading of the golf course was apparently completed prior to the completion of adequate botanical surveys, it is impossible to determine what native plants associated with serpentine soils were present. However, based on the conclusions of the US Fish and Wildlife Service and the California Department of Fish and Game that serpentine soils were found on the site prior to grading, we agree that it is likely that endemic plants associated with these soils were also present (page 107). Many endemic plants found in these habitats in Santa Clara County are listed as rare, threatened or endangered. This habitat is highly diverse, biologically unique and continually under threat from development, invasive plants, and atmospheric change.

Therefore, we urge the adoption of mitigation measures to reduce the secondary and cumulative effects of the loss of special-status plant species (serpentine) which were almost certainly present on the site before the grading took place. As stated the REIR, the only available mitigation measure at this point is off-site compensation through the purchase of equivalent acreage of high-quality serpentine habitat. CNPS policy (see attachment, page 4) lists off-site compensation as the least desirable option for mitigation for impacts to rare, threatened and endangered plants but if this option is necessary (as in this case) then the ratio of acquisition to loss should exceed 1:1, and scale higher depending on the rarity of the species.

Since the number and of rarity of serpentine plant species present on the site before construction is unknown, we recommend the acquisition of at least the recommended 51 acres listed in the mitigation measures listed on page 111 of the REIR. High quality serpentine habitat is available in several areas of southern Santa Clara County, and this mitigation measure is entirely feasible and appropriate, particularly considering the size of the habitat loss. We also urge that funding is made available to manage the acquisition in perpetuity - the management plan should include at least provisions for invasive plant control, monitoring of population health, and control of public access.

RESPONSE L-1: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for special status plant impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT L-2: Riparian habitat: As above, since the loss of riparian habitat has already occurred, we also support there placement and restoration of this habitat. This mitigation measure (page 111-112), which includes the replacement of 0.5 acres of riparian habitat with a 1.5 acre restoration site is an entirely feasible and appropriate mitigation measure. Numerous other projects, including several golf courses in Santa Clara County, have required similar riparian restoration – there is no reason a similar effort should not be undertaken here.

RESPONSE L-2: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the

appropriate mitigation for riparian habitat impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project. The proposed text revisions in Section IV of this Final EIR also identify creation of new riparian habitat as a possible means of mitigating impacts that could occur if the City permits the golf course to implement a reduced setback from existing riparian habitat.

COMMENT L-3: Native trees: Since apparently few if any native trees have been planted on the course at this point, the mitigation measure (page 112) recommending native tree replacement at 5.1 ratio should be required. Most other projects of this size permitted in Santa Clara County have required some ratio of native trees to be planted as landscaping. Native trees and shrubs often require less water and maintenance than exotic trees, and they can provide greater habitat and food sources for native wildlife and birds.

RESPONSE L-3: This comment confirms information in the RDEIR and recommends mitigation identified in the RDEIR. The recommendations relative to the appropriate mitigation for native tree impacts is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

M. RESPONSES TO LETTER FROM COMMITTEE FOR GREEN FOOTHILLS AND SANTA CLARA ALLEY AUDUBON SOCIETY, RECEIVED FEBRUARY 4, 2004:

COMMENT M-1: On behalf of the Committee for Green Foothills ("CGF") and the Santa Clara Valley Audubon Society ("SCVAS"), we submit the following comments on the Institute Golf Course Revised Draft EIR ("RDEIR").

CEQA requires the City to propose and describe mitigation measures to minimize significant environmental impacts identified in the EIR. Cal Pub. Res. Code § 21002. 1 (a); 14 Cal. Code Regs. § 14126(e). Mitigation includes actions to avoid impacts altogether, minimize impacts, rectify impacts, reduce impacts over time, or compensate for impacts by providing substitute resources or environments. 14 Cal. Code Regs. § 15370.

The City cannot legally approve the Institute Golf Course on the basis of the RDEIR if the City fails to require any of the mitigations described in the RDEIR,[1] or if the City fails to include the Integrated Turf grass and Pesticide Management Program ("ITPMP") as described in the attached comment letter from Certified Golf Course Superintendent Kenneth M. Harp. All the RDEIR-identified mitigations, as well as the ITPMP (collectively, "mitigations") are feasible and necessary to minimize the significant impacts from the Institute Golf Course. Cal Pub. Res. Code § 21002.1(c). Approval without including all the mitigations as conditions of approval would therefore violate the CEQA requirement to mitigate impacts where feasible. Id. In addition, approval of the project without including the ITPMP would violate CEQA because the ITPMP is a feasible mitigation measure that would minimize water quality impacts and therefore must be analyzed in the RDEIR, which has not occurred. 14 Cal. Code Regs. § 15126.4(a)(1)(B).

RESPONSE M-1: The California Environmental Quality Act (Public Resources Code §21002) states the following:

> The Legislature finds and declares that it is the policy of the state 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, and that the procedures required by this division 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. The Legislature further finds and declares that in the event 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 specific responses to the letter from Kenneth M. Harp are included in Section III. T. of this Final EIR, including a discussion of the proposed

[1] In situations where the RDEIR suggests alternative mitigations, such as the "Mitigation Measure Packages" on pages 50-53, the City would be acting illegally if it fails to require at least one of the proposed alternative mitigations as a condition of approval for each situation in which the RDEIR has proposed alternative mitigations.

Integrated Turfgrass and Pesticide Management Program. The RDEIR also identifies feasible mitigation that would reduce water quality impacts from the project to less than significant levels, including the preparation of a Chemical Application Management Plan (CHAMP). The content, purpose, and use of the CHAMP appear to be very similar to the purpose and content of the ITPMP. The decision making bodies (City Planning Commission and City Council) will consider all available mitigation measures in their deliberations on this project.

COMMENT M-2: This letter begins with a section of general comments on the RDEIR, and then follows with a separate section of comments on specific sections of the RDEIR.

General Comments
The RDEIR fails to present any evidence to suggest that any of the proposed mitigations are not feasible. The City therefore cannot use infeasibility as a basis for rejecting a mitigation unless it provides evidence of infeasibility for analysis and comment by the public and by responsible agencies and then recirculates the RDEIR.

The only evidence in the record on feasibility of mitigation demonstrates that all the mitigation is feasible, beginning with the fact that the staff and experts developing the RDEIR would not have wasted the effort of proposing mitigations they considered infeasible. The RDEIR fails to indicate whether the proposed mitigation measures not presently incorporated into the proposed project are measures that are commonly used elsewhere, but we are familiar with these types of mitigation and we know that they have been used elsewhere. Responses to this comment should indicate for each mitigation measure whether the experts who have devised these mitigations have seen them used elsewhere. CGF and SCVAS have reviewed many development projects, including golf course projects, and the proposed mitigations are not exceptional in any manner, and therefore have been found to be feasible in many other circumstances. As seen in the attached letter, Golf Course Superintendent Harp is familiar with applying these types of mitigations to golf courses and knows them to be feasible for golf courses. The only "exceptional" aspect of this particular project is the degree of uncertainty caused by the fact that the applicant harmed the environment first, and then initiated the steps for environmental analysis. The fault for that uncertainty rests with the applicant, as should the burden of rectifying the problem of the harm it caused.

RESPONSE M-2: All of the mitigation measures identified in the RDEIR have been used at golf courses elsewhere, or are physically possible on the project site.

COMMENT M-3: Some of the proposed mitigation measures will have the effect of reducing the amount of irrigated turf or require the redesign of the course layout. This effect in no way makes the mitigations infeasible. As noted in the RDEIR, this golf course has over two-and-a-half times the amount of irrigated turf as other courses in the region. RDEIR at 84 (50 irrigated acres elsewhere versus 128 acres for this course). As noted in the letter by Golf Course Superintendent Harp, this course is on a parcel that is over 50% larger than many parcels used for golfing, which increases the flexibility in designing the course layout. Therefore, redesign is not a problem with respect to feasibility. Finally, many of the mitigations are overlapping - buffer zones around water bodies protect against many environmental impacts, and the need to reduce total irrigated turf in order to protect water supplies makes buffer zones all the more sensible. Simply put, there is plenty of room for all the mitigations proposed in the RDEIR.

RESPONSE M-3: This comment does not ask a question or raise an issue regarding the adequacy of the analysis in the RDEIR. No response is necessary.

COMMENT M-4: Economic factors should play a limited role in restricting the "feasibility" of proposed mitigation measures. The project proponent has illegally constructed and maintained a massive course without regard to its costs, so mitigation measures that might be considered expensive for "bare-bones" golf course are appropriate here. This is clearly an attempt to construct a "high-end" golf course. The level of effort the applicant should put into mitigating its significant impacts should be commensurate with the scale of the project. The applicant has not spared any expense in creating a golf course that it wants, so the applicant should accept comparable levels of expenses in mitigating the damage the golf course is causing to the environment. If economic reasons are cited for infeasibility of mitigation measures, economic data to support that assertion must be provided to the public and responsible agencies for comment.

RESPONSE M-4: This comment does not ask a question or raise an issue regarding the adequacy of the analysis in the RDEIR. The feasibility of the mitigation measures will be considered by the Planning Commission and City Council in their deliberations on the project and will be addressed in findings adopted if the project is approved.

COMMENT M-5: The applicant cannot rely on the fact that mitigation measures may now be more expensive or difficult to construct than they would have been if the applicant had not broken multiple laws and constructed the course before applying for its permit. The City must not reward the applicant for its illegal action.

Many of the mitigation measures will result in lower maintenance costs for the course because they require the applicant not to mow, fertilize, or spray pesticides on or near sensitive resources such as streams and ponds. To the extent that economics plays a role, these economic savings are additional reasons why the mitigations are feasible.

By creating on-site natural habitats, the mitigations will significantly improve the aesthetics of the course. Someday, golf course users and neighbors will thank the City for requiring the natural habitat improvements.

RESPONSE M-5: These comments support the feasibility of mitigation measures described in the EIR. No response is required.

COMMENT M-6: The project description states the golf course is a private course for the use of nonprofessional golfers, specifically for recreational use by mathematicians at an associated institute. This description means that mitigation measures are feasible even if the mitigation changes the course in a way that makes it less attractive for professional tournaments. If the mitigation measures proposed are similar to those used at other, nonprofessional golf courses, then that information should be enough to show that the mitigation measures are feasible. As we discuss in detail in our comments below, all proposed mitigation measures are unremarkable and completely feasible.

RESPONSE M-6: Individual comments are responded to separately below.

COMMENT M-7: The City cannot reject mitigation measures that eliminate "take" of endangered species as defined in the Endangered Species Act ("ESA"). The applicant did not receive

permission to take endangered species. If the City does not require mitigation, the City will be granting a permit for an action known to the City to cause take of endangered species. The City itself would violate the ESA if it grants a permit to a third party to commit an action that causes take of endangered species. Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231 (11th Cir. 1998). The way the City can avoid an ESA violation is by requiring, at a minimum, the mitigation described in the RDEIR.

RESPONSE M-7: This is a legal issue, not a CEQA issue. The information in this comment is acknowledged. As stated, the RDEIR identifies mitigation for reducing or avoiding impacts to listed species. It is the City's intent to adopt mitigation as a condition of project approval.

COMMENT M-8: The project description means that professional play in PGA tournaments is not an anticipated use of the course, and proposals for such use would require supplemental environmental documentation.

RESPONSE M-8: This comment is consistent with information contained on page 7 of the RDEIR.

COMMENT M-9: Specific Comments.

Visual Impacts.

The DEIR, at page 22, concludes that there will be no significant visual impacts from the proposed project, while acknowledging that, "Views of the hillside from the neighbors near the project site will be obscured when the numerous trees planted along the perimeter of the project site become established."

The EIR should reconsider the significance of visual impacts on the site. The dense tree planting along the perimeter of the land create a significant, adverse visual impacts for the neighbors and the public as it drives along Foothill or other adjacent roads. In addition, the trees–planted in ugly, artificial-looking rows–fundamentally change the visual character of the area, which is dominated by longer views of the foothills, farmlands, and rural residences. This problem is exacerbated by the type of trees selected. Redwoods and other conifers would not grow in this area naturally, and thus look out of place. This problem will only get worse as the trees grow.

We are submitting photos of the area. From photo number one–taken just to the west of the project site, you can see the view of the foothills from Foothill Road. The following pictures are also from Foothill, but are taken adjacent to the project site. This depicts the hedgerows of trees and the views the neighbors currently have. You can see that the longer views are nearly gone at this point, and will disappears entirely as the trees grow.

A recent count shows that nineteen homes are located directly across Foothill from the project site. Additionally, homes to either side of the project will have their views towards the valley floor obscured as the trees grow.

Additionally, the trees are typically planted too close together for their own well being. Please provide an arborist's opinion as to the long-term health of the trees under the current conditions. If, as we suspect, many trees will suffer or die, will this exacerbate the negative visual impacts.

The mitigation for this impact would be to remove many of the trees, organize those that remain in a more natural looking groups, and remove portions of the berm that many of the trees have been planted on. Ideally, oaks and other trees and shrubs more suitable to the area would be planted instead.

RESPONSE M-9: The RDEIR did not identify the trees as a significant adverse visual environmental (visual) impact. Adding landscaping to a use otherwise permitted by City zoning and General Plan policies is not typically considered a significant environmental impact. As stated in the RDEIR, the golf course is allowed under the City's General Plan designation for the project site. The trees planted along Foothill Avenue were not planted pursuant to an approved landscaping plan, and may be different than what the City would have otherwise approved.

Language is included in the proposed text revisions in this Final EIR clarifying the process that must still be followed before the uses proposed under this PD zoning would be approved on the site. The City must approve a landscape plan as part of the Site, Architectural and Landscape Plan approval process. The City may determine that the row of trees must be removed or diminished or, alternatively, that the trees are an appropriate part of the overall use on the site and can remain.

COMMENT M-10: Wildlife Mitigation Measure Package I (pages 50-53)

Implement USFWS Mitigation Measure Recommendations. The Fish and Wildlife Service ("FWS") recommendations are part of the "Package I" mitigations described on RDEIR page 50 to reduce wildlife impacts. The requirements to purchase 51 acres of offsite-habitat does nothing to alter the golf course and is feasible. FWS identified in its letter an even-smaller 35-acre parcel that could be bought by the applicant, so the mitigation is especially feasible. We additionally note that the applicant's likely violation of the Endangered Species Act through its illegal destruction of habitat in 1997 cannot now be excused on the basis that it would be expensive to mitigate the damage it caused. The cost of purchasing the habitat does not make it infeasible.

FWS proposes that in lieu of purchasing 51 acres of replacement habitat, the applicant may purchase and protect 35 acres of prime habitat currently being considered for purchase by the VTA. RDEIR, App. C-6 at 2. If VTA plans to purchase and protect this prime habitat on its own, and if VTA will not protect additional habitat as a "substitute" for the 35 acres, then this proposed mitigation is legally inadequate. Protecting land through the applicant's purchase that would have been protected anyway might save the VTA some money, but it does not mitigate environmental harm. The City must show how this 35 acre purchase would increase the amount of protected land if the 35-acre option if this mitigation is to be legally adequate. [*sic*]

RESPONSE M-10: VTA does not propose to purchase and protect the 35 acres of prime habitat described in the July 15, 2003 letter from the USFWS. Therefore, purchase and protection of the habitat by the project proponent is mitigation.

COMMENT M-11: Riparian Buffer. The riparian buffer in Package I mitigations is feasible. As described above in the General Comments, the massive size of this golf course means that altering the

course layout as needed for the buffer will not interfere with the ability of golfers, especially amateur golfers, to use and enjoy the course.

Managing Non-Native Predator Species. Monitoring ponds for predators of endangered species and drying out those ponds containing predators for 2-3 week periods is an easily-accomplished measure. The alternative is to create a "population sink" where the golf course design becomes a trap for killing red-legged frogs and tiger salamanders.

Pond buffers. The proposed 10-foot buffers around the ponds will not interfere with golf course play.

Maintaining Water Quality of Breeding Ponds/Establish Vegetated Shelves. As with other measures, this mitigation is unexceptional and does not interfere with golf course play.

Water Quality Setback from Corralitos Creek. The proposed 50-foot buffer adds little if any extra burden to the 70-foot average buffer required by FWS. Again, the golf course has plenty of room with the buffer.

RESPONSE M-11: These comments concur with mitigation measures identified in the RDEIR. No response is required.

COMMENT M-12: Wildlife Mitigation Measure Package II (pages 51-53)

Providing a Buffer Zone. A two hundred-foot buffer zone around water bodies leaves more-than adequate amount of space on the property for an 18-hole golf course. As attested by Golf Course Superintendent Kenneth Harp, the course could easily fit on a much smaller parcel, so the buffers will not interfere with the feasibility of the course.

Managing Non-Native Predators, Water Quality, Vegetated Shelves, Creek Setback. Same as the comments above discussing these components of Mitigation Package I.

Additional Tiger Salamander Mitigation. Comments are hardly needed. Placing some rocks and branches for habitat could not be easier.

RESPONSE M-12: These comments concur with mitigation measures identified in the RDEIR. No response is required.

COMMENT M-13: Riparian Habitat (page 53)

Setback size. Comments made above regarding the feasibility of buffer zones apply here as well.

Other aspects of riparian protection. All the proposed riparian mitigation measures are commonly done and present no feasibility problems.

Water Supply Impacts

As pointed out by Golf Course Superintendent Harp in the attached letter, entire 18-hole courses have been built on 125-acre parcels. The applicant currently has 128 acres in irrigated turf, larger than the entire parcel used by other courses. RDEIR at 84. Reducing irrigated turf to 55-60 acres is still up to 20% more turf than that used at other courses in the region. Id. Fifty acres has been

shown to be feasible, so 55-60 acres is more than feasible mitigation for significant water supply impacts, which will also reduce pesticide impacts and potential groundwater pollution.

RESPONSE M-13: To the extent that these comments concur with mitigation measures identified in the RDEIR, no response is required. All of Mr. Harp's comments are responded to individually in Section III. T. of this Final EIR.

COMMENT M-14: Traffic Impacts

The discussion of traffic impacts fails to analyze whether the 1997 golf course construction of this project had significant traffic impacts, in terms of volume or wear on roads from heavy equipment. Given the massive size of the construction project, the evidence shows those impacts were significant. The project applicant should be required to mitigate any construction-related traffic impacts through payments into a fund used to repair roads and to pay for traffic volume impacts, if any, through payments supporting public transportation. The fact that this and other construction-related impacts have already occurred is irrelevant, because the construction is part of the project, and mitigation expressly includes rectifying impacts after they have occurred, and eliminating impacts over time. 14 Cal. Code Regs. § 15370(c)-(d).

Noise Impacts

As with traffic impacts, the RDEIR should have analyzed construction-related noise impacts. Again, the massive size of the project shows noise impacts were significant. The applicant should pay into a fund for noise abatement. If none exists, the applicant should pay an appropriate amount for retiring and replacing older, noisier vehicles used by the City.

RESPONSE M-14: The RDEIR discusses why the analysis of project impacts does not attempt to quantify the impacts of past actions that did not result in permanent environmental changes (Section I. C., starting on page 1). Impacts of the project evaluated in this EIR must be compared to the conditions that existed when the environmental analysis began. The golf course was mostly constructed when the EIR was begun. Additionally, the unknown impacts of construction that have already occurred cannot be mitigated by paying money, since neither the traffic nor the noise can be undone or reduced, the annoyance and disruption cannot be corrected or avoided, and there is no way to verify what if any damage was done to local roadways. This is different than other impacts identified in the Secondary Impacts section of the RDEIR, in that even if the project were denied and conditions returned to original conditions, noise and traffic that occurred during construction would not be reversed or undone.

COMMENT M-15: The unincorporated noise mitigation measures on page 91 would additionally reduce the total noise impacts experienced by neighbors, and should be required for this project.

RESPONSE M-15: This comment concurs with mitigation measures identified in the RDEIR. No response is required.

COMMENT M-16: Air Impacts

As with traffic and noise, air impacts from the 1997 construction should have been analyzed, and were likely to have been significant, especially from dust. The applicant should pay into an air pollution abatement program to mitigate its impacts.

RESPONSE M-15: As with the response to Comment M-14 above, paying money at this time would not mitigate the impacts that may have occurred during past construction of this project, in that it will not reduce or avoid the dust impacts and cannot repair any effects that might have occurred.

COMMENT M-16: Secondary Impacts

Red-legged Frog. Regarding Mitigation 1, there is plenty of space on the parcel for habitat for all the reasons discussed in the General Comments, above. Mitigations 2-4 are similar to the Wildlife Package Mitigations discussed previously, and those comments apply here. Mitigation 5 - compliance with agencies - is an absolute necessity, so feasibility is irrelevant.

Tiger Salamander. Mitigations 1-3 have been discussed in relation to red-legged frogs and Wildlife Packages, and those comments apply here. Mitigation 4 is another example of offsite mitigation. Off-site mitigation is commonly done and is as feasible for the project applicant as it is for anyone else.

RESPONSE M-16: These comments concur with mitigation measures identified in the RDEIR. No response is required.

COMMENT M-17: Math Institute

Since construction of the Math Institute is a stated project objective, why are there no drawing of the proposed new building? Please provide a visual depiction of the institute, so that the public can determine whether the building design and massing are appropriate for the site, or whether they might lead to increased visual impacts.

RESPONSE M-17: The Mathematics Institute building is proposed within the footprint of the existing restaurant building, and will be no larger than the existing building.

If the proposed PD rezoning is approved by the City of Morgan Hill, the design of the Mathematics Institute building will be subject to approval by the City of Morgan Hill Architectural Review Board, which will include a separate public review process.

COMMENT M-18: Cumulative Impacts

Water Usage. Please support the statement on page 116 that "agricultural land uses require more water than urban land uses." Much of the surrounding land uses will be residential, with lawns and other activities typical of residencies. They might use as much or more water than the orchards and row crops currently near the site. Please provide typical water usages for orchards, row crops, and residential uses of the densities predicted in area.

RESPONSE M-18: Water use can range widely. Residential water use is typically 450 gallons per day, or 0.5 acre-feet per year, for half-acre lots. Agricultural typically uses 2.5 acre-feet of water per acre per year. The pending projects listed in the Cumulative Impacts section on page 117 of the RDEIR are estimated to use approximately 207 acre-feet of water per year when development is complete. Most of these projects are occurring on "Prime Farmland" or "Farmland of Local Importance". Agricultural uses on these same properties would use an estimated 241 acre-feet of water per year under pre-development conditions.

COMMENT M-19: Also, how many of the surrounding projects will be drawing on the same groundwater?

Please provide any information on trends in the level of the groundwater table in the area.

RESPONSE M-19: Future development within the City of Morgan Hill urban service area will be served by the City water utility, which relies on the groundwater for supplies. Information on the groundwater table is discussed on page 80 of the RDEIR, and on pages 6-7 and 37 of Appendix D of the RDEIR.

COMMENT M-20: There is an inadequate analysis of the effect of having two golf courses (the Institute and Harvey Bear) nearly adjacent to each other. Please provide specific information for the combined water needs of the two courses and whether the groundwater in the area can accommodate that without negatively impacting the local residencies which rely on groundwater (e.g. cause them to make their wells deeper).

RESPONSE M-20: The RDEIR for this project does identify a significant impact from the proposed project on the water table serving nearby properties (page 83). The RDEIR states that (on page 116) since most other future development in the project area will require the replacement of agriculture with urban uses, and since agriculture typically uses more water than residential or commercial uses, the RDEIR did not identify a cumulatively significant impact beyond that of the proposed project.

The EIR prepared for the planned golf course at the Harvey Bear County Park does not identify any water needs for the golf course and does not quantify either existing or future water use amounts for the golf course site. The EIR does say that the park will use native plants and will minimize water use for all of its functions. In the absence of any information whatsoever about the design and source of water supply for the Harvey Bear golf course, no estimate can be provided of its future water demand.

COMMENT M-21: To mitigate for potential draw-down of groundwater in the area due to the proposed project, a mitigation measure should be included that groundwater levels will be monitored and, if groundwater levels fall below a threshold (to be established), the course would reduce water usage to a level which reduces the impacts to less than significant.

RESPONSE M-21: As reflected in the substantial discussions about the existing water table and how to characterize changes in it (see Section III. E. Water Supply and the discussion in Appendix D of the RDEIR, and Section III. AI. of this Final

EIR), attribution and characterization of changes in water levels require careful monitoring at multiple locations and are subject to multiple interpretations. The suggested mitigation in this comment could provide an additional level of protection for residents in the area and will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT M-22: Farmlands. To deal with a significant, cumulative loss of agricultural land, the City of Gilroy is implementing a programs whereby those that contribute to the loss of farmland in the future will mitigate that loss by purchasing either fee title or a conservation easement over other farmland in Santa Clara County, and then keeping that land in farming.

We suggest that Morgan Hill consider a similar program of farmland preservation, to reduce the cumulatively significant loss of farmlands from this and other projects. The proposed project could mitigate for its contribution to the cumulative loss of farmland by preserving 57 acres (the amount of prime farmland lost on site) in the region. Please address the feasibility of both aspects of this proposal (i.e. a wider program and the specific amount for this site).

RESPONSE M-22: The creation of a conservation easement does not mitigate for the loss of farmland, since it does not result in the creation of new farmland and does not make existing farmland more productive. In other words, it is not mitigation. Such an easement could reduce the likelihood that future development might occur on land that is currently designated prime farmland. Depending on where the conservation easement is obtained (such as on land that would not be subject to development pressure in the foreseeable future), obtaining a conservation easement might have no effect on the cumulative loss of farmland at all. Conservation easements are a good tool to preserve lands and are being considered by the City as a tool to establish an urban limit boundary for the City of Morgan Hill.

COMMENT M-23: Serpentine and Sensitive Species. Similarly, the project's contribution to a cumulatively significant loss of serpentine habitat and habitats for special status animals (DEIR, page 117-118) could be mitigated by requiring off-site acquisition and preservation of these habitats (as mentioned in the DEIR at page 111). This mitigation appears feasible, in that the project proponent has already agreed with the U.S. Fish and Wildlife Service (FWS) to mitigate for impacts to Red-legged frog by acquiring and preserving off-site habitat. Please describe the current status and content of the agreement with the FWS (acreage, etc), so the public can better understand the nature of off-site mitigation.

RESPONSE M-24: While the project proponent has stated in public meetings that an agreement has been reached with the U.S. Fish and Wildlife Service on a mitigation agreement, no signed agreement is known to exist. If an agreement is ultimately reached with USFWS that includes or requires mitigation that is substantially different than what is described and analyzed in this RDEIR, and which is summarized in a letter from USFWS dated July 15, 2003 and included in Appendix C-6 of the RDEIR, the proposed project may not have complied with the requirements of the California Environmental Quality Act. The City of Morgan Hill as the lead agency under CEQA cannot delegate to

another governmental agency the responsibility for identifying and requiring mitigation of significant environmental impacts.

COMMENT M-25: Mitigation Monitoring and Enforcement

The following comments relate to mitigation monitoring and enforcement. Based on past history, we question the City's ability to adequately monitor or enforce mitigation measures on the site. To an even greater extent, we question the project proponents' commitment to any mitigation measures which are imposed. The public should be confident that those mitigation measures contained in the DEIR will actually be implemented in a manner which does indeed reduce impacts to a less than significant level. Therefore, we feel these are legitimate CEQA comments, and we request a response.

Please describe how the mitigation monitoring plan for this project will be compiled.

Please describe the resources the City has to enforce those mitigation measures. In other words, what is the system in place in Morgan Hill for mitigation monitoring, who is responsible for oversight of a project such as this, and is there adequate staffing to ensure that mitigation measures will be inspected?

If a mitigation measure is not implemented, or not implemented adequately, what are the enforcement mechanisms in place in Morgan Hill? Can the proposed project be shut down, or the prospect proponents fined?

Is there any heightened scrutiny when dealing with a project proponent who has shown a clear disregard for local, state, and federal law, such as the proponents of this project?

If the City is to claim that it has an adequate system in place and adequate staffing to deal with monitoring and enforcement, please explain why these mechanisms were not used in dealing with the project proponent since the late 1990's, when the City first noted that the old grading permit had been violated.

The above information, including a discussion of the City's past failure to monitor or enforce against the proposed project, is relevant to CEQA, in that it will help the public better understand the context of mitigation monitoring and enforcement, and thus have confidence that in the future the project proponents will be held to their permit conditions, giving meaning to the CEQA documents.

Please discuss which proposed mitigation measures lend themselves to performance criteria (e.g. riparian habitat restoration areas shall be monitored yearly for five years and must achieve a success rate of 70%, or replanting shall be required). For those that would benefit from performance criteria, please provide the suggested criteria for public comment).

When the mitigation monitoring plan for the proposed project is drafted, we recommend that it be detailed, clear as to whom responsibility for implementation and oversight of each measure has been assigned, and containing a schedule for inspection and documentation.

RESPONSE M-25: The preparation of this EIR is the result of the enforcement process. Several steps of enforcement has preceded the preparation of the EIR, including a Grading Permit Request by the project proponent and a Grading Permit

Violation issued by the City. The City cannot speak to the enforcement actions that are the responsibility of other agencies.

Depending if and how the project is approved, a Mitigation and Monitoring Plan will be prepared in conformance with the requirements of §15097 of the CEQA Guidelines.

N. RESPONSES TO LETTER FROM SHEILA FLODBERG, RECEIVED FEBRUARY 2, 2004:

COMMENT N–1: It has always been my impression that before building, expanding or modifying a property, a permit had to be obtained. Yet Fry Electronics owner proceeded to do work on the existing Flying Lady golf course without a permit or an EIR. Isn't this against the law? Because of this action there are numerous unmitigated impacts that affect nearby properties, wildlife, riparian habitat, surface and ground waters, many plant species, and excessive use of water to name a few of the many problems.

More specifically red-legged frogs and California tiger salmanders, both listed as endangered species have been and will continue to be lost. Burrowing owls, other raptors and swallows have their nesting areas infringed upon. The storm drain that was removed to enlarge the golf course has resulted in flooding of nearby properties and streets in the area. Ordinance sized might have been removed but they were replaced with numerous mature trees. This plus grading, maintenance, and watering (437,500 gallons per day) has led to high and unsafe leves of natrogen in wells, soil erosion and depleating around water resources, the latter a danger in case of fire. Site inspection showed that the gold course lakes do not confirm to the plan given to the project proponent by the city of Morgan Hill. I could go on and on about the negative impacts the gold course project has.

If the objective is for the site project to be developed with the goals and policies of Morgan Hill, I think the project has failed miserably. Not only is Morgan Hill affected but wildlife, water, soil, plants, etc. and San Martin which borders the named project area. In addition I wonder of the mathematicians being flown in for the mathematics institute and the "charity" golf tournaments have anything to do with proposed airport expansion. Money does speak loudly. I would hope that the city of Morgan Hill has enough concern and caring for the environment and residents that it stops the project where it is and not be swayed by the Fry millions.

RESPONSE N–1: This comment confirms impacts identified in the RDEIR, and does not raise any questions about the environmental analysis or the adequacy of the EIR. No response is required.

O. RESPONSES TO LETTER FROM ANNETTE ZUCK AND ERIC SJOBERG, RECEIVED FEBRUARY 3, 2004:

COMMENT O-1: Regarding the Revised Environmental Impact Report for the Institute Golf Course. We urge The City of Morgan Hill to take adequate steps to protect the Homeowners, Community and the environment.

We live across the street from the "Golf Course" and the following are just a few of our concerns.

1) The depletion of water supply to Homeowners wells
2) The amount of Nitrogen and pesticides in our water supply filtering down from the golf course to our wells
3) The possible flooding and mudslides in the neighborhood. We are currently not zoned as a "Flood Zone" area and we are concerned that we may be upgrade to a "flood zone" as a result of the golf course. Which will increase Homeowners insurance costs.

RESPONSE O-1: These issues are addressed in the RDEIR: (1) depletion of the groundwater is discussed on page 82 and mitigation is identified on pages 84-85; (2) nitrogen loading and contamination by herbicides and pesticides are addressed on pages 65-66 and page 69, respectively, and mitigation is described on pages 75-78; (3) off-site flooding impacts are addressed on pages 60-62, with mitigation described on page 73.

COMMENT O-2: 4) The 8 to 12 foot dirt ridge along Foothill created by the golf course and the trees planted on that ridge which removes all of our View of the Hills

RESPONSE O-2: The presence of trees planted adjacent to the golf course were not identified as a significant environmental impact. However, as reflected in the text revisions in Section IV of this Final EIR, the existing grading and landscaping (including the berm and the row of trees) do not conform to an approved landscape plan that was approved through the City of Morgan Hill's Site, Architectural and Landscape Plan Review process. If the City approves the PD rezoning, any of the grading and landscaping on the site that is found to be inconsistent with the zoning, incompatible with adjacent land uses, and/or inconsistent with the City's development standards, may be required to be modified.

COMMENT O-3: 5) The damage to the road from the golf course's construction

RESPONSE O-3: No information has been provided to the City that the golf course construction was responsible for specific damage to the public streets in the area. If such damage is known to occur, the damage should be reported to the City of Morgan Hill Public Works Department, or the Santa Clara County Roads and Airports Department, if the damage was to County roads.

COMMENT O-4: 6) The traffic to the golf course

RESPONSE O-4: As discussed on page 87 of the RDEIR, the project as it is currently proposed would not result in a substantial increase in traffic that would exceed the capacity of existing roadways.

COMMENT O-5: 7) The water overflow which dumps into a roadside drainage ditch

RESPONSE O-5: Runoff into the drainage ditch along Foothill Avenue is discussed in the analysis of off-site flooding on page 60 of the RDEIR. Mitigation for this impact is included in the measures identified for flooding and drainage on page 73.

COMMENT O-6: 8) The proposed charity golf tournaments would Highly impact us with traffic and people

RESPONSE O-6: The RDEIR states on page 7 that the charity golf tournaments are not evaluated in the RDEIR, and the City will not approve zoning that includes such golf tournaments as an allowed use. The impacts of such tournaments are, therefore, not identified in the RDEIR; this is restated throughout the RDEIR, including in the traffic section on page 87.

COMMENT O-7: 9) The endangered species

RESPONSE O-7: Project impacts to endangered and other special status species and habitats are addressed on pages 41-50 and 107-111. Mitigation measures are identified on pages 50-53, and 111-115.

COMMENT O-8: 10) The Fact that the Golf Course is in Morgan Hill and we live in San Martin. Is the City of Morgan Hill looking out for the interests of the Homeowners in San Martin?
11) If the Golf Course impacts the San Martin Homeowners just "Who" will be accountable?
12) That the City of Morgan Hill require the "Golf Course" to mitigate our concerns.

RESPONSE O-8: The City of Morgan Hill is the lead agency and has the responsibility for land use planning decisions for the project site. These comments are about the project approval process and do not raise any questions about the environmental analysis or the adequacy of the EIR.

P. RESPONSES TO LETTER FROM KENNETH BROWN, RECEIVED FEBRUARY 4, 2004:

COMMENT P-1: I am responding to the Draft Environmental Impact Report on The Institute Golf Course prepared for the City of Morgan Hill.

Although Fry's Golf Course is technically situated in Morgan Hill, San Martin, my neighborhood, surrounds it on all sides. So, I have keen interest in the development in this area.

My first reaction after reading the report is that Mr. Fry egregiously ignored the permit process and created an 18-hole golf course where a 9-hole course had existed. Such disrespect for your city's process and the neighbors' concerns is inexcusable, even for a large property tax contributor like Mr. Fry. My main concern about the expanded course is the ground water pollution from the fertilizer and other chemicals used to maintain the fairways. The runoff also flows into Corralitos Creek, San Martin Creek, and Llagas Creek. I am not opposed to AIM and plans for its building, as long as the structure remains within the bounds of the existing Flying Lady restaurant building.

RESPONSE P-1: Impacts to both groundwater and surface water quality from chemicals used on the golf course are discussed in the RDEIR on pages 63-69. Mitigation measures are identified on pages 74-79. The proposed project presently includes replacement of the restaurant building with a new structure of equivalent size (described on page 5).

COMMENT P-2: My recommendations are:

a. The course is to be scaled back to the original 9 holes, and that the environment restored as much as possible to the state prior to the construction of the 18-holes.

b. As the AIM building is not constructed yet, to allow construction of the building contingent on all permits and environmental mitigations in the report being met.

c. All modifications to existing structures should be permitted only after detailed structural and use plans are submitted. I am especially concerned about the so called ancillary structures, to which no detailed plans have been submitted.

RESPONSE P-2: The recommendations in this comment are acknowledged, and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

Q. RESPONSES TO EMAIL LETTER FROM KEVIN McCURLEY, RECEIVED FEBRUARY 3, 2004:

[Note: The following letter was sent electronically to the City of Morgan Hill. There appears to have been a problem with the document, in that all letter combinations of "fi", "fl", and "ff" are omitted from the letter. Some of words are, therefore, missing those letters.]

COMMENT Q-1: My name is Kevin McCurley, and I am a member of the Scientic Research Board of the American Institute of Mathematics (AIM). I am writing to comment on the benets for the City of Morgan Hill that can be found in the development of the AIM Research Conference Center in your city.

As a bit of personal background, I am a mathematician by training, and a computer scientist by avocation. I grew up in San Jose, graduated from Santa Clara University, and went on to receive an M,S. in Statistics and a Ph.D. in Mathematics from the University of Illinois. During the course of my career I have served in many capacities as a mathematician, including stints as a professor at Michigan State University and the University of Southern California, and eight years working as a research scientist at Sandia National Laboratories. I am currently employed as a research sta member in the Computer Science department at the IBM Almaden Research Center. The AIM Research Conference Center is planned to be a very unique facility, with many potential benets to Morgan Hill, the surrounding area, the United States, and the pursuit of science. The purpose of the AIM Research Conference Center is to bring the best mathematicians from around the world to work on problems together, and thereby advance the frontiers of mathematical research. There are currently four countries that I know of with prominent mathematics research conference centers:

the Isaac Newton Institute in Cambridge, England
Mathematisches Forschungsinstitut Oberwolfach, in Germany
Centre International de Rencontres Mathematiques in Luminy, France
Ban International Research Station for Mathematical Innovation and Discovery, Ban, Canada

Nothing comparable to these facilities currently exists in the United States.

These international conference centers are extremely inuential on the course of research in mathematics, and Morgan Hill would be in very good company indeed to be the home of the AIM Research Conference Center.

Some of the benets of having the conference center in the city are obvious, as exemplied by the many outreach programs that AIM engages in. Northern California has long benetted from world-class educational institutions, both public and private. These educational institutions are part of a part of the intellectual infrastructure that has allowed Northern California to maintain a high quality of life, both as an economic powerhouse as well as a destination for the best and brightest around the world. By bringing the world's best mathematicians to the area, and through continued outreach activities, we can expect that Morgan Hill will continue to provide an intellectual climate that attracts and retains the best teachers and the best workers that the world has to oer.

The quality of a life in a community is derived from a variety of sources, but economic vitality is a necessary component to provide the resources for most of them. It goes without question that the future economic health of California will require a highly educated workforce. Most predictions for

future economic opportunities focus on areas of the economy that require high cognitive skills, such as biotechnology; information technology, and health sciences. These skills can be greatly enhanced in the community by outreach programs and the involvement of local residents with a world class scientic research institution.

RESPONSE Q-1: These comments relate to the desirability of the project and the possibility of economic benefits from the project. They do not relate directly to the environmental impacts of the project. No further response is required.

COMMENT Q-2: As a scientist, I can appreciate the diculty in evaluating the long term environmental impact that comes from any development, and I will assure you that AIM has every interest in sustaining the health of the environment. In fact, one of the research conferences in 2003 run by AIM was on the subject of geometric models of biological phenomena. It is also probably worth noting that among scientic institutions, the city would be hard pressed to nd one with less overall impact on the environment than mathematics. Very few cities of the size of Morgan Hill are going to have such opportunities.

RESPONSE Q-2: The EIR prepared for this project identifies the specific environmental effects anticipated from the project as it was proposed at the time the RDEIR was circulated.

COMMENT Q-3: Mathematics research has benetted greatly from the largess of John Fry through his nancial support for AIM.The vast majority of basic research in science is funded through government grants, and this is most pronounced for mathematics. AIM is a rare example of a basic research institute that receives a signicant amount of funding from private sources. This support for basic science from a prominent resident of Morgan Hill is a good example of the intellectual health of the community. I hope that the Morgan Hill City Council and Planning Commission will embrace the construction of the AIM Research Conference Center, and become a partner in the advancement of science for the good of mankind and the nation.

RESPONSE Q-3: This comment addresses the benefits of approving the project and do not raise any environmental issue. No response is required.

R. RESPONSES TO LETTER FROM PETER KEESLING, DVM, RECEIVED FEBRUARY 4, 2004:

COMMENT R-1: This letter is in response to the call for public comment to the Draft Environmental Impact Report for the Institute Golf Course. Thank you for you consideration.

As a neighbor living less than 1000 yards from this property, I am concerned not only about the project itself, but more for the proposed plans to mitigate some of the environmental impacts caused by this project. The DEIR lists numerous items that will have a significant impact on the environment. It also details how some of these can be mitigated by the proponent to lessen the impact. The specific mitigation requirements are extensive and necessary. I am particularly concerned about the effects of this project on groundwater contamination and supply.

The proponent has already demonstrated a cavalier attitude towards those regulations that we all must follow. For example, the use permit of April, 1997 allowed for the work on the 40 acres of the then-existing golf course. The proponents instead did improvements over 150 of the 192 acres, doing cut/fill work that amounted to over 4 times the amount allowed. It appears that the now-existing golf course was built without permits or any proper regard for the regulations that everyone in this region must follow. And the effects on neighbors are already measurable ... flooding of adjacent properties that were previously not affected by heavy rains, increased nitrate levels in surrounding wells, etc.

The DEIR describes ways in which the proponent can mitigate the impacts of this project on the environment. The work necessary would be extensive. But given the past history of the proponent's methods of work, why should anyone believe that these solutions be completed?

I strongly believe that a No Project Alternative would be the appropriate action for the Institute Golf Course. This is based on the repeated efforts by the proponent to work outside the regulations by which all others must abide. It is clear that the proponent's interest in developing a top-quality golf course overrides any concern for environment or those families living in the same region. And the environmental effects of this project are too far reaching.

The project was built to its extensive level without proper permits or concern for environment. It has already had a negative impact on groundwater and other environmental issues. I have little faith that mitigation of any of the problems already caused by this development would be carried out.

I would be happy to discuss this further with you or any of your staff. Thank you, again, for your consideration.

RESPONSE R-1: This comment letter does not identify any new significant environmental impact not discussed in the RDEIR, and does not raise any question about a new impact or the analysis in the EIR. The recommendation that the No Project alternative be implemented is acknowledged, and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

S. RESPONSES TO LETTER FROM ROBERT BENICH, RECEIVED FEBRUARY 4, 2004:

COMMENT S-1: I have a number of comments regarding the subject draft EIR that I believe should be addressed. Overall, the report is deficient in that it does not take into consideration the use and condition of the land by the previous owner compared to the present situation. Common sense dictates that one must ask, "Who is/was exercising better stewardship of this property the current or previous owner?"

RESPONSE S-1: The RDEIR compares the impacts of the proposed project to the physical conditions that existed when the environmental review was begun, in conformance with state law and the CEQA Guidelines. The basis of the environmental review is discussed in the section entitled "Background", on pages 1-4. Consideration of previously existing conditions is reflected in Section III of this RDEIR, in the discussion of Secondary Impacts.

COMMENT S-2: Specifically, I have the following comments and observations. Please refer to the mustard colored "SUMMARY" beginning on page v of the report.

Pg. VI - Viii Vegetation and Wildlife Impacts

Bullfrogs Vs Red-Legged Frogs: Pg. 50 of the report states, "Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented".

I ask, "Why"? In addition, the report states that ponds should be drained in the Fall "just in case" there might be bullfrogs present and, therefore, harm the red-legged frogs. How can this be rated as a "Significant Impact" when no bullfrogs or other non-native predators were found?

In addition, page 36 of the report states, "... red-legged frogs were observed in the natural creek and ... at the man-made pond... of the project site. In September 2003, red-legged ... adults (50 total) were observed in all ponds ... on the site." I ask again, "Then why drain the ponds in the Fall?"

RESPONSE S-2: The absence of bullfrogs when the site was last inspected is no guarantee that bullfrogs will not move onto the site. At least one bullfrog was found on the site during the last year. Red-legged frogs are an endangered species, bullfrogs are predators on red-legged frogs, and the project proponent has modified habitat occupied by the red-legged frogs and created a series of ponds that could attract and support bullfrogs. Although the current conditions on the site also attract red-legged frogs, the conditions do not constitute safe or sustainable habitat for red-legged frogs. As discussed in the biology report in Appendix C-1, the conditions created on-site may function as a "population sink", which would be a detriment to the red-legged frog population in the area.

The necessity for the identified mitigation program is discussed in the RDEIR text on pages 35-36, 43, 48, 51-52, and 112-114. More detailed discussion of the need for appropriate mitigation for impacts to red-legged frogs is included in Appendix C.

COMMENT S-3: Tiger salamanders: Pg. 36 of the report says that, "A ... tiger salamander was observed...". I interpret this to mean that one single salamander was seen. Does this justify such drastic mitigation measures? It seems to me that this is INSIGNIFICANT.

RESPONSE S-3: The RDEIR points out that the presence of a tiger salamander indicates that there was probably a larger population on the site and that both breeding and aestivation habitats were likely destroyed by the grading. It should be noted (page 52 of the RDEIR) that the mitigation measures for tiger salamander are generally the same as the mitigation measures for red-legged frogs (no additional measures are necessary to protect the tiger salamanders).

COMMENT S-4: Burrowing Owls: Pg. 37 of the report states, "Although ... ground squirrels and their burrows were observed ... in 2000, no Burrowing Owls were observed... Because habitat for Burrowing Owls was observed during the 2000 survey, they could occur on-site."

No Burrowing Owls in over three years? Then how can this be a "Significant Impact" (Pg. 44 of the report)?

RESPONSE S-4: The significant impact identified on page 44 would only occur if the project proponent were to destroy a Burrowing Owl or an occupied burrow.

COMMENT S-5: Raptors, swallows & bats: Pg. 45 of the report states that construction activities and demolition of existing buildings could disturb these animals.

I ask: "What did these animals do before there were even any buildings on this site? What did they do when these buildings were being constructed in the first place? And finally, were the buildings constructed for the benefit of birds or the benefit of people?

These should be "INSIGNIFICANT IMPACTS".

RESPONSE S-5: The building identified as most likely to harbor bats is presently unoccupied and is not suitable for human habitation. Before buildings existed on the site, bats and swallows nested in large tree cavities and on natural earthen banks or rock outcroppings. If the buildings have been neglected or otherwise allowed to be used for nesting birds or bats, the destruction of those nests or the reproductive efforts of the birds and bats is a significant environmental impact.

COMMENT S-6: Pg. xiv - Ordinance-Size Trees

Pg. 112 of the report states, "The numerous trees planted on the golf course are primarily non-native and do not offer replacement habitat values".

I respectfully disagree with this assessment. Just look at the all the beautiful "non-native" trees planted throughout the State of California and prescribed by city codes. Eucalyptus varieties from Australia, numerous kinds of Palm trees, Japanese Maples, and Chinese Elms are only a sampling of wonderful trees that provide visual beauty, shade, and habitat for birds and animals. To plant only native species of trees would be boring.

This should be rated an "INSIGNIFICANT IMPACT".

RESPONSE S-6: Non-native plant species generally provide less habitat value for native animals and birds than do native species. Habitat values would not necessarily be the same as the aesthetic values of urban landscaping, and the aesthetic value does not compensate for the loss of habitat.

COMMENT S-7: Overall, the report assessment of the current land use is too severe - especially when compared to the way the property was being managed (or mismanaged) by the previous owner. There are many suggested impacts and mitigations that are warranted but, overall, the many items listed in the "SUMMARY" are simply "overkill" and are not justified.

Finally, the report needs to include the results of research, tests and mitigations that have already been done by the current owners and which are not reflected in this draft EIR.

RESPONSE S-7: The RDEIR incorporated all of the reports and information provided by the project proponent at the time the EIR was circulated (see specifically Appendices C-2, C-3, and C-4, references on pages 61, 70, and 82, and various citations throughout the report in Appendix D). Additional information received from the project proponent at the close of the circulation period for the RDEIR are included in this Final EIR (see Subsection III.AI.).

The opinions reflected in this comment letter are acknowledged, and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

T. RESPONSES TO LETTER FROM KENNETH M. HARP, CGCS, RECEIVED FEBRUARY 4, 2004:

COMMENT T-1: Please include the following letter and information into the public review of the Revised Draft of the Environmental Impact Report for the Institute Golf Course.

It is my professional opinion as a "Certified" Golf Course Superintendent with the Golf Course Superintendents Association of America that all of the mitigation referred to in this report be adopted by the project and become mandatory before issuance of any related permits. Many of the mitigations referred to in this draft do not go far enough in defining or protecting the environment or reducing the impact caused by the project and golf course.

The existing Environmental Impact Report is not specifically tailored for a golf course construction project. Most EIRs are for projects other than golf courses. The existing EIR fails to take into account that a golf course project once finished, becomes a living entity within the environment in which it resides. That a golf course unlike the majority of EIR's which mainly deal with the building of buildings for businesses and parking lots, streets, so on and so forth will continually pose an environmental threat to itself and other environments in close proximity to it unless ongoing environmental programs and policies are continually reviewed and upgraded.

The following information should have been included in the Environmental Impact Report.

1. INTEGRATED TURFGRASS AND PESTICIDE MANAGEMENT PROGRAMS

The EIR for the Institute Golf Course does not contain either a report for a proposed Integrated Turfgrass Management Program or a proposed Pesticide Management Program. Both of these programs are highly consistent with any professionally managed golf course maintenance operation. Their inclusion into the EIR would then take into account all of the relevant proposed Mitigation Measures and those deemed a requirement and in turn show how these

Mitigation measures would be complied with and accomplished on a daily, weekly, monthly and annual basis.

The Integrated Turfgrass and Pesticide Management programs will also show what chemical types and amounts the golf course might expect to use on a daily, weekly, monthly and annual basis. An extremely important consideration for environmental impacts associated with Vegetation, Wildlife, Hydrology and Water Quality portions of this EIR.

RESPONSE T-1: The RDEIR does identify the need for a Chemical Application Management Plan (CHAMP), which would be an integrated program for identifying the appropriate type of grass species, and for managing the application of all chemicals. The content, purpose, and use of the CHAMP are described on pages 76-78 of the RDEIR, and appear to be very similar to the purpose and content of Integrated Turfgrass and Pesticide Management Programs.

COMMENT T-2: INTEGRATED TURFGRASS MANAGEMENT PROGRAM OVERVIEW
An Integrated Turfgrass Management Program is primarily written by a qualified Golf Course Superintendent. The qualifications in keeping with the Class "A" and "Certified" standards of the Golf Course Superintendents Association of America.

An Integrated Turfgrass Management Program identifies the specific turf types present on the golf course as well as native turf types. The program will also identify all plant types within the golf courses boundaries and wildlife present. The program will outline the specific types of soils and predominant species of turfs to be grown on the soils present. The program will address fertility requirements of the differing turf species in relation to their uses on the golf course and in turn show what types of fertilizers will be used, how much will be used on an annual basis. This will in turn answer many questions in relation to run off of fertilizer components into surrounding water bodies and the potential for ground water contamination.

RESPONSE T-2: See description of the CHAMP on pages 76-78 of the RDEIR.

COMMENT T-3: The Integrated Turfgrass Management Program will be able to determine the water use rate based on historical data for the selected species of turf being grown on the golf course. Historically speaking, an 18 hole golf course will use approximately 500,000 gallons of water per day in order to water the entire golf course. This fact was not apparent in the EIR and is important in determining factors relevant to the EIR Water Supply.

RESPONSE T-3: The RDEIR states on page 81 that the existing golf course uses approximately 437,500 gallons per day. Based on recently available information, the estimated water use of the existing golf course is 397,000 gallons per day, as reflected in the text revisions in Section IV of this Final EIR. Golf courses have been constructed in the region with as little as 50 acres of irrigated turf, which would use substantially less water (see RDEIR mitigation measures on page 84). An example of a recently constructed golf course with approximately 50 acres of irrigated turf is the Tehama Golf Course in Carmel, California. The Tehama Golf Course is 6,870 yards long from the championship tees.

COMMENT T-4: With increasing emphasis on clean water, the use of Grey Water as the primary irrigation source for the golf course was not included as a mitigation for water supply problems which will occur in the future because of increased construction around the golf course boundaries which historically occurs after a golf course is built. The mention of the Automatic Irrigation System did not include a map of the existing or proposed irrigations system and where the irrigation heads (sprinklers) will be positioned and in turn where the water will be applied. If the water being applied will stay within the golf courses boundaries. If the water will be introduced into habitat area's designated for endangered species, endangered plants, etc. It would show if the existing lakes designated for irrigation purposes will be sufficient in size and depth to supply a days water use by the course and the requirements or water amounts needed to maintain an adequate enough supply in the lakes from other sources. Rain, well, stream, etc.

RESPONSE T-4: Regarding the first issue raised (grey water): the proposed uses on the project site will generate relatively little gray water – usually understood to include water from kitchen sinks, bathtubs, showers, washing machines, etc. As discussed in Response H-2 above, domestic water use on the site will be a relatively small percentage of the total.

Regarding the irrigation system details: the golf course and its irrigation system currently exist, but maps of the irrigation system were not included in the RDEIR. Information and a quantitative estimate of the water contained in

the irrigation pond and the amount of water used for irrigation on the site and the source of all of the water used on the site were determined without details about the sprinkler system; this information is included in Appendix D of the RDEIR.

COMMENT T-5: The Integrated Turfgrass Management Program will outline the training programs that will be used to teach and continually educate the golf courses employees in all aspects of golf course maintenance operations. To include but not limited to safety, first aid, safely operating golf course equipment, golf course rules and courtesies extended to golfers during equipment operations and most importantly environmental awareness. For in order to make sure that mitigation of any environmental impact is to be successful requires that those closet to the golf course on a daily basis, the golf course maintenance employee, must become knowledgeable in regards to the environment and how to protect the environment at the golf course.

The Institute Golf Course would become a member of the Audubon Sanctuary Program after complying with the requirements for membership. This should become a part of the mitigation for Wildlife in this EIR.

The Turfgrass Management Program if it had been included into the Institute of Golf Courses EIR, would ensure that those steps in regards to mitigation would not be forgotten by a new golf course superintendent which may not have the qualifications to effectively manage the golf course to professional standards. The inclusion of this program into the EIR by the developer/ city, would show that a genuine attempt is being made to ensure that all mitigation needed or suggested by the EIR would be undertaken and not lost in the coming months or years. Which historically can happen if management changes, which will eventually happen.

RESPONSE T-5: While the concept of an integrated management system is included in the RDEIR, the text revisions in Section IV of this Final EIR include an acknowledgment that a Turfgrass Management Program and Integrated Pesticide Management Program could be required to provide the mitigation identified as a CHAMP.

COMMENT T-6: PESTICIDE MANAGEMENT PROGRAM OVERVIEW
The Pesticide Management Program is primarily written by a qualified golf course superintendent. The qualifications are in keeping with a class "A" or "Certified" golf course superintendent with the Golf Course Superintendents Association of America.

The Pesticide Management Program primarily addresses the use of any and all pesticides, to include but not limited to, herbicides, insecticides and fungicides.

It will describe the types of pests, weeds and diseases present or expected to occur in relation to the turf species grown. The program will outline the specific types of application equipment to be used for the application of pesticides, the potential for drift of the pesticides from the targeted area's or runoff potential. The amounts and types of pesticides to be used will dictate the size of the Hazardous Materials building size, the size of the Wash Pad and attached water recycling unit.

An Integrated Pesticide Management Program will include a map of the golf course property. This map will in turn be divided into spray areas. Where set backs exist for spraying. Where spraying of

certain pesticides is not allowed based upon their type but may be used on other portions of the golf course.

The Pesticide Program will detail the spray equipments operation and most importantly it's cleaning and disposal or waste water derived from the cleaning operations.

The Pesticide Program will set thresholds and limits of insect or plant pests present in order to qualify spraying for those insect or plant pests.

The Pesticide Program will outline the training and licensing of the golf course employees responsible for the application of Pesticides. It will also outline the 'On Going" training of these employees.

Very simply, the existence of the Turf Management and Pesticide Management Programs is to explain in layman terms what is required to effectively run a professional golf course operation. It is the understanding of the interrelationships that exist between the programs which is most important. The EIR for this project does put forth many worthwhile idea's and concerns but fails to take into account that many aspects of golf course maintenance are determined in large part by what happens in the environment on a daily basis, which in turn can completely change the direction a golf course takes for that week and even month. Golf courses are not an immediate reflection of the professional care they have been given. Golf courses are a reflection of what has been accomplished up to 6 months and a year prior to any given day in question. The EIR falls short in that it does not recommend that only a highly qualified individual with experience in professional turfgrass management be employed as the Superintendent of the golf course maintenance operations. The EIR does however mention that on a "licensed" person be responsible for spraying pesticides. The City of Morgan Hill and all others should avoid at all costs putting itself in the position of overseer of the golf course maintenance operations which would include the approval or disapproval of fertilizers or pesticides. Case in point, the cheapest fertilizers are normally the quick release or highly soluble forms of fertilizer in up front costs. But when compared to slow release forms of fertilizers which have a higher cost initially the cheaper forms or quick release actually end up costing more per square foot.

RESPONSE T-6: The program described in this comment appears to achieve the same objectives as the CHAMP identified as mitigation in the RDEIR.

COMMENT T-7: MITIGATION MEASURES DIRECT IMPACT

In my professional opinion, all mitigation measures should be incorporated to the fullest extent possible. The project proposes an extremely large golf course of 18 holes over nearly 200 acres. Eighteen hole-courses can fit in 125-acre parcels (with significantly less turf, and comfortably fit into 150-acre parcels. There is plenty of room on this 200-acre parcel for the various buffer zones proposed without compromising the ability to play golf. The problem with less than 125 acres is that holes can be too close together, raising safety issues of golfers getting hit. The buffer zones do not create that problem here because the holes can remain spread-out.

The large amount of turf, and the long and wide fairways can be reduced without eliminating the recreational value of the course, especially for the amateur golfers that the course is expressly designed to accommodate.

The various natural features proposed in the mitigation such as establishing native plants and vegetated shelves in the ponds are common features on golf courses, so there is no reason why they

could not become part of the project. These natural features add to the environmental and aesthetic value of many golf courses.

MITIGATION MEASURES SECONDARY IMPACT

In my professional opinion, all mitigation measures should be incorporated to the fullest extent possible. Secondary impacts can over time be more important than the initial direct impacts. It is therefore prudent from a time standpoint to ensure that any mitigation measures proposed be carefully followed and documented.

RESPONSE T–7: These comments confirm specific mitigation measures addressed in the RDEIR. No response is required.

COMMENT T-8: CUMULATIVE IMPACTS AND MITIGATION
Cumulative water supply impacts is in total error. The demands of the golf course for water is based upon rainfall or more accurately, the lack of rainfall. Irrigation as mentioned before, can see the golf course use up to and even more than 500,000 gallons per day depending on irrigation system design, gallons per minute of each individual sprinkler head and the sprinkler heads collectively.

The golf course water requirements in order to grow acceptable turf of sufficient quality to play the game of golf upon can change daily and weekly. Two weeks without water would see the entire golf course in a state of drought with supplemental watering be required on a daily basis. Greens can not go for more than 48 hours at the extreme without water, depending on their construction method. USGA greens require daily watering during the growing season in order to maintain a perched water table within the green. If anything, it should be seen that the cumulative demands of the golf course on the existing water supply will not lessen but only increase over time, but then again, that is totally dependent on the lack of rain.

RESPONSE T-8: It is not clear to what aspect of the cumulative analysis this comment is referring. The cumulative section does not address the individual project's impacts, but is discussing the impacts of the proposed project in combination with those of past, present and reasonably foreseeable future projects.

The project's impacts on water supply are addressed in Section II. E. of the RDEIR, starting on page 80, and are identified as significant. Page 81 of the RDEIR states that the existing golf course currently uses approximately 437,500 gallons of water per day Based on recently available information, the estimated water use of the existing golf course is 397,000 gallons per day, as reflected in the text revisions in Section IV of this Final EIR.

COMMENT T-9: Cumulative loss of Agricultural Land has already been mentioned in that those area's immediately adjacent to the golf course property will see and increase in homes and possibly businesses. I would venture to guess that plans are already underway for those areas. It is my professional opinion that the loss of agricultural lands should be stopped in total. The loss of these lands only guarantees our dependence on farmers from other countries.

RESPONSE T-9: The likelihood that the golf course could induce growth on nearby properties in discussed in Section VI. Growth-Inducing Impacts of the RDEIR, starting on page 130.

COMMENT T-10: Cumulative Special-Status Plant Species Habitat Impact. Owing to the fact that this project has already devastated a half acre of habitat for plants and animals it is only fit and proper that the project purchase the mentioned land in the EIR and keep it for perpetual use as a protected habitat. A small price to pay for destroying what could have and should have cost in the millions for violating it's permits.

RESPONSE T-11: The opinion in this comment is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT T-12: Cumulative Surface Water Quality Impacts. In defense of a properly and professionally maintained golf course, the surface water quality will not increase but to the contrary, should decrease. If the maintenance equipment is kept on a Preventative Maintenance Program and the Wash Pad's recycling system is kept operational and completely functional, the golf course will not impact surface water quality. The only way that the surface water quality would be impacted would be from improperly applied fertilizers or pesticides. It has been shown scientifically that properly maintained turf grass will actually reduce surface runoff.

Cumulative Ground Water Quality Impacts. The water reaching the underground water table through normal soil infiltration on a golf course will significantly increase the water quality. Farmed land requires the tilling of the land or disturbing the uppermost soil profiles which allows for a faster introduction of pollutants into the lower soil profiles. Studies have shown that golf courses by their nature, contribute greatly to ground water quality increase because the chemicals introduced on the surface of well maintained turf will be tied up in normal soil chemistry and therefore not allowed to migrate downwards into the lower soil profiles. It is only when the upper soil profiles are continually disturbed does the potential for ground water contamination exist. The only other source for the degradation of the ground water quality is if the existing ponds or lakes on a golf course are at the same level as the ground water table. In the event that this is true, all ponds or lakes should be lined with commercially available plastic sheeting specifically designed for pond lining. This will in turn protect the ground water table from pollution due to chemical spills or excessive runoff of improperly applied fertilizers or pesticides.

Cumulative Increase in Surface Water Runoff Impacts. Properly grown turfgrass will aid in the slow down of surface runoff from the majority of the golf course. It is to be expected that asphalt areas to include cart paths will contribute to surface water runoffs increasing. The use of turf swales on the project should be the first consideration when it comes to golf course drainage. Swales of turf will definitely assist in the slowdown of water off the course property and act as a filter for the water in the process. Silt and clay will be more prone to settle out and be trapped by actively growing turf.

RESPONSE T-12: These comments reference the project's impacts on both water quality and quantity. The impacts of the proposed project on both areas are addressed in the RDEIR on pages 62-71. The cumulative impacts section discusses the degree to which the project's impacts would contribute to significant impacts when considered with the effects of other projects.

COMMENT T-13: MITIGATION FOR CUMULATIVE IMPACTS
Mitigation for Cumulative Loss of Agricultural Land. In contrast to the conclusion, the mitigation which should be required is to purchase the property immediately adjacent to the golf course property

on it's East, North East Boundary and have a 100' to 200' setback from the boundary line which would be left in as natural a state as possible without fear of any future development. This would mean buying a one hundred to two hundred foot border down the entire length of the project boundary and designating it as natural habitat. This would be apart from purchasing other land for other mitigation measures.

RESPONSE T-13: It is not clear from this comment how purchasing other land and keeping that land as "natural habitat" would reduce the cumulative impact on agricultural land. If the other land purchased were also in active agriculture, it would exacerbate the cumulative impact.

COMMENT T-14: Mitigation for Cumulative Loss of Special-Status Plant Species (Serpentine) Habitat.
The Project should be required to mitigate measures described in Section III., Secondary Impacts. This should be required by the City of Morgan Hill as a condition of project approval.

RESPONSE T-14: The opinion in this comment is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT T-15: Mitigation for Cumulative Loss of Special-Status Animal Species.
The City of Morgan Hill should make as a condition of approval the best one of the two mitigation measure packages described in Section II., C,. Vegetation and Wildlife. The project and subsequent golf course operations should be required to Conformance of the City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan and should include the application to the Audubon's Golf Course Sanctuary Program, with future admission into the program also a condition of the projects approval.

Mitigation for Cumulative Surface Water Quality Impacts. The City of Morgan Hill should require as a condition of project approval the mitigation measures identified in Section II., D., Hydrology and Water Quality. As an additional mitigation measure the City should require the writing of an Integrated Turfgrass Management Program for the golf course maintenance operations by a qualified member or former member of the Golf Course Superintendents Association of America whose status was/is either Class "A" or 'Certified". The City of Morgan Hill should also require as a condition of approval an Overlay Irrigation Map constructed to show the projected irrigation head placement and existing irrigation head placement, with additional overlays showing each irrigation head's respective throw diameter. The City of Morgan Hill should make as a condition of project approval, the lining of all ponds or lakes within the project boundaries. (Protection of Ground Water Tables)

Mitigation for Cumulative Increase in Surface Water Runoff Impacts.
The City of Morgan Hill should make as a condition of project approval the mitigation measures identified in Section II., D., Hydrology and Water Quality. As an additional mitigation measure the City of Morgan Hill should require the writing of an Integrated Pesticide Management Program for the golf course maintenance operations by a qualified member or former member of the Golf Course Superintendents Association of America whose status was/ is either Class "A" or "Certified".

The most feasible solution outside of a no-project is to adopt the Reduced Impact On-Site Alternative with the additional mitigation measures introduced in this letter.

RESPONSE T-15: The opinions in this comment are acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

U. RESPONSES TO LETTER FROM RICHARD AND SUE GAMBOA, RECEIVED FEBRUARY 4, 2004:

COMMENT U-1: I am writing in order to summarize various concerns and comments regarding the DEIR and the golf course project in general. We own our property on 14555 Foothill Avenue which is located at the comer of Foothill and Middle, directly across the street from the Golf Course. We have reviewed the DEIR and believe that the report has adequately identified many of the significant impacts to our property and the surrounding community, including the problems of flooding, erosion, water quality, depletion of groundwater and animal habitats. These are serious problems that pose significant threats to the safety and quality of life for all neighboring homeowners and residents.

Of particular concern are the rising levels of nitrates in residential wells neighboring the golf course. Our own well has been independently tested and had current nitrate levels already exceeding acceptable standards for drinking water, so we have been forced to purchase drinking water. Should the golf course be responsible for paying for our drinking water? Certainly, measures should be taken to hold the project responsible for monitoring the situation and make sure it doesn't continue to worsen over time. Similarly, the concern about depletion of the groundwater basin should be monitored and corrected.

The flooding concerns discussed in the DEIR are also of great concern. The golf course has basically replaced "natures drainage system" by diverting most of the water to the drainage ditch along Foothill Avenue. This drainage ditch is unable to adequately handle all of the additional runoff and water which has been diverted here. This has created flooding problems along Foothill Avenue and the impact has been easily been visible during the past rainy season. There are many problems with the existing drainage ditch which must be corrected, and as suggested in the DEIR, that should be a requirement that the golf course drainage and runoff be diverted to other areas rather than the ditch on Foothill which is bearing the bulk of the load.

RESPONSE U-1: These comments confirm information that is included in the RDEIR. No other response is required.

COMMENT U-2: There are some items in the DEIR that seem to indicate that there are no significant impacts which we would disagree with. With respect to visual impact of the project, the planting of large trees and density of trees planted along Foothill Avenue has already blocked most of the view of the hills for properties on Foothill Avenue. Within just a few more years, those trees will grow to effectively block any view of the hills at all. Homeowners who purchased properties along Foothill should have the right to retain their views of the hills and should not have those views blocked by all of the trees which have been planted in order to achieve this very purpose. We would urge the City of Morgan Hill to clarify the height maximum that these trees can grow to and force the trees to be trimmed when they reach this maximum height in order to preserve the views for these residents and maintain the property values which were enhanced by their proximity to the hills prior to the development of the golf course. There is also not much concern expressed in the DEIR for noise, traffic, and impact to Foothill Avenue by construction and future construction. However, these impacts may be severe. The additional large trucks already traveling on Foothill to the golf course for construction and golf course development have already taken a toll on the roadway, and the construction noise, toxic issues to replace the old buildings, and other construction issues can become a big problem.

RESPONSE U-2: The opinion expressed in this comment about the significance of the visual impact resulting from the trees planted along Foothill Avenue is acknowledged. As discussed in Section II. A. of the RDEIR, the golf course is consistent with the General Plan land use designation of Open Space on the project site. Landscaping associated with the use would not generally be considered a significant visual impact.

The trees planted on top of the berm along Foothill Avenue were not, however, part of an approved landscape plan reviewed by the City, and evaluated for consistency with the proposed use and neighboring uses. As reflected in language included in the text revisions in Section IV of this Final EIR, review and approval of a landscaping plan would be required if the City decides to approve the proposed PD zoning. If the proposed PD rezoning is approved by the City of Morgan Hill, the City must approve a landscape plan as part of the Site, Architectural and Landscape Plan approval process. During this process, City may determine that the row of trees must be removed or diminished or, alternatively, that the trees are an appropriate part of the overall use on the site and can remain.

With regard to the construction impacts, there is no mechanism available under the standards imposed by CEQA for addressing the construction impacts from previously occurring construction, even if the construction was done illegally. The impacts most likely to occur from future construction are addressed in the noise, hazardous materials, and air quality sections, on pages 90, 92, and 98. Traffic impacts associated with any future construction, including the replacement of the existing restaurant building, would occur intermittently during the day and would be short term.

COMMENT U-3: The overall concern is that the City of Morgan Hill will allow the Golf Course, the Institute, and Fry's Electronics to continue their attitude of downplaying the impacts to the area, and outright deceiving and misrepresenting the project to the City and the neighboring residents. As discussed in the DEIR, there are many environmental issues including the groundwater basin and nitrate levels that the Golf Course project takes a formal stand that there is no impact even when other evidence demonstrates otherwise. This indifference for the impact on the project's neighbors is of obvious concern. They never stopped construction and development of the golf course even when ordered and instructed to so. They have misrepresented from the beginning the scope and size of the project that they planned to undertake, and so forth. This leads one only to believe that any commitments they make to mitigate these numerous issues may only be "lip service" and there is no intent to truly address these issues. When I read about only 36 rounds of golf per day with an is occasional charity golf event" what I believe is that it would not be surprising to see 250 golfers driving to and participating in a "charity event" on a monthly basis and exceeding all of the estimates for the impact on traffic, the roadway, and so forth.

We urge the City of Morgan Hill and the City Council to stand up for the citizens and residents of our community and not simply accept the hollow promises of the project developers with respect to the issues addressed in the DEIR, These problems must be corrected, and the developers should be held accountable for future impacts of the development. The City Council should keep the interests of residents and homeowners as primary, and not be swayed by the promise of campaign donations or

the promise of future tax revenues because of a potential relocation of a larger business to Morgan Hill.

RESPONSE U-3: The opinions represented in this comment are acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

V. RESPONSES TO LETTER FROM G. REID FISHER, RECEIVED FEBRUARY 4, 2004:

COMMENT V-1: I am incensed by the applicant's disregard for the planning process and the law at the State, County and City levels. The net result of this disregard is that eastern side of valley may end up with two golf courses significantly affecting area ground water, among other impacts. The short version of my comments: require every single potential mitigation, and cut no slack.

I am troubled by the Alice-in-Wonderland ability of the Fry's golf course proponents and the Bear Ranch golf course proponents to disregard each other's course in the preparation of their respective EIRS. The EIR for the Bear Ranch golf course does not take into account the effect of the Fry's course, saying it was unpermitted. The Fry's golf course EIR does not take into account the Bear Ranch golf course, since it has not yet been constructed. The net result ultimately could be that two golf courses are constructed, neither one of which adequately considered significant, cumulative effects.

RESPONSE V-1: The Harvey Bear Ranch golf course is identified in the Cumulative Impacts section starting on page 117. The EIR prepared for the Harvey Bear Ranch park, however, does not identify any quantitative information about the design of the future golf course in the park, and does not quantify how much water might be required for the golf course, or what source of water would be used. The Harvey Bear Ranch EIR does say that water demand would be minimized, and that the County will consider use of recycled water from the Gilroy/Morgan Hill wastewater treatment plant at the time the golf course may be implemented. County staff (Elish M. Ryan, Park Planner) indicated that the County will not implement the golf course without the inclusion of means (such as the availability of recycled water) to avoid any significant impacts to the water supply in the area. If the county golf course uses only recycled water, it would not contribute to the impact on groundwater in the area. Any further analysis of this issue at this time would be speculative, based on the information currently available.

COMMENT V-2: I am most concerned about effects on surface and ground water quality. Nitrate pollution is already a documented health concern for local residents who draw on well water. The EIR identifies this potential effect, but potential mitigation measures in my opinion do not go far enough in reducing the potential for nutrients to reach groundwater.

The site is located in an area of recharge to the groundwater basin supplying nearly the whole South County. If this recharge area can be considered clean and kept clean, it offsets in a small way the effect of pollution introduced at the Olin Perchlorate site in Morgan Hill. We'd be certifiably crazy to allow contamination of this resource when we have the legal means to stop an illegal project, or to extensively revamp it so it no longer has those impacts.

To reiterate, at a minimum I beg you require every single mitigation identified to date, and strongly urge you to require a redesign of the project as though it were never there, so as to ensure a legal project that duly takes into account all significant impacts. Anything less is caving in.

RESPONSE V-2: The opinions expressed in ths comment about the appropriate mitigations for the proposed project will, as part of the Final EIR, be considered by the Planning Commission and City Council in their deliberations on the project.

W. RESPONSES TO LETTER FROM DAWN PERU, RECEIVED FEBRUARY 4, 2004:

COMMENT W-1: I live in on a small property west of the Fry Golf course. Over the years I watched to reconstruction of what used to be the Flying Lady. I assumed this was all being done legally. When I noticed the berm being created along Foothill Avenue, I wondered how the neighbors would be affected. After the trees were planted on top of the berm, the newspapers started writing articles about the golf course, I was saddened but not surprised that some guy with a lot of money thought he could do whatever he wanted. I don't believe the group that now owns this property cares at all about wild life, traffic increases on our rural streets, groundwater, or what they've done to their neighbor's properties.

It would be outrageous to continue to allow this arrogant behavior to continue. I sincerely hope that those of you who are responsible for enforcing codes and laws here step up to the responsibility of making this group of renegades do what is right by the neighborhood, and not allow money and influence to be the downfall of a wonderful small town community.

RESPONSE W-1: The opinions about the environmental impacts are acknowledged and, as part of the Final EIR, will be taken into consideration by the Planning Commission and City Council as part of their deliberations on the project.

X. RESPONSES TO LETTER FROM DENISE AND BRUCE MATULICH, RECEIVED FEBRUARY 4, 2004:

COMMENT X-1: This letter is a submission of our concerns regarding the Fry's AIM Golf Course DEIR dated December 2003. We have reviewed the findings and are concerned about the following:

1. Water Quality
The surrounding property owner's sole source of water is from private wells. Nitrate loading from fertilizing the golf course, along with pesticide use will potentially degrade an already fragile aquifer. We believe that our own well, which has shown increasing nitrate levels, is related to the golf course development. We feel that the city of Morgan Hill needs to take every precaution in protecting the groundwater supply. The city of Morgan Hill needs to require that the project proponent implement all proposed mitigation processes to alleviate the nitrate loading potential. The city of Morgan Hill should monitor the project proponent for full compliance since it is not their business practice to comply with the laws and ordinances as set forth.

RESPONSE X-1: The RDEIR does identify a mitigation program that would reduce impacts from nitrate loading and pesticide use to less than significant (pages 75-79), if the mitigation were implemented. The opinion in this comment about the need for monitoring is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT X-2: 2. Water supply
The golf Course will require a significant amount of water to maintain. The DEIR dated December 2003 states that the Golf Course water requirements are on average approximately 437,500 gallons per day. This greatly exceeds the amount of groundwater recharge that occurs locally. It was found that the net result of the continued operation of the existing course, as currently designed, may be a decline the groundwater levels beneath the project site and beneath existing water wells serving neighboring properties. The city of Morgan Hill needs to warrant that the project proponent will not deplete the groundwater supply, which serves the surrounding properties and community. The project. proponent must be required to implement all mitigating processes as stated in the DEIR dated December 2003. The golf course should be monitored regularly for full compliance.

RESPONSE X-2: The RDEIR identifies mitigation measures that would reduce project impacts on groundwater to less than significant (pages 84-85), if implemented. The opinion in this comment about the need for monitoring is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT X-3: 3. Flooding
The DEIR states that the AIM project will exacerbate existing flood conditions, causing worse and more frequent flooding problems on the roadway and on other nearby properties. in order to eliminate this flooding condition and damage to nearby properties the city of Morgan Hill should require the project proponent to re-design the drainage systems for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions.

Our property has been experiencing increasing run-off and flooding during heavy storms as the project has developed. This flooding is coming from the direction of the golf course (see enclosed pictures) and has forced us to have additional financial burden to mitigate the flow.

Also noted, during a walk-by of the property is a newly installed drainpipe to the Foothill Ave. culvert. This newly installed drain appears to be draining from the other side of the berm and is located just north of E. Middle Ave on Foothill Ave.

RESPONSE X-3: The information on impacts from runoff from the golf course appears to confirm the information in the RDEIR. The drain pipe described in the comment appears to be the drain pipe from Pond D to the Foothill Avenue drainage, whose impacts are described in the RDEIR. On page 73 of the RDEIR is a discussion of modifications that would be required to reduce impacts associated with flooding.

COMMENT X-4: 4. Waste Disposal
The project proponent should not be allowed to use the site for a dump. Piles of debris have been seen on the property along Foothill Avenue.

RESPONSE X-4: The code enforcement officer for the City of Morgan Hill visited the site during the preparation of this Final EIR. There were not any debris piles visible from the roadway.

The comment is acknowledged and, as part of the Final EIR, will be considered by the Planning Commission and City Council in their deliberations on the project.

COMMENT X-5: 5. Aesthetics
The golf course has planted hundreds if not thousands of trees along a built up berm. These trees already obstruct the view of the neighboring properties on Foothill Ave. and in a few short years will be of a height that will severely impact the view of the hills. According to Sunset's Western Garden Book, most redwood trees grow rapidly and reach 70 -90 feet in height. Most people in our neighborhood purchased their homes because of the proximity to the hills and the beautiful views they present. This degradation will undoubtedly negatively impact the value of our home.

Also, recently installed is an unsightly stick and chicken wire fence just outside a row of Italian Cypress which are know to grow in excess of 60 feet in height. It seems as if the goal is to shelter the golf course from the surrounding San Martin community. It is our opinion that the golf course is sparing no expense at making the facility beautiful from the inside but very UGLY to the surrounding neighbors on the outside.

RESPONSE X-5: As stated in response to previous comments, and as discussed in Section II. A. of the RDEIR, the golf course is consistent with the General Plan land use designation of Open Space on the project site. The RDEIR does not identify the trees planted on the site as a significant visual impact.

In this circumstance, neither the trees planted on top of the berm along Foothill Avenue, nor the row of Italian cypresses, were part of an approved landscape plan reviewed by the City, and evaluated for consistency with the

proposed use and neighboring uses. As reflected in language included in the text revisions in Section IV of this Final EIR, review and approval of a landscaping plan would be required if the City decides to approve the proposed PD zoning. The City may decide, through the Site, Architectural and Landscape Plan Review process to require that the existing landscaping be modified or completely redone.

COMMENT X-6: 6. Traffic Impacts

The findings in the DEIR are in adequate since they do take into consideration the nature of the quiet rural residential area that the project is located in. A study should compare the pre-development traffic flow in contrast to the projected increase in flow of traffic and the impact to the quality of life in the surrounding area.

RESPONSE X-6: The thresholds of significance used to evaluate traffic impacts are listed on pages 86-87 of the RDEIR. While the trips associated with the proposed project would be noticeable in a rural environment, that fact does not raise the impact of the trips to the level of a significant environmental impact. The traffic generated by the project would not exceed the capacity of the roadway system (page 87), and would not generate a noticeable increase in noise levels (page 90).

COMMENT X-7: 7. Golf Tournaments

While the project proponent has requested to hold golf tournaments and the city of Morgan Hill maintains that this will not be permitted, some form of reassurance through stiff fines and penalties should be implemented by the City of Morgan Hill for violation. We have no confidence that the project proponent will refrain from holding golf tournaments even though they are not be permitted, since they have not complied with the laws and ordinances to date.

RESPONSE X-7: The opinion in this comment about the need for fines and penalties for violations of the permitted uses, is acknowledged and, as part of the Final EIR, the degree to which the fines might discourage violation will be considered by the Planning Commission and City Council in their deliberations on the project.

Y. RESPONSES TO LETTER FROM DANA DITMORE, RECEIVED FEBRUARY 5, 2004:

COMMENT Y-1: Subject: Permitting for the American Institute of Mathematics (AIM) & Golf Course

I wanted to take this opportunity to clarify and expand a bit on the informal remarks I made at the town meeting on Wednesday March 4, 2004 preceding your regularly scheduled Council meeting. But, first I'd like to say that until last evening I did not appreciate how difficult a task you in our local government face in meeting the needs of the community with the broad diversity of opinion on issues of importance like the one we are discussing. My hat is off to you for taking on this challenge for your community.

Background:

I am a resident of Santa Clara County in the local jurisdiction of San Martin, California at 14305 Foothill Avenue. My home is on a five-acre parcel located across the street from the site location for the proposed AIM center, and the currently existing golf course. My interest in the issue is from two perspectives: 1) as a local resident (5 ½ years at the current address/24 ½ years in South County) and 2) as a long-time advocate for math and science initiatives in Silicon Valley.

By way of additional background, I am a degreed Mechanical Engineer (BS/MSME) from UC Berkeley (1963/1966), and a retired Silicon Valley executive, currently engaged part-time in business consulting and part-time in a number of not-for-profit education initiatives.

I sit on two technology-company boards of directors, and two other company advisory boards. I am a past-president of the Santa Clara Valley Chapter of the National Society of Professional Engineers. I was chairman for eight years (1992 - 2000) of the Engineering Industry Advisory Council for the College of Engineering at SJSU. I was Co-Chair of the International Science & Engineering Fair 2001 board of directors. I currently sit on the board of directors for the Synopsys Championship Foundation which oversees/manages the Silicon Valley Science & Engineering Fair network. I also sit on the board of directors of the San Jose State University Foundation. And, I currently act in an advisory capacity to the Jose Valdes Summer Math Institute, an eastside San Jose program to prepare under-represented middle school children for high school algebra and beyond.

RESPONSE Y-1: The information in this comment is acknowledged. No question is raised about an environmental impact or the analysis in the RDEIR. No response is required.

COMMENT Y-2: Perspective As A Local Resident/Homeowner:

As a local resident/homeowner, my perspective on the proposed siting of the AIM center and attendant golf course is that it should be approved and allowed to go forward, assuming that appropriately engineered/approved environmental mitigation is implemented. I believe that the net result of the golf course, with appropriately engineered/approved environmental mitigation, can be an environmental enhancement to the area. I do not mind at all living across the street from the golf course.

RESPONSE Y-2: The opinion in this comment that the project should be approved with appropriate mitigation, is acknowledged and, as part of the Final EIR, will be taken into consideration by the Planning Commission and City Council in their deliberations on the project.

COMMENT Y-3: 'Visual Impact'
Unlike some of my neighbors, I'm not particularly bothered by the fact that the property owner has chosen to bound his property with a forest of Italian Cypress trees. That 'forest' the owner has chosen to plant is an environmental asset, converting C02 to Oxygen and making our local air more breathable. And, if the owner's desire for privacy results in ringing his property with trees, I believe that should be his prerogative, providing there is no adverse environmental impact.

RESPONSE Y-3: The discussion of visual and aesthetic impacts, which addresses the trees along Foothill Avenue, also speaks to the subjective nature of aesthetic values and the differing viewpoints that may exist among various individuals (page 21). The RDEIR therefore addresses this difference of opinion before concluding that the trees do not constitute a significant adverse environmental impact.

COMMENT Y-4: 'Flooding Impact'
One of my neighbors has raised the issue of flooding as a major concern relative to the golf course and the proximity to their property. I cannot speak for their situation. However, I can say that in the 5-1/2 years of my residing at my current location I've not experienced one instance of flooding due to water crossing over Foothill Avenue from the golf course to my property.

Flooding during the rainy season is, however, a regular occurrence on the flat lands bordering on Foothill Avenue between Maple Avenue and San Martin Avenue. The flooding seems to be attributable to two key factors, 1) we have about three to four feet of dense clay as topsoil, above a sand-like silt layer of subsoil and 2) we are in a natural low spot at the base of the foothills. The clay topsoil becomes quickly saturated and just doesn't allow for good percolation down to the subsoil and into the aquifer. This results in significant water accumulation in low spots all over my property, which has resulted in water flowing into my garage and flooding of a number of the sidewalks crisscrossing the property.

To redress this flooding tendency we have installed a number of drains and sumps in strategic locations to collect the runoff and pump it through underground pipes to the back of our property. The runoff is pumped into a 15,000-gallon capacity percolation pond at the back of the property. This flood control mitigation was necessitated by the specific nature of our property, it's topsoil and our location at the base of the foothills, and is in no way related to or caused by the presence of the golf course across Foothill Avenue. I suspect that a number of my neighbors on this stretch of road have similar problems with which they are contending.

RESPONSE Y-4: The existing environmental factors discussed in this comment were factored into the hydrology analysis upon which the flooding evaluation in the RDEIR was based (see Appendix D of the RDEIR).

COMMENT Y-5: 'Ground Water Impact'
As regards the issue of Nitrates in the ground water, I have not had our well water tested, either recently or at the time we purchased the property 5 1/2 years ago. So, I cannot speak to any change that may have occurred. We use our well water for irrigation only.

However, I think that it is important to give full consideration to all possible sources of 'reported' increases in ground water Nitrates, before concluding that the golf course is the culprit. My neighbors and I live on ground that has been used for agricultural purposes for decades. And, there is currently

significant acreage from Tennant Avenue to San Martin Avenue, bounded by Hill Avenue, Center Avenue and Foothill Avenue, which continue to be planted in row crops every year. If I had to venture a guess, I'd say the fertilization of these crops that bound our properties has a more significant impact than the golf course on our local ground water Nitrates. I do not know what environmental controls/mitigation the local farmers are required to employ, but I suspect that they are a good deal less stringent and less formal than those described Wednesday evening as currently being employed at the golf course to manage the amount of Nitrogen and water used in fertilization and irrigation.

I do find the data described at the meeting regarding the lowering of Nitrate levels after aeration in the irrigation pond(s) on the golf course to be very interesting and potentially reassuring. If that can be validated to the satisfaction of qualified experts, it does suggest that under current conditions the golf course might not be causing an increase in Nitrates, but in fact may be providing some dilution.

A review of the available data by an independent 'expert', contracted by the City, might be an appropriate course of action to de-fuse the emotion surrounding this issue and ensure the perception of complete objectivity. Such an independent review could determine what valid conclusions can with confidence be derived from the existing data, and what additional data might be necessary to arrive at a resolution to the open questions. It would be important that any such independent review consider all major potential sources of Nitrates; i.e., both agricultural land use and the golf course.

RESPONSE Y-5: This comment discusses information contained in the RDEIR and testimony received at a public hearing. The opinion that an independent expert be used to evaluate the data is also acknowledged. The consulting firm that prepared the analysis in Appendix D of the RDEIR and evaluated the most recent information provided by the project proponent , is an independent expert in hydrological issues, under contract to the firm that prepared the RDEIR who are, themselves, under contract to the City of Morgan Hill.

COMMENT Y-6: Perspective As An Advocate For Math & Science Initiatives:
From my perspective as a long-time advocate for effective math and science initiatives in Silicon Valley, I'm excited about the prospect of re-locating the AIM facility to Morgan Hill. I believe this move is of great potential value to the local community and school system.

In it's relatively short lifetime, AIM has established itself as a highly successful 'think-tank' for mathematics problem solving and enrichment, while also developing programs with local schools like Math Counts and Math Councils which help to accelerate and expand the math learning experience of our future workforce.

Math is a fundamental building block and pre-requisite for pursuing a college education following high school. In our work with the Jose Valdes Summer Math Institute we have learned that it is possible to take young people with no family higher education legacy, give them a solid founding in mathematics at the middle school level, with a resulting high percentage later being accepted to college. Mathematics is one of the most important fundamental building blocks for the Information Age and the lifestyle it affords to all of us. And, AIM brings with it a prestigious track record of achievement both on the higher academic level and in helping local middle schools and high schools.

AIM is unique even when compared to our local universities, with better than a 75% hit rate on National Science Foundation grants to applications. Not even Stanford or Berkeley can match their achievement in this regard. They have done an impressive job, in a relatively short period, at

establishing a track record of excellence on a par with these two prestigious universities, albeit with a more narrow focus.

For me the bottom-line is that AIM will be an asset to our local community on a par with the wonderful new Community Center in Morgan Hill. It will bring both value and prestige to our local community. We need to find a way to work through the difficulties to make this a reality.

RESPONSE Y-6: The opinion in this comment regarding the desirability of approving the project, is acknowledged and, as part of the Final EIR, will be taken into consideration by the Planning Commission and City Council in their deliberations on the project.

AH. RESPONSES TO LETTER FROM REED SMITH LLP, RECEIVED FEBRUARY , 2004:

COMMENT AH-1: As you might recall, I am assisting The Institute in the environmental review process for its proposed golf course/mathematics center project in the City. I have reviewed the Revised Draft Environmental Impact Report dated December 2003 (Revised Draft EIR) and I am concerned about the section on secondary impacts. I wanted to share my concerns with you. I am hopeful we can resolve these concerns so that this project can move forward.

While the Revised Draft EIR correctly defines secondary impacts as "those which are caused by the project and are later in time or are farther removed in distance, but are still reasonably foreseeable" (p. 107), it analyzes impacts that are, by definition, not secondary impacts. Based on the following, we urge that the analysis on secondary impacts be eliminated from the Revised Draft EIR. The information contained in this section may be appropriate under the "No-Project" alternative discussion or as background information.

RESPONSE AH-1: The comment is acknowledged. Responses to the statements made are set forth below in response to the more detailed statements in the letter.

COMMENT AH-2:

ISSUE

In 1997, the City issued a grading permit to The Institute. The City maintains that The Institute exceeded the grading allowed under the permit and, as a result, various significant adverse impacts occurred on the site. The "project" at issue now, however, is a request for a Planned Unit Development (PUD) to construct a math institute and to continue operating the 18-hole golf course. Thus, the purpose of this Revised Draft EIR is to analyze what, if any, significant impacts issuing a PUD may have on future conditions of the property based on the property's current condition. See, CEQA Guidelines § 15126.2(a). Yet, the secondary impact section contains an analysis that is antithetical to CEQA in that it incorrectly analyzes impacts that might have occurred from past actions.

RESPONSE AH-2: The comment acknowledges the City's position that The Institute exceeded the grading allowed under the original permit and that as a result significant adverse impacts occurred on the site. No evidence is presented to contradict the City's position. Because the construction of the golf course was never subjected to environmental review under CEQA, the RDEIR analyzes not only the impacts of the ongoing operation of the golf course but also the physical impacts of the construction of the golf course. The commenter presents no evidence or argument that any different approach is required under CEQA in these unique circumstances.

COMMENT AH-3:

LAW

An indirect physical change in the environment is "not immediately related to the project, but...is caused indirectly by the project." CEQA Guidelines § 15064(d)(2). The analysis should consider only those indirect impacts that are "reasonably foreseeable"; the agency need not consider a potential impact that is "speculative or unlikely to occur." Id. (d)(3). Furthermore, an agency's analysis should

focus on the impacts of the proposal before it, not the preexisting conditions that are not part of the proposal. Silveira v. Las Gallinas Valley Sanitary District, 54 Cal. App. 4th 980, 993-994 (1997). "The purpose of CEQA is to protect the environmental from proposed projects, not to protect proposed projects from the existing environment." Baird v. County of Contra Costa, 32 Cal. App 4th 1464, 1468 (1995).

Analysis of pre-development or pre-project impacts is inconsistent with the principle that CEQA is not the appropriate mechanism to analyze or question prior activities even if that prior activity is illegal. Riverwatch v. County of San Diego 76 Cal. App. 4th 1428, 1452-53 (2000); Fat v. County of Sacramento, 97 Cal. App. 4th 1270, 1280 (2002). As explained by both Riverwatch and Fat, the real difficulty in developing an early baseline (as opposed to a baseline that exists at the time an application is submitted) is the burden it would impose in determining the true nature and extent of the past acts. Riverwatch, 76 Cal. App. at p. 1453 ; Fat, 97 Cal, App. at p.**1280.**

RESPONSE AH-3: The commenter's citations from the CEQA Guidelines and the case law are inapt because of the circumstances noted in Response AH-2 above. CEQA Guideline § 15125 states that "normally" the baseline will be the existing physical conditions, implying that there are circumstances in which another baseline may be appropriate. None of the cases cited by the commenter are apt. First, these cases all involved challenges to the agency's selection of the baseline as the existing environment at the time of the preparation of the CEQA review. Thus, while there is general language in these cases to the effect that the earlier illegal activities should be ignored, the Court was in fact deferring to the agency's exercise of its discretion under the standard of whether the agency had committed a "prejudicial abuse of discretion." The courts have generally held that determination of the proper baseline is clearly a matter committed in the first instance to the agency's discretion. Second, in none of these cases was the EIR the direct outgrowth of aborted illegal activities which were determined to require environmental review before they could be legally approved. Nor did the courts' sanction of the existing environment as the baseline grant the developer a windfall from CEQA review as the result of its illegal activity. In the present case, all of these factors support the City's use of the pre-existing environmental conditions as the baseline for consideration of the impacts of the illegal activity - treated appropriately as "secondary impacts" of the project.

COMMENT AH-4:

DISCUSSION

We believe the secondary impact discussion is inappropriate and should be eliminated from the Revised Draft EIR for the following reasons,

First, the secondary impacts section does not analyze potential impacts that may be caused by the project, but rather analyzes impacts that might be caused if the project is not approved. In doing so, the analysis incorrectly analyzes past conditions and not future conditions. This analysis is not consistent with the definition of secondary impacts and thus, is not appropriate. See, CEQA Guidelines § 15126.2(a).

Second, we seriously question whether it is "reasonably foreseeable" that the City could or would require the applicant to return the property to the condition that existed before it issued the 1997 permit for two reasons. As noted above, only reasonably foreseeable impacts need to be considered. First, the City cannot require the applicant to return the property to the condition that existed before the 1997 permit was issued by the City because the applicant already acquired a vested right under this permit. The fact that construction activity occurred after this permit was issued does not invalidate the 1997 permit. Second, the City has permitted the applicant to grade and operate the golf course over the years and even issued several temporary use permits that validated this grading activity and use. It would be difficult, if not impossible, for the City to now reverse these decisions.

RESPONSE AH-4: The secondary impacts section appropriately addresses the impacts of the construction of the golf course for the reasons stated in Response AH-3 above and in the RDEIR. Requiring the applicant to return the property to its pre-construction condition is one of the options that the City has in reviewing the Final EIR. Contrary to what the commenter asserts, illegal activities that proceed without the required CEQA review and permits (or that exceed the scope of existing permits) do not grant an applicant any "vested rights," and none of the City's actions (including the issuance of temporary use permits) have "validated" the applicant's actions.

COMMENT AH-5: Third, the legitimate concern raised in Riverwatch and Fat regarding the difficult task in determining what past acts did or did not occur is so evident in the present situation. The drafters of the Revised Draft EIR are using different information than that information provided by the applicant to demonstrate what the property looked like before the 1997 grading permit was issued. The applicant went to painstaking lengths to document what the site looked like before and after the 1997 permit was issued. Yet, the drafters are not using this information in their analysis. We are not clear what information is being used by the drafters or how their information was generated in making their assumptions and determinations. All we know is that the information and assumptions are incorrect as shown by the following few examples.

RESPONSE AH-5: The cited cases do not support a different approach by the City in the instant matter. In both cases, the court deferred to the agency's adoption of the baseline used in the CEQA review. Moreover, in Riverwatch v. County of San Diego, 76 Cal.App.4th 1428, 1453 (1999), as distinguished from the present case, the alleged illegal activities were on previous sand mining or land clearance activities that were apparently unrelated to the quarry project. It was in this context that the court raised concerns that inclusion of the impacts of these earlier activities "may either interfere, conflict or unfairly amplify" the enforcement actions being undertaken by other agencies. 76 Cal.App.4th at 1435. In the present matter, the preparation of the EIR is at least in part a direct outgrowth of the need for an environmental evaluation of the project constructed illegally without environmental review, the project cannot be permitted without this review, and enforcement agencies (including the City) are looking to the EIR to provide them with impact evaluation necessary for the performance of their oversight for the project. Similarly, in Fat v. County of Sacramento, 97 Cal.App.4th 1270 (2002), the court upheld the baseline used by the County because its standard of review "requires us to defer to the County's exercise of discretion if supported by substantial evidence" and noted the parties' agreement that CEQA Guideline § 15125 "use

of the term 'normally' gives the agency discretion to deviate from the time-of-review baseline." 97 Cal.App.4th at 1278.

In its review of the site conditions prior to the construction of the golf course, the RDEIR relies on information and analysis provided by its independent consultants, who in turn have evaluated the information and analysis provided by the applicant. The RDEIR clearly distinguishes between the different sources of information relied upon.

COMMENT AH-6: The applicant did not remove 0.5 acres of riparian habitat as claimed on page 110 of the Revised Draft EIR. A comparison of the pre-construction aerial photograph and the post construction aerial photograph contained in the Analysis of the Pre-and Post Development Habitat Conditions prepared by the applicant and submitted to the City, shows the riparian vegetation is unchanged.

RESPONSE AH-6: Construction of the golf course resulted in the loss of riparian habitat. This is a significant impact. The conclusion in the RDEIR is supported by the report prepared by the project proponent's commissioned biologist. The following language is from the last paragraph of page 6 of the document titled "Analysis of Pre- and Post-development Habitat Conditions For Special Status Amphibians and Reptiles at the Institute Golf Course" and dated July 2002 that was prepared by the project proponent's commissioned biologist and provided to the City of Morgan Hill:

> "Additionally, the width of riparian vegetation along the main stem and tributaries is *nearly identical* with that shown after conversion. While *there is an occasional tree missing* along the edges of the upper reaches, it is evident there was no significant impact to riparian vegetation or California red-legged frog aestivation, foraging, or dispersal habitat within the riparian corridor due of golf course conversion." [italics added]

Trees that grow adjacent to a creek or which are part of a continuous riparian woodland, are part of the riparian habitat. The removal of "occasional" trees along this riparian corridor is a removal of part of the riparian habitat, by definition. Based on the information provided by the project proponent and upon the City's consulting biologist's unbiased review of pre-and post-development conditions using the aerial photographs included as Figure 10 in the RDEIR, the RDEIR concluded that approximately 0.5 acres of riparian habitat was removed during construction of the golf course.

As another example, when the City's biologists last inspected the site, the fairway for hole #3 included a section of turf built entirely across a segment of creek drainage. Whatever natural riparian vegetation was present in that drainage was replaced by turf grass. The turf grass for this fairway was not planted by prior owners.

Based on the information provided by the project proponent and the City's consulting biologist's unbiased review of pre-and post-development

conditions, the RDEIR concluded that approximately 0.5 acres of riparian habitat was removed during construction of the golf course.

COMMENT AH-7: The Revised Draft EIR claims at page 110 that the applicant removed "as many as 50 ordinance-sized trees"during golf course construction. The Revised Draft EIR recommends that the applicant replace these trees at a 5:1 ratio. Tree Health Professionals surveyed the trees on site in April of 1997. This survey was provided to the City. This survey noted the ordinance-sized trees on the property. None of these ordinance-sized trees were removed; rather these trees continue to flourish on the site. Also, as noted in the Analysis of the Pre-and Post-Development Habitat Conditions, the applicant planted over 11,000 large sized trees to compensate for the trees that were removed. Yet, this fact is not included in the analysis on secondary impacts.

RESPONSE AH-7: The tree survey provided by the project proponent is a limited survey; it does not identify or address all of the trees on the project site. The survey only addresses five trees, and never discusses the size or condition of other trees on the site.

Based on their review of pre- and post-development aerial photographs of the project site, the City's consulting biologist estimated that as many as 50 ordinance size trees were removed during golf course development. The project proponent has stated that a tree planting plan is not available for the project. Without a tree planting plan, mitigation for the estimated impact to as many as 50 ordinance size trees can not be verified. Simply planting trees, some of which are too close to each other or are species that will not flourish under the project conditions, would not be mitigation for the loss of mature native trees that provided habitat value to wildlife in the area.

As stated on page 112 of the RDEIR, the ultimate design of this mitigation measure for loss of ordinance sized trees should be based on an estimate of the number and size of the trees destroyed during the construction of the golf course, prepared by the City Staff using historical aerial photographs and other historical documentation.

COMMENT AH-8: The Revised Draft EIR at page 110 assumed all the lakes or ponds on the property were adequate breading sites for the California red-legged frog (CRF). It was also assumed that these water courses actually contained CRFs. Based on these inaccurate assumptions, the Revised Draft EIR recommends that the applicant mitigate for this perceived loss. As shown in the Analysis of the Pre-and Post-Development Habitat Conditions, these lakes were not adequate habitat for the CRF or any other special status species. Moreover, as part of the 1997 grading permit, the applicant replaced 3 acres of lakes with over 5 acres of lakes. These new lakes were created to provide suitable habitat for the CRF. Thus, the grading activities had a beneficial impact on the CRF and other special status species. Yet, this beneficial impact was not mentioned in the analysis.

RESPONSE AH-8: Page 110 of the RDER states that consulting biologists found numerous California red-legged frogs on the site. Because construction on the project site has already occurred, it is not possible to determine if and/or how many individual California red-legged frogs were destroyed during past construction

and maintenance, therefore, the impact to individual frogs is identified here as less than significant.

It is known, however, that approximately three acres of former golf course irrigation ponds were filled between golf course holes 10 and 17 to construct the current golf course. Given the extensive populations of California red-legged frogs that remain on the site, it is likely that the ponds harbored populations and must have constituted breeding habitat. The loss of this breeding habitat is a significant impact.

The USFWS agrees with the conclusions and mitigation measures in the RDEIR. As stated in the comment letter on the RDEIR received from the USFWS and dated February 4, 2004 (Section II. B. of this Final EIR), the USFWS believes the reconstruction of the golf course in 1997 resulted in the take of California red-legged frog. The letter states that the Service's comments assume all measures described in the RDEIR under Mitigation Measures Not Currently Incorporated Into the Proposed Project will, in fact, be incorporated into the project description.

Construction of the golf course filled approximately 3 acres of ponds that are believed to have provided habitat for California red-legged frog and California tiger-salamander. The fallow golf course in its pre-project condition also provided upland aestivation habitat for the California tiger-salamander.

The 5.1 acres of existing ponds on the site are devoid of vegetation, are not drawn down, and are not buffered. They are not safe refuges and they are not considered habitat.

Appropriate on-site mitigation for filling the previous ponds would be providing 9 acres (3:1 ratio) of breeding pond habitat that contains emergent vegetation and is drawn down on a yearly basis to control bullfrogs and other non-native predator species.

COMMENT AH-9: These few examples show that the analysis incorrectly assumed impacts that did not and do not exist. This real and critical "difference" in information only complicates the environmental review of the project and leads to a confusing and inaccurate document.

Fourth, because the drafters of the Revised Draft EIR feel they have no way of confirming what occurred in the past, they are making assumptions on what might have occurred. These assumptions lead to impacts that are not real and mitigation measures that are unnecessary and wholly inappropriate. As you know, EIRs cannot be based on assumptions. So that the true impacts of a project can be determined and appropriate mitigation measures created, an EIR's analysis must be based on facts, reasonable assumptions based on facts, and expert opinion supported by facts. CEQA Guidelines § 15384: Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553 (1990). This section clearly fails to include this required degree of information.

RESPONSE AH-9: The conclusions in the RDEIR are based on facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. It is not true that the drafters of the RDEIR "feel they have no way of confirming what occurred in the past." In some instances, because the applicant proceeded without the required permit and environmental review in advance of construction, the applicant failed to perform the studies which would have provided definitive data for use in the RDEIR. In those instances, the conclusions in the RDEIR are based on reasonable assumptions predicated on the facts which are known. On this basis, the City believes that the impacts analyzed in the RDEIR are real, and that the mitigation measures set forth in the document are necessary to mitigate those impacts to a less than significant level. The City further believes that the applicant bears the burden of proof on these issues, and to extent the applicant has failed to meet that burden of proof because of its own failure to conduct timely studies or collect data prior to the illegal construction of the golf course, it has no basis for complaint about the City's effort in reconstructing those conditions and evaluating the impacts based thereon.

COMMENT AH-10: Fifth., allowing this section to remain in the Revised Draft EIR can serve as an improper mechanism for the City to extract commitments from the applicant (through mitigation measures) to address impacts that did not and do not exist. CEQA requires mitigation measures to be consistent with applicable constitutional requirements such as the "nexus' and "rough proportionality" standards established in case law. CEQA Guidelines § 15041 (a). In creating mitigation measures, the City must ensure that the measures actually relate to the impact caused by the project. The City cannot try to force an applicant to provide a benefit (through mitigation) unrelated to the impacts or that would do more than fully mitigate the impacts of the project. See, Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); Ehrlich v. City of Culver City, 12 Cal. 4th 854 (1996). As shown above, the impacts identified in this section are not real and thus, are not caused by the project. Accordingly, the mitigation that follows cannot be imposed on the applicant.

RESPONSE AH-10: See Response AH-9. All of the mitigation measures reviewed in the RDEIR are necessary at the levels discussed in order to mitigate the impacts created by the project to a less than significant level, and are supported in this regard by substantial evidence.

COMMENT AH-11: Sixth, assuming the analysis is correct as an impact analysis, it does not contain a discussion of those impacts that might occur in returning the property to its original condition. As a result, the City cannot require the applicant to return the property to its original condition without first having the benefit of such an analysis. On a similar point, this analysis also fails to consider and take into account the mitigation that was already imposed on the applicant in the 1997 grading permit.

RESPONSE AH-11: Where impacts would occur from restoring the premises to their earlier condition, those impacts have been analyzed in the RDEIR. The commenter presents no evidence to the contrary. All of the mitigation identified in the RDEIR is necessary to mitigate the impacts of the applicant's actions or the impacts of the ongoing project.

COMMENT AH-12:

ALTERNATIVE APPROACH

We strongly urge that the secondary impact discussion be deleted. In the alternative, the information contained in this section can be moved to the Alternatives section under the discussion of the No-Project Alternative. A no-project alternative is the condition that would exist if the project was not approved. The discussion presently contained in the No-Project Alternative should remain because that too fits within the definition of that alternative. See, CEQA Guidelines §15126,6(2). Another place to include the secondary impact information is in the background section of the Revised Draft EIR.

CONCLUSION

It is clearly inappropriate under CEQA to allow the secondary impact discussion to remain as an impact section. As a result, we ask that it be removed from the Revised Draft EIR as an impact discussion. As an alternative, the information can be placed in the discussion of the No-Project Alternative or in the background section.

Thank you for this opportunity to provide you with my comments. I would really appreciate the chance to discuss this with you in the hope of resolving my concerns. Please call me to discuss this matter at your earliest convenience.

RESPONSE AH-12: The comment is noted. The City believes that the most appropriate section of the RDEIR for addressing the impacts of the golf course construction and their mitigation is in the secondary impact section.

AI. RESPONSES TO LETTER FROM THE INSTITUTE LLC, RECEIVED FEBRUARY 4, 2004:

COMMENT AI-1: The RDEIR includes many unsubstantiated assumptions. These assumptions were used to create impacts that do not really exist and thus, mitigation measures that are not necessary. An EIR cannot be based on assumptions; rather they must contain facts and analysis. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553. Even if precise data is not available to determine an impact, an EIR at a minimum must rely on informed estimates. Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal. 3d 376.

In order to understand the real impacts of the project, the applicant commissioned studies. These studies were designed to look for actual evidence of significant environmental impacts, and if they occurred or were occurring, to recommend appropriate mitigation measures. The studies covered the full range of the prominent issues including a comparison between past and current conditions, consultation with the previous owner and the regulatory agencies, and monitoring for potential pollutants and for the presence of special status wildlife. The studies were furnished to the City and the City's consultant for use in preparing the RDEIR and are referenced in the RDEIR at Appendix C-4. Additional information consisting of recent monitoring results, and sub-consultant response to the RDEIR, correspondence with the USFWS, and detailed response to 'significant impacts' is attached as Exhibits A-F of this letter.

Please eliminate the assumptions made in the RDEIR, and change the document to reflect the evidence contained in these studies and additional information as further discussed in the following comments.

RESPONSE AI-1: This comment mis-characterizes both the CEQA document and the manner in which the analyses used in the RDEIR were prepared. The existing conditions that are described throughout Section II of the RDEIR are the currently existing physical conditions described as accurately as was possible, using the information provided by the project proponent, and visiting the site while construction continued to occur.

CEQA, the CEQA Guidelines, and most of the case law relied upon in interpreting CEQA address circumstances in which an environmental assessment is prepared before the project is constructed; the law assumes that projects will proceed in a lawful fashion after receiving the appropriate entitlement. An EIR is supposed to include an accurate description of the existing condition, or environmental setting (CEQA Guidelines §15125), and "any significant impacts the project might cause" if the project as proposed is implemented (§15126.2).

Because the law does not explicitly address the circumstance in which a project is built illegally, without permits, before the CEQA process even begins, there is no explicit language that explains how to go about preparing an analysis of impacts when the "existing (or pre-project) condition" no longer exists.

As explained in the RDEIR (page 4), much of the discussion in Section II of the RDEIR addresses impacts that the ongoing maintenance and operation of

the golf course will have on a physical environment that currently exists. This format is necessary because CEQA requires that an EIR address impacts from the project compared to conditions that exist when the CEQA process is begun (Guidelines §15126.2). Only in Section III of the RDEIR, in the discussion of Secondary Impacts, does the RDEIR discuss what impacts might have occurred as a result of the illegal grading, construction, and installation of improvements done to build the golf course.

The statement in this comment that the RDEIR is based on "unsubstantiated assumptions" is not correct. The technical studies prepared for the RDEIR were written by unbiased professionals with recognized expertise in their fields, and were based on the information that was provided to the City by the project proponent. When the only information available was outdated or clearly inconsistent with the existing conditions, the analyses were forced to rely upon the expertise and experience of the persons doing the analysis. This is specifically consistent with the quoted opinion in *Laurel Heights Improvements Association v Regents of the University of California*, that an EIR must rely upon "informed estimates". Responses to the specific comments referred to in the above comment are provided below.

COMMENT AI-2: The claimed environmental impacts associated with Corralitos Creek, such as grading and removal of riparian vegetation, previously attributed to the golf course construction, were created by actions of prior owners. (RDEIR, Appendix C-4, pg. 13, RCL Ecology/Rana Resources Appendix C).

RESPONSE AI-2: Construction of the golf course resulted in the loss of riparian habitat. This is a significant impact. The conclusion in the RDEIR is supported by the report prepared by the project proponent's commissioned biologist. The following language is from the last paragraph of page 6 of the document titled "Analysis of Pre- and Post-development Habitat Conditions For Special Status Amphibians and Reptiles at the Institute Golf Course" and dated July 2002 that was prepared by the project proponent's commissioned biologist and provided to the City of Morgan Hill:

> "Additionally, the width of riparian vegetation along the main stem and tributaries is *nearly identical* with that shown after conversion. While *there is an occasional tree missing* along the edges of the upper reaches, it is evident there was no significant impact to riparian vegetation or California red-legged frog aestivation, foraging, or dispersal habitat within the riparian corridor due of golf course conversion." [italics added]

Trees that grow adjacent to a creek or which are part of a continuous riparian woodland, are part of the riparian habitat. The removal of "occasional" trees along this riparian corridor is a removal of part of the riparian habitat, by definition. Based on the information provided by the project proponent and upon the City's consulting biologist's unbiased review of pre-and post-development conditions using the aerial photographs included as Figure 10 in

the RDEIR, the RDEIR concluded that approximately 0.5 acres of riparian habitat was removed during construction of the golf course.

As another example, when the City's biologists last inspected the site, the fairway for hole #3 included a section of turf built entirely across a segment of creek drainage. Whatever natural riparian vegetation was present in that drainage was replaced by turf grass. The turf grass for this fairway was not planted by prior owners.

Based on the information provided by the project proponent and the City's consulting biologist's unbiased review of pre-and post-development conditions, the RDEIR concluded that approximately 0.5 acres of riparian habitat was removed during construction of the golf course.

COMMENT AI-3: Laboratory testing of the water in the irrigation lake consistently shows very low nitrate concentrations. This is in direct contradiction to the assumptions stated in the RDEIR. This testing shows that the water used for irrigation, balanced with the correct amount of applied fertilizer; would only have a nitrate diluting effect if seeped into groundwater. (Aquifer Sciences -Exhibit A.)

RESPONSE AI-3: According to information provided by the project proponent, well water entering the irrigation pond (Pond D) has an average nitrate concentration of 50 mg/L. By some unknown process denitrification is occurring in Pond D, resulting in irrigation water with an average nitrate level of 20 Mg/L. As stated on page 66 of the RDEIR and confirmed by the project proponent's water quality specialist during the Planning Commission workshop on January 27, 2004, no one knows how the denitrification can be controlled or made consistent.

Because of the uncertainty associated with these conditions, the unbiased groundwater quality analysis prepared by the City's consulting hydrologist is based on a range of possible nitrate levels in the irrigation water. Page 66 of the RDEIR states that this range is between 20 mg/L (current level of nitrogen in the irrigation pond water) to 50 mg/L (average level of nitrogen in groundwater coming from the wells used for irrigation). Based on this range, it is estimated that seepage from the golf course is estimated to contribute nitrate in the range of 45 mg/L and 96 mg/L into to the groundwater. Based on recently available data, the nitrogen loading analysis in the RDEIR has been modified slightly. The range of nitrate levels is now estimated to be 19mg/L to 50 mg/L, and as a result, the seepage from the golf course is now estimated to contribute nitrate in the range of 43 mg/L to 96 mg/L. groundwater. This is reflected in the text revisions in Section IV of this Final EIR.

Irrigation of the golf course will not have a nitrate diluting effect on the groundwater. Please refer to Response AI - 64 for more information regarding nitrogen loading.

COMMENT AI-4: There is no significant decline in groundwater levels after five years of golf course pumping. This indicates that golf course irrigation is having no effect on neighboring wells. (Exhibit A.).

RESPONSE AI-4: This statement is not supported by any information currently available to the City.

As stated on page 82 of the RDEIR, review of the information provided by the project proponent found that the water level of the well closest to the project site dropped 20 feet between 1997 and 2001 and the well farthest away from the golf course dropped 10 feet. This is a substantial water level change, and does not support the project proponent's contention that the golf course is not affecting water levels below the site.

Based on the information provided by the project proponent (refer to Response AI-64), the water demand of the golf course is approximately 436 acre-feet per year. The amount of groundwater recharge occurring on the project site is approximately 150 acre-feet per year, a net deficit of 286 acre-feet per year. Based on the magnitude of the groundwater extraction deficit, the City's consulting hydrologist concludes that groundwater levels in the project area will decline over time.

COMMENT AI-5: Laboratory tests of the water samples from Corralitos Creek show no pesticide runoff or other contaminates, refuting the assumptions in the RDEIR. (RCL Ecology/Sequoia Analytical Exhibit B)

RESPONSE AI-5: The water quality information provided by the project proponent concerning creek water quality consists of two samples from Corralitos Creek during one mid-winter storm period (December 30, 2003). No map is provided showing where the samples were taken, and no laboratory or chain of custody reports are provided. Also, there is no indication if the sampling was done at the beginning ("first flush"), middle, end of a runoff event, or if it was conducted between storm events. As explained in the RDEIR, such limited sampling can only be accepted as a "snapshot" of conditions at one particular point in time. This is insufficient data to alter the conclusion of the RDEIR or change the opinion of the City's consulting hydrologist, Regional Water Quality Control Board or the Santa Clara Valley Water District that 50-foot buffers from Corralitos Creek are needed on the project site. The recommended buffers are needed not only for "normal" operational conditions for the golf course, but to also protect against impacts from accidental releases or runoff during "out-of season" storm events that may happen over the lifetime of the project.

The text revisions for RDEIR page 75 that are provided in Section IV of this Final EIR do identify circumstances under which the water quality buffers can be reduced to less than 50 feet.

COMMENT AI-6: Laboratory testing of the lakes and ponds shows no pesticide content except for an occasional extremely low-level, non-injurious amount of lindane insecticide in two of the lakes on the original golf course. The current golf course operator has never used this chemical; the previous

owners may have applied it. These monitoring results refute the pesticide runoff assumptions stated in the RDEIR. (Exhibit B.)

RESPONSE AI-6: The RDEIR acknowledges the recent sampling results provided by the project proponent regarding non-detectable concentrations of pesticides in the golf course lakes. However, the sampling conducted by the project proponent is limited and provides only a "snapshot" in time at a few selected locations. There is no information on when the samples were taken, exactly where they were taken, or how the sampling was coordinated with chemical applications, irrigation schedules and rainfall.

This limited information is not sufficient to change the conclusions in the RDEIR or the opinion of the City's consulting hydrologist, RWQCB, or the SCVWD that ten-foot buffers around all ponds are needed on the project site. The recommended buffers are needed not only for "normal" operational conditions but also to protect against impacts from accidental releases or runoff during "out-of-season" storm event that may happen over the lifetime of the project.

COMMENT AI-7: Recent surveys for bullfrogs and California red-legged frogs (CRF) found only one bullfrog, and a breeding population of 32 CRFS. This shows that a viable population of CRF is established in the created habitat, and that the bullfrog population can be controlled by direct measures instead of draining the lakes as recommended in the RDEIR, which exposes the young red-legged frogs to predation. (Rana Resources - Exhibit C.)

RESPONSE AI-7: The presence of a single bullfrog this year indicates only that bullfrogs can move onto the site at any time in the future. The methods for controlling bullfrogs proposed by the project proponent are less reliable than the mitigation identified in the RDEIR, depending entirely on careful consistent monitoring and a good faith effort at ongoing implementation. Draining the ponds are a verifiable and distinct form of mitigation that would not be inconsistent with the proposed use of the golf course (which is stated to be used only between April 16th and September 30th).

Draining ponds is the preferred method to control bullfrog predation on sensitive species such as the Red-legged frog. There is no negative impact to sensitive species, if it is done correctly under the supervision of a qualified biologist. The limited sampling results do not justify using less effective methods of bullfrog control. As stated in their February 4, 2004 letter (found in Section II. B. of this Final EIR, the USFWS recommends that the City adopt all of the measures recommended in the RDEIR (including draining the ponds to control bullfrogs).

COMMENT AI-8: The estimated runoff from the project is considerably less than pre-development flows. This, combined with the operation of the lake system, serves to reduce peak flows so as not to contribute to downstream flooding (Mattern & Associates - Exhibit D).

RESPONSE AI-8: The report referenced in this comment was reviewed by the City's consulting hydrologist. The review found that the Supplemental

Drainage Analysis (Exhibit D) generally lacks documentation and contains inconsistencies in several respects which preclude meaningful review of the analysis. For more detailed information regarding the inadequacy of the Supplemental Drainage Analysis (Exhibit D attached to this letter), please refer to Response AI-67.

COMMENT AI-9: The applicant and USFWS have entered into an agreement that contains off-site and on-site mitigation for the special-status wildlife (Correspondence with the USFWS - Exhibit E).

RESPONSE AI-9: The letters in Exhibit E do not represent a formal agreement. The letter from the project proponent is not signed. Recent phone communication with the USFWS (February 23, 2004, Mary Hammer, Biologist, USFWS) indicates that a formal agreement had not on that date yet been completed between the applicant and the USFWS.

COMMENT AI-10: Geology and Soils (pages 24- 27)

The statement that the existing golf course was constructed without a grading permit is not correct (page 26). As admitted on page 1 of the RDEIR, in 1997, a grading permit was issued for the reconstruction of the original course. Before this grading permit was issued, a soils report was prepared on the entire site and submitted to the City for review and approval (RDEIR, Appendix B-1). An additional geotech report was prepared in 2003 to test the stability of the soil berms (RDEIR, Appendix B-2). These reports show that the soils on the site are stable. Moreover, the golf course has operated for over 5 years with no occurrence of soil instability.

Due to this evidence, the assumption of soil instability and need for an additional geotechnical report needs to be removed and replaced with the above discussion showing that the existing grades on the site are stable and therefore, this issue needs to be changed to less than significant.

RESPONSE AI-10: As stated on page one of the RDEIR, in April 1997, the City of Morgan Hill issued a grading permit for the reconstruction of an existing golf course on the project site. The April 1997 permit also allowed for the construction of a new access driveway and an irrigation pond. The approved grading plan allowed for a maximum cut/fill of 105,000 cubic yards of material and was limited to an area of approximately 40 acres. The project proponent expanded grading operations to construct the existing 18-hole golf course, which encompasses almost the entire 192-acre project site. The amount of material graded on the property is estimated to have been in excess of 500,000 cubic yards. The project proponent graded approximately 150 acres of the site and moved more than 395,000 cubic yards of material in excess of the grading permits and approvals issued by the City.

Two geotechnical reports were prepared for the golf course. One was prepared in 1997 and the other in 2003. The report prepared in 1997 recommended additional analysis prior to finalizing the golf course plans. The additional analysis was never completed. For this reason, the City requested that a geotechnical report be completed for the entire site that documents that all slopes of the golf course are stable. In response to this request, the project

proponent prepared a geotechnical report that addressed only two locations on the site (the berm along Foothill Avenue and the southern edge of Pond G). The stability of all the slopes on the site have not, as of the date of this Final EIR, been reflected in a report submitted to the City of Morgan Hill by a Certified Geologist or Civil Engineer. For these reasons, the RDEIR can not conclude that soils on the site are stable.

COMMENT AI-11: Vegetation and Wildlife (pages 28- 50)

The analysis in this section of the RDEIR does not accurately reflect the pre- and post-construction habitat conditions. These conditions are accurately depicted in the report that was previously submitted to the City (RDEIR, Appendix C-4, pg. 13, Appendix B).

RESPONSE AI-11: The analysis in the RDEIR is based on the unbiased expert opinion of the biologist hired by the City to complete independent review of all available information, including the information submitted to the City.

Appendix C-4, page 13, Appendix B pertains to hyrdrological information. It is believed this reference is in error and the project proponent meant to refer to Appendix C attached to Appendix C-4, which discusses pre- and post-development conditions. The report in Appendix C is not, however, based on any actual inspections of the project site prior to development of the golf course. It is based on a review of historic aerial photographs, as is the analysis used to prepare the RDEIR. The habitat present on the site prior to construction of the current golf course was destroyed by the grading.

The impact analysis and mitigation scenarios in the RDEIR reflect the best professional judgement of the USFWS, the City's consulting biologists, and the State Department of Fish and Game. The evaluation of pre-and post-development conditions submitted by the project proponent was reviewed and considered by the City's biologist and is included as an appendix in the RDEIR for this reason.

COMMENT AI-12: Moreover, this analysis does not take into consideration the mitigation measures that the applicant already implemented for the loss of vegetation and wildlife under the 1997-grading permit.

RESPONSE AI-12: It is not clear what mitigation measures is referred to in this comment. The analysis in the RDEIR evaluates the actual ongoing use and operation of the golf course, based on the physical conditions present on the site.

COMMENT AI-13: Also, it does not recognize the outcome of the monitoring results for the special-status species (Exhibit C).

RESPONSE AI-13: Exhibit C contains a letter from the project proponent's biologist. The information in the letter was reviewed and taken into consideration by the City's biologist prior to circulation of the RDEIR. The results of those surveys is not sufficient to forego standard mitigation techniques as recommended by the City's biologist and by the USFWS.

COMMENT AI-14: Under direction of expert herpetologist Mark Jennings Ph.D., several studies have been conducted. For example, a study of pre and post-golf course development habitat conditions for the CRF, California tiger salamander, and the western pond turtle concluded that there was an increase in habitat over previous conditions (Appendix B above). In addition, current monitoring for the CRF found 32 individuals from young of the year to adults breeding in the newly created lakes (Exhibit C) . During the monitoring, it is significant that all age classes of CRF were found on site. This shows that the existing lakes and adjacent habitats, as managed under current golf course operations, are supplying all requirements of the species lifecycle.

RESPONSE AI-14: As with the previous comment, it is believed that the reference to Appendix B is in error and the project proponent meant to refer to Appendix C, which discusses pre- and post-development conditions.

The report included in Appendix C is not based on any actual inspections of the project site prior to development of the golf course. It is based on historic aerial photographs, as was the analysis in the RDEIR. The habitat present on the site prior to construction of the golf course was destroyed by the grading.

The letter in Exhibit C does not state that "it is significant that all age classes of California red-legged frog were found on the site", as this comment implies. That is the letter writer's interpretation of the letter. The letter in Exhibit C does state that, "The number of frogs in each pond could undoubtably be increased with the addition of some pond side cover." The project proponent does not propose to provide side cover, however.

The USFWS service has stated its belief that an existing population of Red-legged frog does not have a good chance of long-term survival on an active golf course.

The mitigation scenarios for California red-legged frog in the RDEIR reflect the best professional judgement of the USFWS, the City's consulting biologists, and the State Department of Fish and Game.

COMMENT AI-15: Agreement with USFWS

The applicant and the USFWS have entered into an agreement for the protection of the special status species (Exhibit E.)

RESPONSE AI-15: The letters in Exhibit E do not represent a formal agreement, and do not identify protection for all of the special status species found on this site, since not all of the species are federally protected.

The letter in Exhibit E from the applicant is not signed. Recent telephone communication with the USFWS (February 23, 2004, Susan Hammer, Biologist, USFWS) indicates that a formal agreement has not been completed between the applicant and the USFWS.

The USFWS mitigation outlined in the July 15, 2003 letter (Exhibit E) is not for the protection of all special status species on the site. The

USFWS focuses on mitigation for the loss of habitat for the red-legged frog, which is a federally listed species, and for the loss of serpentine habitat on the site, which the USFWS believes supported federally listed species. As stated on page 3 of the 7/15/03 letter (Appendix C-6 of the RDEIR), the USFWS hopes that a future Corps of Engineers' permit for a bridge or culvert will establish a federal nexus for their involvement in mitigation measures to avoid impacts to individual frogs. The USFWS letter also states that the mitigation proposed for red legged frog will "partially compensate" for impacts that occurred to the tiger salamander as a result of grading on the project site. The USFWS letter does not address mitigation for impacts to riparian habitat, burrowing owl, or western pond turtle at all.

On a related subject, the letter in Exhibit E (attached to this comment letter) from the project proponent to the USFWS requests an exception from the minimum 30-foot setback requirement that the USFWS has requested. The mitigation in the RDEIR is based on execution of the mitigation outlined in the July 15, 2003 letter from the USFWS (which does not include such an exception). Deviation from the mitigation in the 7/15/03 letter is not covered in the RDEIR and may result in a significant impact.

COMMENT AI-16: This Agreement contains off-site compensation for possible impacts to the CRF foraging habitat as well as other sufficient mitigation measures to mitigate the potential impacts on the other special status species. The RDEIR recommends that the applicant abide by additional measures to protect these species. The RDEIR does not contain any evidence or reasoning to justify these additional measures. Since USFWS, as the agency responsible for protecting these species, has already determined that the measures in its agreement with the applicant are sufficient to mitigate this impact, the additional measures in the RDEIR must be removed.

RESPONSE AI-16: The USFWS mitigation outlined in the July 15, 2003 letter (Exhibit E) does not address protection of all special status species on the site, since the USFWS is not the "agency responsible for protecting" all of these species. Please also refer to Response AI-15 above. The USFWS can only oversee mitigation where there is a federal nexus.

As stated on page 49 of the RDEIR, since circulation of the DEIR in January 2003, the USFWS has worked with the project proponent to develop a mitigation program for the red-legged frog, which is a federally listed species. That mitigation program does not address project impacts to other sensitive species, including tiger salamander, western pond turtle, or burrowing owl, nor does it address impacts to riparian habitat or to water quality.

COMMENT AI-17: Moreover, the additional measures such as buffers and setbacks recommended in the RDEIR are not only inconsistent with those required by the USFWS, but also infeasible as they would prevent the project from occurring. For example, the measure requiring a 200-foot buffer from centerline of creek, combined with an additional 100-feet of setback from edge of riparian in the upper

portion of the creek, would require a total distance of 300-feet. The golf course could not exist with these enormous unnecessary buffers and setbacks.

RESPONSE AI-17: As stated previously, the additional mitigation measures identified in the RDEIR are not inconsistent with the mitigation measures required by the USFWS. In fact, as stated in the comment letter dated February 4, 2004 from the USFWS (refer to Section II. B. of this FEIR), the USFWS recommends that all measures identified in the RDEIR be adopted by the City. The measures identified in the RDEIR will not prevent a mathematics institute or an 18-hole golf course from existing on the project site, although some modifications would need to be made to the existing design.

The setback example in the comment is misleading. First, the 200-foot on-site buffer is only necessary for Mitigation Package II. If the project proponent continues to pursue an agreement with the USFWS, Mitigation Measure package II would not be relevant. Second, the 200-foot buffer from the centerline of the creek would, in most if not all of the areas of the golf course, also provide the 100-foot setback necessary for the protection of riparian habitat. Therefore, a 300-foot setback would never be necessary on the project site under any of the mitigation scenarios.

COMMENT AI-18: During a meeting with the agencies and the City last year, the California Department of Fish and Game (CDFG) requested that the USFWS take a lead position in management discussions regarding the CRF, California tiger salamander, and western pond turtle. During this past year, the USFWS and the applicant have worked closely together to reach consensus on a habitat management agreement. A component of the agreement regarding the creek area includes establishment of an undulating buffer, revegetation of the buffer and areas cleared by previous owners, restoration of drainage in specific areas, and general habitat management of the area This management has been deemed by the USFWS to be of benefit to all three of the special status wildlife species.

RESPONSE AI-18: There have been three meetings between the responsible agencies (USFWS, CDFG, RWQCB, and SCVWD) and the City of Morgan Hill (the lead agency). Never during these meetings did the CDFG defer their responsibility to the USFWS and the USFWS did not accept CDFG responsibility. The CDFG and USFWS did agree that because the red-legged frog is a federally listed species, the USFWS is responsible for protection of the California red-legged frog.

The July 15, 2003 letter from the USFWS (Appendix C-6 of the RDEIR) focuses on mitigation for the loss of habitat for the red-legged frog, which is a federally listed species, and for the loss of serpentine habitat on the site, which the USFWS believes supported federally listed species. As stated on page 3 of the 7/15/03 letter, the USFWS thinks that a future Corps of Engineers' permit for a bridge or culvert may establish a federal nexus for their involvement in mitigation measures to avoid impacts to individual frogs. Their comments do not, at this time, address the adequacy of mitigation to avoid impacts to the frog population on the golf course.

The USFWS letter also states that the mitigation proposed for red legged frog will "partially compensate" for impacts that occurred to the tiger salamander as

a result of grading on the project site. Because the Californian tiger salamander is not, at this time, a federally listed species, their comments do not address the adequacy of the mitigation for the tiger salamander. The USFWS letter does not address mitigation for impacts to riparian habitat at all, because there is not federal nexus for such review at this time.

COMMENT AI-19: Before the 1997 grading permit was issued, this portion of the site contained approximate 3 acres of golf course ponds. These ponds were shallow and were not likely adequate breeding habitat for any of the special status wildlife RDEIR, Appendix C-4, pg. 13, Appendix C). Moreover, the ponds before 1997 did not include buffers. As part of the 1997 permit, the applicant replaced the approximate 3-acres of ponds with over 3-acres of deeper, permanent lakes furnishing breeding habitat for all the three special status species and included buffers. Thus, this work, permitted and accepted by the City, cannot be re-analyzed as part of this project.

RESPONSE AI-19: Since no qualified biologists inspected the ponds prior to their removal, there is not substantive basis for stating that they were not "likely adequate breeding habitat" for any wildlife. No surveys for California red-legged frog were completed on the project site prior to the grading and construction of the existing golf course. The USFWS, CDFG and the City of Morgan Hill all agree that California red-legged frog habitat occurred on the project site, prior to construction of the existing golf course. It is the professional opinion of the City's consulting biologist that the former ponds on the site were California red-legged frog habitat and that the fallow golf course that existed on the project site provided a passive buffer for the ponds on the site. The USFWS states in the July 15, 2003 letter that the service is not confident that the existing ponds on the project site are suitable habitat for the California red-legged frog. The USFWS is certain that the existing conditions on the site do not provide adequate upland refugia for the California red-legged frog.

It is not clear what work has been "permitted and accepted by the City", because the work allowed by the City's permit was not built. As soon as an endangered species was known to exist on the site, the City was obliged to take appropriate steps to avoid damage or impacts to the species. Because the previous permitting for the project site did not address the loss of red-legged frog habitat and individuals, it is being addressed now.

COMMENT AI-20: The applicant agrees to many of the mitigation measures identified in this section. Changes are only proposed if the measures are in addition to or inconsistent with those already required by the USFWS, or wherein studies and monitoring show evidence that the claimed potential impacts are not occurring and the associated mitigation is unwarranted, or in some cases, has already been accomplished.

RESPONSE AI-20: As stated in Response A-17, the "Mitigation Measure Package I" identified in the RDEIR is not inconsistent with the USFWS measures. The other mitigation measures not otherwise identified by the USFWS draft agreement are needed to reduce all project impacts to California tiger-salamander, Western pond turtle, riparian habitat, and water quality. It is the professional opinion of the City's consultants that the limited amount of sampling conducted on the project site is

not sufficient to allow non-standard mitigation measures that the City, USFWS, CDFG, SCVWD, and RWQCB all agree are inadequate.

COMMENT AI-21: California Red-Legged Frog

The applicant agrees to implement the mitigation per the USFWS Agreement. The requirements in the Agreement are similar to those contain in Mitigation Package I at pages 50-5 1, with the following exceptions:

With respect to the measure on "Manage Non-Native Predator Species," the USFWS has agreed to change the lake draining management to direct bullfrog control, due to the survey findings of only one bullfrog and 32 CRFS.

Therefore, the USFWS-approved mitigation is to have the applicant survey lakes/ponds quarterly during spring, summer and fall months (temperature to be at or above 56 F, for bullfrogs to be active) and to control any bullfrogs found. Seine for occurrence of bullfrog larvae, and destroy any bullfrog egg masses found during spring surveys. Should this method be found not to be effective, the applicant will consult with the City, USFWS and CDFG to determine an alternate method such as draining.

RESPONSE AI-21: Based on information available to the City, this comment does not accurately represent the USFWS position. The USFWS has not addressed bullfrog control or approved bullfrog control on the project site in any written communications with the City. It is the City's understanding that the USFWS was willing to allow the project proponent to control bullfrogs by gigging for the first year until a permit for water discharges from the ponds is obtained from the RWQCB. Once the project proponent obtains the permit from the RWQCB, the USFWS preferred method for controlling bullfrogs on the site is draining the ponds.

COMMENT AI-22: With respect to the measure on "Vegetated Buffers Around Ponds," water quality sampling shows that there is no concern for pollutant runoff.

RESPONSE AI-22: The limited water sampling completed on the project site does not change the opinion of the City, RWQCB, or SCVWD that 10-foot buffers around the golf course ponds are needed on the project site. Buffers on the site are needed not only for everyday operation of the golf course, but for any accidental releases that may happen over the lifetime of the project, due to the use and storage of chemicals on the site (e.g., unexpected rain after chemical application).

COMMENT AI-23: With respect to the measure on "Maintain Water Quality of Breeding Ponds/Establish Vegetated Shelves Around Ponds," water quality sampling indicates no concern for pollutants, and the measure is not included in the USFWS letter. However, the applicant will continue to monitor the water on an episodic basis (after fertilizers or pesticides are applied) as mentioned in the first sentence of this measure. This monitoring will be consistent with the requirements of the RWQCB as covered under the SWPPP and NPDES. Should monitoring results indicate a concern for lake/pond water quality, the applicant will immediately cease use of the contaminate in that area, and consult with the City and appropriate agencies to determine a course of action. The remaining portion

of this measure is not necessary. With respect to the measure "Water Quality Setback from Corralitos Creek," even though monitoring shows that there is no concern for creek water quality, the applicant agrees to provide the buffers as specified in the USFWS agreement. The minimum width of which also complies with the requirement of the RWQCB Basin Management Plan for this area. Moreover, the applicant will agree to monitor the water quality in the Creek as specified above with respect to the ponds.

RESPONSE AI-23: The program described above is not sufficient to reduce water quality impacts to a less than significant level, nor is it sufficient to mitigate impacts to special status species. As stated previously, the limited sampling that has been done is not sufficient to eliminate the need for ongoing protection of water quality, particularly water that is occupied by an endangered species.

Vegetated shelves along the edge of the pond are a necessary component of pond habitat, and are consistent with adjacent golf course uses. The importance of vegetative shelves is reflected in the letter from the project proponent's biologist, which states "The number of frogs in each pond could undoubtedly be increased with the addition of some pond side cover." (See Exhibit C attached to the letter found in Section II. AI. of this Final EIR.)

COMMENT AI-24: With respect to mitigation for the California Tiger Salamander, and Western Pond Turtle, the applicant agrees to implement the CRF mitigation per the USFWS Agreement that also provides for these species.

RESPONSE AI-24: This statement is inaccurate. The USFWS does not provide mitigation for impacts to either of these species, because they are not federally listed. Please refer to Response AI-16.

COMMENT AI-25: With respect to riparian habitat, the applicant will implement the USFWS agreement that describes creek riparian enhancement and buffer management as well as riparian enhancement.

RESPONSE AI-25: This statement is inaccurate, please refer to Response AI-16. The USFWS mitigation is specifically for California red-legged frog habitat. The USFWS letter dated July 15, 2003 (Appendix C-6 of the RDEIR) does not address riparian habitat at all, nor does the USFWS comment letter that is included in Section II. B. of this Final EIR. There is presently no federal nexus for the USFWS to obtain mitigation for impacts to riparian habitat.

COMMENT AI-26: Fencing of buffer boundaries is not in conformance with the USFWS agreement.

RESPONSE AI-26: Please refer to Response AI-16. Fencing or signs for the purpose of restricting access into the buffer boundaries is not inconsistent with the USFWS mitigation.

COMMENT AI-27: The RDEIR mentions one example of localized flooding (page 61). This event occurred in 1999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill

Avenue and the property. Due to an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event and immediately had a pipe installed under the new apron. Since the installation of the pipe, no localized flooding has occurred.

Shortly after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court, located one block east of Foothill Avenue. The person admitted that his flooding problem has two causes. The first is that his property is below grade, and the second is that there is no drainage ditch on the east side of Foothill. This lack of storm water conveyance allows water to travel from the crest of Foothill across lots on the west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

Based on the above explanation, and the results of the Mattern and Associates report (Exhibit D), the golf course does not contribute to downstream flooding, and therefore this impact needs to be changed to less than significant..

RESPONSE AI-27: As stated on the top of page 61 of the RDEIR, interviews with neighbors in the project area completed by the City's consulting hydrologist indicate that in the winter of 1999 water flooded the Foothill Avenue drainage ditch fronting the project site and flowed under the road surface (within the sub-base) onto properties on the west side of Foothill Avenue, south of the project entrance road. This comment contends that drainage problems at Foothill Avenue on the north side of the project entrance road were a single event and were due to an undersized driveway culvert that has since been replaced. This would not explain, however, the flooding and drainage problem that occurred on the south side of the entrance road culvert.

Letters received by the City from neighboring property owners indicate a belief that the golf course is still the cause of ongoing drainage and flooding problems (refer to comments letters N, O, R, U, and X in Section II of this Final EIR). In order to determine if the golf course is the cause of local drainage and flooding problems, additional analysis is needed.

The Supplemental Drainage Analysis prepared for the existing golf course by Mattern Associates and included as Exhibit D of this comment was reviewed by the City's consulting hydrologist. The supplemental analysis does not support a conclusion that no off-site drainage or flooding impacts will result from the golf course grading and operation. (See Response AI-67 below for a more detailed response to all of the information provided in the Mattern & Associates report attached to this comment letter.)

COMMENT AI-28: Soil Erosion

Please clarify that the measure on page 74, regarding soil erosion (the fourth bullet) only precludes grading during the rainy season and not all construction. There would be no need to preclude all construction since only grading activities may create this impact.

RESPONSE AI-28: The fourth bullet on page 74 is specifically referring to the Erosion Control Plan required for any construction that could result in soil erosion. Language will be added to clarify its intent.

COMMENT AI-29: Pesticides and Herbicides

Please replace the first bullet at the top of page 75 that recommends modifications to the golf course with the requirements contained in the agreement with the USFWS. The buffers required in the agreement are sufficient to reduce this impact to a level of insignificance. Also, please note that the water sampling results in Exhibit B show that the lakes are free of pesticides and other contaminates. The turf grass used on the course serves as an excellent buffer and filters pesticides and other contaminates. The negative findings from the waters sample clearly show that the existing landscaping and practices are adequate to protect the quality of the water.

RESPONSE AI-29: Please refer to Responses AI-5 and AI-6 above. As stated previously, the unsigned agreement with USFWS does not address mitigation for water quality impacts other than such mitigation that is minimally necessary for the loss of red-legged frog habitat.

COMMENT AI-30: Ground Water Impacts

The proposed project will not create a significant impact on ground water quality (page 66). As shown in the report by Aquifer in Exhibit A, Questa assumed more nitrates would be applied to the golf course then are actually applied. In using the correct concentration of nitrates, Aquifer has concluded that the nitrate concentration would be far less than estimated by Questa. As a result, please change the determination of this impact from "Significant Impact" to "Less than Significant Impact" at page 66.

The nitrogen level in the ground water wells on site is significantly better than the average for the region. SCVWD examined a well across the street from the project to determine if the project was causing an impact on ground water. The SCVWD noted that the level of nitrate has increased over the life of the well. Examination of the data shows that the increase in the nitrate level in that well occurred before the golf course became operational. Since the golf course has been in operation, the level of nitrate in that well has gone down.

It should also be noted that the well across the street from the project is actually one of only three wells in the region that meets the nitrate standard in the Safe Drinking Water Act.

RESPONSE AI-30: The City's consulting hydrologist reviewed the additional nitrogen loading information by the project proponent (Exhibit A attached to this comment letter). The additional information does not change the conclusions in the RDEIR. Please refer to Response A1-64 for detailed information regarding

nitrogen loading on the project site and the new information provided by the project proponent.

COMMENT AI-31: Nitrogen Loading

The applicant will prepare a nitrogen control plan (NCP). Please clarify that the NCP can be a component of the Chemical Application Management Plan (discussed at page 76-78) since these two plans work together. The plan will describe the NCP plan cts.

RESPONSE AI-31: The text on page 75 will be revised to state that the NCP can be part of the CHAMP. The NCP must include all of the elements described in the RDEIR on pages 75 and 76, in order to reduce project impacts to less than significant. The last sentence in this comment is unclear.

COMMENT AI-32: The Aquifer Sciences analysis shows that nitrogen application, accounting for low amount of nitrogen in the irrigation water balanced with the remaining applied fertilizer needed by grass and soil, will not contribute to a rise in groundwater nitrate levels (Exhibit A.) In addition, the SCVWD has agreed that the current rate of fertilization is appropriate, and is assisting us to fine-tune applications.

RESPONSE AI-32: The City's consulting hydrologist reviewed the additional nitrogen loading information by the project proponent (Exhibit A of the comment letter). The additional information does not change the conclusions found in the RDEIR. Please refer to Response A1-64 for detailed information regarding nitrogen loading on the project site and the specific response to the new information provided.

The statement in this comment regarding SCVWD agreement with the current rate of fertilizer application is inaccurate. Recent communication with the SCVWD (Yvonne Aroyyo, Community Projects Review Unit, Santa Clara Valley Water District) indicates that the SCVWD does not agree that the fertilization rate is appropriate. In addition, the comments received from the SCVWD on the RDEIR do not reflect District approval or agreement with current fertilization rates.

COMMENT AI-33: The applicant agrees to continue to monitor surface waters for nitrogen [nitrate (NO3) and TKN (N)] on a schedule timed to fertilizer application rates and rainfall. Should monitoring show an increase in the above chemicals, the applicant will immediate cease fertilizing and consult with the City and appropriate agencies to determine if the other items listed in the proposed mitigation should be implemented.

RESPONSE AI-33: The purpose of this comment is unclear. It appears the project proponent is not willing to implement all of the mitigation measures identified on pages 75 and 76 of the RDEIR. If the mitigation is not implemented the impacts cannot be found to be less than significant. The City of Morgan Hill, as the lead agency under CEQA, cannot defer to the project proponent the City's responsibility to oversee the implementation of mitigation, or allow a determination of the adequacy of the mitigation to be made by the project proponent, based on unspecified standards and an unknown monitoring schedule.

COMMENT AI-34: Some of the components recommend in the RDEIR for the NCP are unnecessary or infeasible and we ask that they be modified as follows:

RESPONSE AI-34: None of the mitigation measures recommended in the RDEIR for Nitrogen Loading are unnecessary or infeasible.

COMMENT AI-35: Remove the last sentence in bullet 3 under Nitrogen Loading, page 75. It is unclear what pre-project conditions are and what portion of the golf course would be included. The important aspect is to make sure the existing applications do not create a significant impact. It is irrelevant how the existing application relates to the pre-project conditions.

RESPONSE AI-35: The mitigation measure is not unnecessary or infeasible. Pre-project conditions are relevant in this area where high levels of nitrate already exist in the ground water, both in determining localized impacts and in judging what would be a reasonable standard. An estimate of pre-project nitrogen loading from the site would be prepared by the City staff in consultation with the SCVWD.

COMMENT AI-36: Moreover, the applicant has already submitted to the City an analysis that shows if any water from the project reached the aquifer, it would dilute the nitrate in the ground water.

RESPONSE AI-36: The City's consulting hydrologist reviewed the additional nitrogen loading information provided by the project proponent (Exhibit A attached to this comment letter). The additional information does not change the conclusions found in the RDEIR. Please refer to Response A1-64 for detailed information regarding nitrogen loading on the project site and the specific response to the new information provided.

COMMENT AI-37: Revise bullet 4, under Nitrogen Loading, page 75. The NCP (and/or CHAMP) will be submitted to the RWQCB for review and approval.

RESPONSE AI-37: It is not clear why this comment proposes to exclude the Water District from review of the NCP and CHAMP. The mitigation measure is not unnecessary or infeasible.

COMMENT AI-38: Revise bullet 5, under Nitrogen Loading, page 75. Please substitute the last word "monthly" to "quarterly." There is no evidence to indicate that the monitoring must occur on a monthly basis. This monitoring is extremely expensive and the nitrate level in the irrigation water does not vary significantly over time. Thus, it would be feasible and more appropriate to require testing on a quarterly basis.

RESPONSE AI-38: The mitigation measure is not unnecessary or infeasible, since there are no records currently available to prove that nitrate levels do not vary significantly over time. Once monthly records exist to support such a statement, the City may be in a position to revise the monitoring requirements. The SCVWD and RWQCB both agree with the mitigation measures identified in the RDEIR.

COMMENT AI-39: Revise bullet 6, under Nitrogen Loading, page 75. Please substitute the words recommendations provided by the NCP."

RESPONSE AI-39: The suggested change would be to substitute the judgment of the project proponent's consultants for that of the Santa Clara Valley Water District. No justification is provided for such a change.

COMMENT AI-40: Revise bullet 7, under Nitrogen Loading, page 76. Please substitute this bullet with the following: "Appropriate fertilizer will be used according to weather forecast and time of year based on the CHAMP. This fertilizer may include slow release or less soluble form."

RESPONSE AI-40: The statement in the RDEIR is "The nitrogen fertilizer shall be slow release or less soluble form, whenever possible." The suggestion that fertilizer application should be based with the CHAMP is consistent with the EIR analysis and is included in the proposed text revisions.

COMMENT AI-41: Revise bullet 8, under Nitrogen Loading, page 76. In the second sentence, please include the word "generally" between "shall" and "be" as occasionally dry areas will require additional hand watering.

RESPONSE AI-41: The statement referred to in this comment is that "Excessive irrigation shall be avoided." The word excessive is used in this context to mean exorbitant, implying a departure from accepted standards regarding amount or degree. Watering dry areas by hand would not normally be considered either excessive or exorbitant.

COMMENT AI-42: Eliminate bullet 10, under Nitrogen Loading, page 76 since the mount of nitrogen loading will depend upon each circumstance. The NCP will dictate the required nitrogen needed to prevent excessive fertilization.

RESPONSE AI-42: Bullet 10 states that the amount of maintained turf shall be reduced in order to minimize the total fertilizer requirement. The NCP will only control nitrogen within the requirements of the turf.

COMMENT AI-43: Eliminate bullets 11, 12, 13 and 14, under Nitrogen Loading, page 76. The requirements in these bullets are no longer necessary now that an agreement has been reached with USFWS. Requirements in that agreement will satisfy the measures identified in these bullets. Also, please be advised that the turf referenced in bullet 13 has been removed.

RESPONSE AI-43: As stated previously, the mitigation measures recommended by the USFWS do not address water quality impacts. A possible alternative to the 50 foot setbacks for protecting water quality is identified in the proposed text amendments in Section IV of this Final EIR (amendments proposed for page 74 of the RDEIR). The conditions described in bullet 13 (turf in the creek near hold #3) were present when the City's consultants were last allowed on the project site.

COMMENT AI-44: Add the following new bullet: "The NCP will be consistent with the creek restoration plan and the requirements identified in the USFWS agreement."

RESPONSE AI-44: This would not be an accurate statement to add to the EIR. The NCP will need to be consistent with the CHAMP, and with the other conditions of approval required by the City of Morgan Hill.

COMMENT AI-45: Pesticide and Herbicides

Please eliminate the term "construct" in the second sentence under this section. As you know, the golf course has already been constructed.

RESPONSE AI-45: The language has been changed to state construct or reconstruct. The revised language is included in Section IV of this Final EIR, Revisions to the Text of the Revised Draft EIR.

COMMENT AI-46: Revise bullet 1, under Pesticide and Herbicides, page 76. Please substitute this bullet with the following text: "The grass species already in place have characteristics of drought, pest and disease resistance and are appropriate to the area."

RESPONSE AI-46: Future activities may require turf replacement. The text is accurate. Also, the grass species and their relevant characteristics will need to be specifically identified in the CHAMP.

COMMENT AI-47: Please eliminate bullet 10, under Pesticide and Herbicides, pages 77-78. This bullet is not necessary. The applicant has already agreed to abide by its agreement with USFWS.

RESPONSE AI-48: As stated previously, the mitigation recommended by the USFWS does not address water quality impacts. The proposed USFWS draft mitigation program does not address the setbacks necessary to reduce water quality impacts to a less than significant level.

COMMENT AI-49: Revise bullet 1, under Pesticide and Herbicides, page 78. Please substitute the word "monthly" in the middle of this bullet to state "episodically based on application schedules.

RESPONSE AI-49: The mitigation measure is not unnecessary or infeasible. The City, SCVWD, and RWQCB, agree that monthly sampling is appropriate. It would not be appropriate to defer a monitoring responsibility by identifying testing as occurring "episodically" unless the testing schedule is irrelevant to the adequacy of the mitigation.

COMMENT AI-50: Under Pesticide and Herbicides, page 78. Please eliminate the reference to SCVWD since they do not have approval authority over the CHAMP.

RESPONSE AI-51: The SCVWD will have approval authority over the CHAMP because the City of Morgan Hill has requested that they review and concur with the document as stated on page 78 of the RDEIR.

COMMENT AI-52: Lake Water Quality Management and Discharges

The applicant will prepare a CHAMP and submit the CHAMP to the RWQCB. The CHAMP will include elements that are commonly included in the CHAMP's for other golf courses in the area.

RESPONSE AI-52: As stated on page 78, to suffice as mitigation for the impacts identified in the RDEIR, the CHAMP shall include the elements identified in the RDEIR and be subject to review and approval by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB (if the RWQCB accepts regulatory authority for the CHAMP, the reports to the City and SCVWD may be informational only.). The preparation of a CHAMP is not replacement for any of the additional mitigation measures identified on page 78 and 79 of the RDEIR.

COMMENT AI-53: Remove bullet 2, under Lake Water Quality Management and Discharges page 78. This measure is no longer necessary as reflected in the Mattern Report contained in Exhibit D.

RESPONSE AI-53: The report referenced in this comment (Exhibit D attached to the comment letter) was reviewed by the City's consulting hydrologist. The review found that the Supplemental Drainage Analysis (Exhibit D) generally lacks documentation and contains inconsistencies in several respects which preclude meaningful review of the analysis. For more detailed information regarding the inadequacy of the Supplemental Drainage Analysis (Exhibit D), please refer to Response AI-67.

COMMENT AI-54: Please be advised that the applicant has applied to the City for domestic water for use by the Mathematics Institute.

RESPONSE AI-54: The City of Morgan Hill has not received an application to connect to the City's water system from the project proponent. The City's preference is for the property to connect to an existing public water system in the project area. Additional environmental review may be needed for any expansion of the existing public water system, prior to obtaining a permit.

COMMENT AI-55: Irrigation Water

Aquifer Sciences prepared an additional report to respond to the statement made in the second paragraph under this section at page 82 (Exhibit A). That study shows no evidence of groundwater decline after five years of golf course operation. The applicant will continue to monitor the groundwater levels in the on-site wells.

RESPONSE AI-55: The letter prepared by Aquifer Sciences and provided by the project proponent as Exhibit A in this comment letter was reviewed by the City's consulting hydrologist. The groundwater level data in the RDEIR was supplied by Aquifer Sciences and is the same data analyzed in Exhibit A. The groundwater level data in Exhibit A clearly show a greater water level drop at the well nearest the project site compared with wells farther away. Therefore, these water level data do, in fact, support the analysis and conclusions in the RDEIR. Please refer to Response AI-64 for more information regarding the letter in Exhibit A and the City's consulting hydrologist's review of that letter.

COMMENT AI-56: The discussion of secondary impacts should be removed since it does not comply with the California Environmental Quality Act (CEQA). Secondary impacts are to look at reasonably foreseeable impacts that are caused by the project, not impacts that will be caused if the project is not approved. Including this discussion of impacts that might have existed in the past in this

section of the RDEIR not only creates confusion but is also misleading. It is misleading because the RDEIR is using a baseline that is not accurate but rather based on unsubstantiated assumptions.

RESPONSE AI-56: This comment inaccurately characterizes information in the RDEIR, and does not reflect the requirements of CEQA or the CEQA Guidelines.

The RDEIR does not anywhere state that the discussion of Secondary Impacts (starting on page 107) is an evaluation of "impacts that will be caused if the project is not approved". Rather, the secondary impacts are the physical impacts that have already occurred as a result of the illegal construction of the golf course, and whose correction or mitigation will not occur if the City of Morgan Hill chooses to approve the project.

CEQA does, specifically, require that an EIR must address these impacts. The definitions section of the CEQA Guidelines says that the words "effects" and "impacts" are synonymous as they are used in the CEQA Guidelines, and their meaning includes "Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." [§15358] The secondary impacts identified in the RDEIR actually occurred in the past, but will become unmitigated (and therefore unavoidable) at that point in time when and if the City of Morgan Hill chooses to approve the project without requiring that the project mitigate the identified significant impacts.

The secondary impact analysis is not based on unsubstantiated assumptions. When there is evidence to support a conclusion that the impact occurred, it is identified. The secondary impact analysis does not identify impacts if there is not evidence to support the claim.

For example, the secondary impact to serpentine soils on the site is well documented. This is the same impact for which the USFWS is requiring the mitigation of 51.2 acres of off-site replacement habitat. As stated on page 107 of the RDEIR, the USFWS, CDFG, and the City's consulting biologist all agree that serpentine habitat existed on the project site prior to the un-permitted grading.

As an additional example, it is stated on page 110 that consulting biologists found numerous California red-legged frogs on the site. Because construction on the project site had already occurred, it was not possible to determine if and/or how many individual California red-legged frogs or California tiger salamanders were destroyed. Because it is not possible to know how many frogs and salamanders were destroyed, the loss of those individuals is not identified as a significant secondary impact.

All of the significant secondary impacts identified are supported by facts that were either confirmed by evaluation of pre- and post-construction aerials provided by the project proponent and/or information provided by the USFWS, CDFG, and/or the project proponent.

COMMENT AI-57: The drafters of the Revised Draft EIR are using different information than that information provided by the applicant to demonstrate what the property looked like before the 1997 grading permit was issued. The applicant went to painstaking lengths to document what the site looked like before and after the 1997 permit was issued. Yet, the drafters are not using this information in their analysis. We are not clear what information is being used by the drafters or how their information was generated in making their assumptions and determinations. All we know is that the information and assumptions are incorrect as shown by the following few examples.

RESPONSE AI-57: As stated in the RDEIR, the analysis of project impacts uses the best information available from all sources when an understanding of pre-project conditions is required. (Again, keeping in mind that the CEQA analysis of project impacts generally compares existing conditions to existing conditions because the project was developed before the CEQA process began, as stated on page 4 of the RDEIR.)

In those circumstances in which information about pre-construction conditions provided by the project proponent is consistent with information available from independent sources (such as an aerial photograph), the RDEIR reflects that information. In those circumstances where information provided by the project proponent is inconsistent with independently obtained information, or where there is no independent source of verification of the information, the analysis does not rely solely upon the information provided by the project proponent.

Each of the examples provided in this letter is responded to separately below.

COMMENT AI-58: The applicant did not remove 0.5 acres of riparian habitat as claimed on page 110 of the Revised Draft EIR. A comparison of the pre-construction aerial photograph and the post construction aerial photograph contained in the Analysis of the Pre-and Post Development Habitat Conditions prepared by the applicant and submitted to the City, shows the riparian vegetation is unchanged.

RESPONSE AI-58: The following language is from the last paragraph of page 6 of the document titled "Analysis of Pre- and Post-development Habitat Conditions For Special Status Amphibians and Reptiles at the Institute Golf Course" and dated July 2002 that was prepared by the project proponent's commissioned biologist and provided to the City of Morgan Hill:

> "Additionally, the width of riparian vegetation along the main stem and tributaries is *nearly identical* with that shown after conversion. While there is an *occasional tree missing along the edges* of the upper reaches, it is evident there was no significant impact to riparian vegetation or California red-legged frog aestivation, foraging, or dispersal habitat within the riparian corridor due of golf course conversion.". [italics added]

Trees that grow adjacent to a creek or which are part of a continuous riparian woodland, are part of the riparian habitat. The removal of "occasional" trees along this riparian corridor is a removal of part of the riparian habitat, by definition.

Based on the information provided by the project proponent and upon the City's consulting biologist's unbiased review of pre-and post-development conditions using the aerial photographs included as Figure 10 in the RDEIR, the RDEIR concluded that approximately 0.5 acres of riparian habitat was removed during construction of the golf course.

COMMENT AI-59: The Revised Draft EIR claims at page 110 that the applicant removed "as many as 50 ordinance-sized" during golf course construction. The Revised Draft EIR recommends that the applicant replace these trees at a 5:1 ratio. Tree Health Professionals surveyed the trees on site in April of 1997. This survey was provided to the City. This survey noted the ordinance-sized trees on the property. None of these ordinance-sized trees were removed; rather these trees continue to flourish on the site. Also, as noted in the Analysis of the Pre-and Post Development Habitat Conditions, the applicant planted over 11,000 large sized trees to compensate for the trees that were removed. Yet, this fact is not included in the analysis on secondary impacts.

RESPONSE AI-59: The tree survey provided by the project proponent is a limited survey; it does not identify or address all of the trees on the project site. The survey only addresses five trees, and never discusses the size or condition of other trees on the site.

Based on their review of pre- and post-development aerial photographs of the project site, the City's consulting biologist estimated that as many as 50 ordinance size trees were removed during golf course development. The project proponent has stated that a tree planting plan is not available for the project. Without a tree planting plan, mitigation for the estimated impact to as many as 50 ordinance size trees can not be verified. Simply planting trees, some of which are too close to each other or are species that will not flourish under the project conditions, would not be mitigation for the loss of mature native trees that provided habitat value to wildlife in the area.

As stated on page 112 of the RDEIR, the ultimate design of this mitigation measure for loss of ordinance sized trees should be based on an estimate of the number and size of the trees destroyed during the construction of the golf course, prepared by the City Staff using historical aerial photographs and other historical documentation.

COMMENT AI-60 The Revised Draft EIR at page 110 assumed all the lakes or ponds on the property were adequate breading sites for the California red-legged frog (CRF). It was also assumed that these water courses actually contained CRFS. Based on these inaccurate assumptions, the Revised Draft EIR recommends that the applicant mitigate for this perceived loss. As shown in the Analysis of the Pre- and Post-Development Habitat Conditions, these lakes were not adequate habitat for the CRF or any other special status species.

RESPONSE AI-60: Page 110 of the RDER states that consulting biologists found numerous California red-legged frogs on the site. Because construction on the project site has already occurred, it is not possible to determine if and/or how many individual California red-legged frogs were destroyed during past construction and maintenance, therefore, the impact to individual frogs is identified here as less than significant.

It is known, however, that approximately three acres of former golf course irrigation ponds were filled between golf course holes 10 and 17 to construct the current golf course. Given the extensive populations of California red-legged frogs that remain on the site, it is likely that the ponds harbored populations and must have constituted breeding habitat. The loss of this breeding habitat is a significant impact.

The USFWS agrees with the conclusions and mitigation measures in the RDEIR. As stated in the comment letter on the RDEIR received from the USFWS and dated February 4, 2004 (Section II. B. of this Final EIR), the USFWS believes the reconstruction of the golf course in 1997 resulted in the take of California red-legged frog. The letter states that the Service's comments assume all measures described in the RDEIR under Mitigation Measures Not Currently Incorporated Into the Proposed Project will, in fact, be incorporated into the project description.

COMMENT AI-61: Moreover, as part of the 1997 grading permit, the applicant replaced 3 acres of lakes with over 5 acres of lakes. These new lakes were created to provide suitable habitat for the CRF. Thus, the grading activities had a beneficial impact on the CRF and other special status species. Yet, this beneficial impact was not mentioned in the analysis.

RESPONSE AI-61: Construction of the golf course filled approximately 3 acres of ponds that are believed to have provided habitat for California red-legged frog and California tiger-salamander. The fallow golf course in its pre-project condition also provided upland aestivation habitat for the California tiger-salamander.

The 5.1 acres of existing ponds on the site are devoid of vegetation, are not drawn down, and are not buffered. They are not safe refuges and they are not considered habitat.

Appropriate on-site mitigation for filling the previous ponds would be providing 9 acres (3:1 ratio) of breeding pond habitat that contains emergent vegetation and is drawn down on a yearly basis to control bullfrogs and other non-native predator species.

COMMENT AI-62: RDEIR CHAPTER IV - CUMULATIVE IMPACTS (PAGES 116-120)

The cumulative impact section must be revised consistent with the comments in the letter. Accordingly, since there is more then sufficient evidence to confirm that the proposed project will not create significant impacts or will not create significant impacts that cannot be mitigated, this section can no longer conclude that the project will result in cumulative impacts.

RESPONSE AI-62: Because neither this letter nor its attachments provide substantive evidence to support changes in the conclusions of the RDEIR, only the revisions that can be made on the basis of other information are reflected in included in the conclusions of the RDEIR.

COMMENT AI-63: V. RDEIR CHAPTER V - ALTERNATIVES (PAGES 121-127)

We do not believe the No-Project alternative discussion is adequate. The "no-project" alternative must analyze the existing conditions of the property (the golf course with vacant buildings) in relationship to the proposed project (the golf course with a mathematics center). CEQA Guidelines Section 15126(e)(2). The alternative discussed in this section does not meet this definition of CEQA.

RESPONSE AI-63: The project proponent is requesting that the project be compared to itself with and without the mathematics center. This would not be truthful, or consistent with CEQA.

The reference to Section 15126(e)(2) is to a section that does not exist in the CEQA Guidelines.

COMMENT AI-64: EXHIBIT A - Response to Revised Draft Environmental Impact Report

A copy of this letter from Aquifer Sciences, Inc., in its entirety is included in Appendix A of the Final EIR.

RESPONSE AI-64: Following are responses to the comments and additional information provided in the letter dated February 2, 2004, from Aquifer Sciences, Inc. (ASI), regarding groundwater and water quality issues addressed in the Revised Draft EIR (RDEIR) for the project.

The revised tables and calculations referred to in this response are provided on the pages following this response.

1. Groundwater Production. Additional groundwater production data for the golf course operations is provided to supplement the information available for the RDEIR.

Response. The additional data have been reviewed and incorporated into revised nitrate loading and water balance calculations. The data indicate an average annual groundwater production rate of about 445 acre-feet for golf course operations, which is approximately 10 percent less than the 491 acre-feet previously reported by the Applicant (for the period of Jan. 1999-Dec. 2001) and cited in the RDEIR.

2. Potential Groundwater Depletion. ASI questions the RDEIR presentation and analysis of groundwater level information. ASI contends that the data show no evidence of groundwater depletion impacts from the golf course irrigation wells. ASI also questioned the water balance comparison in the RDEIR, challenging that pre-development water use has not been determined and was therefore "speculation". ASI also stated that no estimates were made in the RDEIR of groundwater recharge quantities.

Response. The groundwater level data presented in the RDEIR were supplied by ASI. It is agreed that the groundwater level data show similar fluctuations in the groundwater levels for the water well nearest the golf course (25P001) as

compared with wells located farther away (e.g., 26P001). However, as shown by the water level data for 1997, 1998 and 2001, there is clearly a greater water level drop at the nearest well compared with the other wells located farther away. This suggests a drawdown influence in the immediate vicinity of the golf course. This drawdown effect can also be seen graphically in the superimposed plots of water levels supplied by ASI for the wells 25P001 and 26P001 (see attached Figure QR1). The water level trend for 25P001 between 1997 and 2001 shows a steeper downward decline than the water level trend for 26P001 for the same period. As stated in the ASI letter, a declining trend with a steeper slope at Well 25P001 compared with Well 26P001 could be an indication of groundwater depletion at the golf course. This is what the graphical plots show. Therefore, these water level data do, in fact, support the analysis and conclusions in the RDEIR regarding the significant drawdown effect of groundwater pumping for the golf course.

With respect to pre-development groundwater pumping, ASI is correct that specific production quantities are not provided in the RDEIR. However, the RDEIR analysis of water use for pre-development conditions is based on the knowledge that the site was used historically for irrigation of a 40-acre golf course, dry-farming of hay, a restaurant, and for other miscellaneous uses such as livestock watering and a church. Based on their professional judgment, the City's consultants concluded that water requirements for these prior uses would have been significantly less than the 400 to 500 acre-feet per year currently used by the new golf course. This is not "speculation", since it is based on verifiable calculations made by a qualified engineer and based on known physical constraints. If the project proponent (or ASI) has actual water use data for the pre-development conditions that contradict the estimates made by the City's consultants, these can be reviewed and incorporated for reference.

With respect to quantification of groundwater recharge estimates, the quantified estimates are explained on pages 23 and 45 of Questa's report which is included as technical Appendix E of the RDEIR.

3. Irrigation Water Quantities. ASI contends that computer irrigation system records the actual quantity of water applied to the golf course/landscape irrigation system, and that it amounts to only about 79 percent (352 ac-ft/yr) of the total water production from groundwater (445 ac-ft/yr). The remaining water (93 ac-ft/yr) is assumed by ASI to be lost to evaporation, storage in the ponds and other incidental uses.

Response. The amount of water used on the golf course site was determined based on well logs provided by the Santa Clara Valley Water District; the well logs are the result of meters on the wells themselves. The estimates of water use provided by the golf course and relied upon by ASI are calculations based on the computerized monitoring of the length of time the irrigation system runs, combined with the volume of water assumed for the specific sprinkler or irrigation heads.

With regard to evapotranspiration from the ponds and lakes, the golf course has 6.2 acres of lakes and streams where evaporation can occur. Evaporation data for the nearby Anderson Reservoir and Coyote Reservoir (DWR Bulletin 73-79) show an average annual evaporation rate of about 3 acre-feet per acre. Therefore, evaporation from the 6.2 acres of artificial lakes and stream features on the golf course can only account for about 19 acre-feet per year of water loss. In addition, the lakes also receive an average of approximately 20 inches (1.67 acre-feet per acre) of direct rainfall per year, or approximately 10 acre-feet total rainfall addition to the lake-stream system. Therefore, the net loss of water to evaporation is estimated to be about 9 acre-feet, on average. Subtracting 9 acre-feet from the reported total groundwater production volume of 445 ac-ft/yr leaves a total annual water use of 436 ac-ft/yr.

According to ASI, the irrigation accounts for only 352 ac-ft/yr, which would mean that the golf course uses approximately 84 ac-ft/yr of water (27.4 million gallons/year) for other unspecified "miscellaneous" uses. This is not a clearly defensible position. If it were accurate, it would represent a significant waste of water that would be a new significant impact of the project.

In further discussions between Questa and the project proponent's representatives, it was determined that a possible source of the discrepancy between the recorded well production vs. the computer-calculated irrigation volumes may be inaccurate assumptions that are programmed into the computer system regarding irrigation flow rates, number and capacity of spray nozzles, etc., rather than other unaccounted losses or uses. There is no indication that the water meter data for the water wells is inaccurate.

In the absence of any further information, it is appropriate to consider the well water pumping data, less 9 ac-ft per year to account for net evaporation from the on-site water features, as the best measure of irrigation water use for the project. Accordingly, water balance and nitrate loading calculations have been revised using this revised irrigation water use value of 436 ac-ft/yr (445 minus 9 ac-ft/yr). See Table QR1 for revised water balance estimates for the proposed project and reduced project sizes.

4. Nitrate Content of Irrigation Water. The ASI letter is accompanied by additional nitrate data for the golf course lakes that were obtained in October through December, 2003. ASI contends that these additional data show that the average nitrate content of the irrigation water supplied to the golf course from Lake D is 18 mg/L, and that the nitrate loading analysis in the REDIR should be revised accordingly using this value.

Response. The additional data supplied by ASI were taken late in the irrigation season and during the start of the 2003-2004 rainy season when the nitrate concentration in Lake D was influenced by rainfall (dilution) and when irrigation water was not applied to the golf course in significant quantities. For example, in December, there was no reported irrigation of the golf course at all. Consequently, although these additional data are useful, to be meaningful they can only be considered for calculation of a weighted average value, based upon

how representative they are of the amount of water actually applied to the golf course at the time of sampling. Accordingly, Table QR2 presents the calculation of the weighted average of all nitrate data collected from Lake D and directly from the irrigation system, incorporating the corresponding amount of reported irrigation water applied during the sampling period (i.e., the month of sampling). These updated calculations show a weighted average nitrate concentration of 19 mg/L rather than 20 mg/L as used in the RDEIR. Accordingly, the nitrate loading calculations have been updated to reflect this revised nitrate concentration to establish the lower end of the range presented in the analysis (see Table QR3).

The nitrate concentration used for the upper end of the range (50 mg/L) is not affected by these updated nitrate data and the weighted average calculation, since it is based on the ambient groundwater nitrate concentration. As explained in the RDEIR, the inclusion of an upper range value is appropriate, given the fact that the nitrate reduction in Lake D is happenstance, is not controlled or managed by the golf course operators, and cannot be accounted for by either the City's professional consultants or the consultants retained by the project proponent.

The RDEIR identifies the need to periodically drain Lake D as a mitigation measure for control of bullfrog population, which would likely alter the biology and nitrate removal functions of the lake for significant periods of time. This, in turn, would result in irrigation water nitrate concentrations that could approach or equal the concentrations (50 mg/L) found in the groundwater.

5. Nitrogen Application Due to Irrigation Water. Based on the contention that the golf course receives only 352 ac-ft of irrigation water per year, and that the nitrate concentration is 18 mg/L in the applied water from Lake D, ASI calculates that the total amount of nitrogen applied to the golf course is an estimated 3,920 lbs/year, and that this does not exceed the projected golf course fertilizer requirements.

Response. As stated in response to previous ASI comments 3 and 4, the irrigation water use assumption of 352 ac-ft/yr and the nitrate concentration assumption of 18 mg/L are not supported by the available data. The amount of total nitrogen application due to irrigation water was recalculated, based on a revised irrigation water use estimate of 436 ac-ft/yr and a nitrate concentration ranging from a low of 19 mg/L to a high of 50 mg/L. With these updated assumptions, the revised estimate of nitrogen loading to the golf course and associated landscape areas is estimated to be in the range of about 5,100 to 13,400 lbs/year. Based on further analysis and information from the project proponent's representatives, it was determined that the golf course turf areas (128 acres) represent only about 70% of the area that is irrigated. The irrigation water (and associated nitrate-nitrogen) is also applied to about 50 acres of trees and other landscaping on the site. Therefore, the RDEIR should be corrected to indicate that golf course turf receives an estimated 3,500 to 9,400 pounds of nitrogen per year from irrigation water (i.e., 70 percent of 5,100 to 13,400 lbs/yr). This means that the nitrogen content in the irrigation

water should satisfy a substantial portion, but not likely all, of the projected total fertilizer requirement (10,716 lbs/year) for the golf course. This does not change the conclusions of the RDEIR regarding the need to account for the nitrogen fertilizer value of the irrigation water.

6. Potential Nitrate Impacts to Groundwater. ASI presents revised calculations of potential nitrate contribution to groundwater from golf course irrigation. Their calculations are based on an assumed 352 ac-ft/yr of irrigation water having a nitrate concentration of 18 mg/L. The other assumptions in their analysis conform with assumptions in the RDEIR. ASI contends that their revised calculations show a resultant percolate nitrate concentration of 42 mg/L, which is less than the range of 45 to 96 mg/L cited in the RDEIR. ASI also states that, upon reaching the groundwater, the nitrate concentration would be less due to dispersion and dilution.

Response. As stated in response to previous ASI comments 3, 4, and 5 (above) from ASI, the irrigation water use assumption of 352 ac-ft/yr and the nitrate concentration assumption of 18 mg/L are not supported by the available data. However, the groundwater nitrate loading was recalculated based on revised irrigation water use of 436 ac-ft/yr and a weighted average nitrate concentration of 19 mg/L as a low end assumption. The revised calculations are attached (see Table QR3) and show a resultant percolate concentration range of 43 to 93 mg/L. The low end nitrate value of 43 mg/L does not differ significantly from the value of 42 mg/L calculated by ASI.

With respect to ASI's last statement, the evidence does not support their suggestion that nitrate concentrations would be lower in the groundwater due to dispersion and dilution. Based on water well nitrate data supplied by the project proponent and by Santa Clara Valley Water District (and discussed in the RDEIR), background groundwater concentrations in the area are already at higher levels, averaging about 68 mg/L. Therefore, the groundwater in the project vicinity dos not offer a source of dilution to lower the concentration of the percolating water beneath the golf course once it disperses and mixes with the native groundwater.

The revised tables and calculations referred to in this response are provided on the following pages.

Table QR1
Revised Water Balance Estimate for
Proposed Project and Reduced Golf Course Size

(Revised from Table WS2 in RDEIR, Questa Engineering, Appendix E)

Item	*Proposed Project*	*Reduced Golf Course Size*	
Irrigated Area (acres) :			
- Turf	128	70	60
- Landscaping	50	30	25
- Total	178	100	85
Estimated Water Demand			
- Turf/Landscape Irrigation (@2.45 ac-ft/ac-yr)	(-436)	(-245)	(-208)
- Domestic Water (@ 4500 gpd)	(-5.0)	(-5.0)	(-5.0)
- Residential Use in Upper Watershed (30 (30 lots @ 0.5 ac-ft/yr lot)	(-15.0)	(-15.0)	(-15.0)
Total Estimated Water Demand (ac-ft/ac-yr)	**(-456.0)**	**(-265.0)**	**(-228.0)**
Estimated Local Groundwater Recharge			
- Rainfall-Recharge (800 ac @ 0.25 ac-ft/ac-yr)	+200.0	+200.0	+200.0
- Irrigation Seepage Losses (@ 20% of irrigation use)	+87.0	+49.0	+42.0
Total Estimated Local Groundwater Recharge	**+287.0**	**+249.0**	**+242.0**
NET GROUNDWATER DEFICIT	**(-169.0)**	**(-16.0)**	**+14.0 (surplus)**

Table QR2
Lake D – Irrigation Nitrate Data Summary

Sample Period (month)	NO_3 Concentration (mg/L)	Monthly Irrigation Water Use		Weighted NO_3 Value (mg/L)
		Gallons	% of Total	
Mar. 2002	26	7,502,500	11.8	3.07
Aug. 2003	19, 16 Ave = 17.5	21,939,400	34.6	6.06
Sep. 2003	17, 24, 19 Ave = 20	19,021,600	30.0	6.00
Oct. 2003	17	14,103,800	22.3	3.79
Nov. 2003	6.9	818,000	1.3	0.09
Dec 2003	8.9	0	0.0	0.0
Total	-	63,385,300	100.0	19.01

Table QR3
Revised Nitrate Loading Calculations

PROPOSED PROJECT CONDITIONS

For irrigation nitrate concentration of 4.3 mg-N/L:

N_C = (1,072 + 2,547)/(8.34)(15.8+28.4) = **9.8 mg-N/L** or **43.4 mg/l, NO_3**

For irrigation nitrate concentration of 11.3 mg-N/L:

N_C = (1,072 + 6,695)/(8.34)(15.8+28.4) = **21.1 mg-N/L** or **93.5 mg/l, NO_3**

where:

N_C = resultant nitrate concentration in groundwater, mg-N/L
R = million gallons per year rainfall-recharge
= (0.25 ft) (193.7 ac) (325,851 gallons/ac-ft) = 15.8 million gallons
S = seepage losses = (436 acre-feet/year)(0.20)(325,851 gallons/ac-ft)
= 28.4 million gallons
N_L = fertilizer nitrogen leached = (10,716 lbs/yr) (0.1) = 1,072 lbs/year
N_w = irrigation water nitrogen seepage losses (lbs/year): @ 4.3 mg-N/L
= (0.5) (5,095 lbs/yr) = 2,547 lbs/year; @ 11.3 mg-N/L
= (0.5)(13,389 lbs/yr) = 6,695 lbs/yr
8.34 = units conversion factor

PREVIOUS PROJECT SITE CONDITIONS

For irrigation nitrate concentration of 4.3 mg-N/L:

N_C = (0.22)(1,072 + 2,547)/(8.34)(15.8+ (0.22 x 28.4))
= **4.3 mg-N/L** or **19.0 mg/l, NO_3**

For irrigation nitrate concentration of 11.3 mg-N/L:

N_C = (0.22)(1,072 + 6,695)/(8.34)(15.8+ (0.22 x 28.4))
= **9.3 mg-N/L** or **41.2 mg/l, NO_3**

COMMENT AI-65: EXHIBIT B - RCL Ecology/Sequoia Analytical - Summary of Surface Water Sampling. This letter, with all of the exhibits attached to this comment letter, is included in its entirety in Appendix A of the Final EIR.

RESPONSE AI-65: The data in Exhibit B was used in the report from Aquifer Sciences that was attached as Exhibit A to this same comment letter. The information was reviewed by the City's consulting hydrologist and is reflected in Response AI-64.

COMMENT AI-66: EXHIBIT C - Rana Resources- California Red-legged frog and Bullfrog Survey Results This letter, with all of the exhibits attached to this comment letter, is included in its entirety in Appendix A of the Final EIR.

RESPONSE AI-66: The information provided in Exhibit C was reviewed by the City's consulting biologist. The information is consistent with information that was available when the RDEIR was prepared and no change in conclusions in the RDEIR is required as a result of the information provided in this letter report. To the extent that the information in Exhibit C is reflected in some of the other comments in this letter, those comments are responded to individually.

COMMENT AI-67: EXHIBIT D - Mattern and Associates- Drainage Analysis
A copy of this supplemental report in its entirety is included, with all of the exhibits attached to this comment letter, in Appendix A of the Final EIR.

RESPONSE AI-67: Following are responses to the additional information provided in the Supplemental Drainage Analysis Report of February 2, 2004, prepared by Mattern & Associates, regarding the drainage and hydrologic impacts from of the project.

In this report, Mattern & Associates presents a revised drainage analysis and calculations which are intended to correct and replace information that was provided in their original "Drainage Analysis" report, dated May 24, 2002 (and discussed in the RDEIR beginning on page 61).

The revised drainage analysis includes recalculation of runoff flows for the existing golf course (as constructed), as well as for previous site conditions. The main revisions to the analysis reflect: (a) changes in drainage area assumptions for several sub-watershed areas on the golf course; (b) assumption of limited capacity and effective drainage area for the former storm drain that ran from the central part of the site to Corralitos Creek; (c) detention storage analysis for the former lake system in the pre-project fallow golf course; (d) revised detention storage analysis for the existing golf course, including the assumption of discharge from Lake D to Foothill Avenue. Based on their revised analysis, Mattern draws the conclusion that the peak runoff flows from the golf course to Foothill Avenue and the San Martin Creek watershed area have been reduced in comparison with previous conditions.

Mattern's Supplemental Drainage Analysis lacks documentation and contains certain inconsistencies , which limits meaningful review of this information:

1. The revised analysis includes several changes and significant new assumptions regarding delineation of drainage areas for existing and previous conditions. However, no supporting hydrology-drainage area maps are provided to support the previous conditions analysis, which would be essential to allow a reviewer to verify the input assumptions for the hydrologic calculations. Although not included in the Mattern Report attached to this comment letter, a hydrology map was subsequently provided upon Questa's request for a map of the project conditions. However, the accuracy of the map is questionable. The map includes, for example, "white-out" changes to the as-built drainage system mapping that was previously prepared and signed by the project civil engineer, Steven Ourada. No map of existing conditions has yet been provided that was prepared by a civil engineer, bearing the engineer's stamp and signature.

Also, according to information from the project proponent's representatives, there are still additional changes that have been made in the drainage system that are not shown on the revised map provided by Mattern (e.g., the outfall pipe from Pond D to Foothill Avenue). Of particular consequence is the existence of a storm drain that reportedly runs directly from the maintenance building area to Foothill Avenue, bypassing the lake detention system. A significant (pipe-full) discharge from this storm drain was documented by City staff during a storm event in late February 2004. Mattern's hydrologic analysis does not account for the discharge from this storm drain, which is sufficient to invalidate the supplemental hydrologic analysis and conclusions presented in the Mattern report.

2. As a basis for previous conditions assumptions, Mattern refers to and relies upon a "drainage plan dated June 23, 1977". This map appears to be critical to the report's assumptions about runoff under previous conditions and drainage routing through the former system of lakes. However, this map is not included with the report and has not been made available to review and confirm the assumptions used by Mattern.

Subsequent to the review of the information included in this response letter, Mattern has clarified to the RDEIR consultants that the June 23, 1977 date is a typographical error; it was intended to state "June 23, 1997". The RDEIR consultants have reviewed this map; however, it is a map of the drainage facilities plan and as-built grading for the proposed project - it is not a hydrology-drainage map of previous conditions as indicated by Mattern.

3. The Mattern report provides the output summary of the runoff modeling for the previous conditions; however, none of the key assumptions used in the model are provided for review in this report. Upon further request, Mattern provided copies of the input data for the previous conditions and as-built conditions. Some of the input data have been reviewed; however, due to the lack of accurate hydrology-drainage maps of previous conditions and as-built conditions, many of the input assumptions cannot be verified.

4. A critical element in the revised analysis provided by Mattern Associates is the assertion that, under previous conditions, the storm drain from

the central portion of the site (current maintenance area) that discharged to Corralitos Creek had very limited capacity, and that most of the flow during storm events would have overflowed to Foothill Avenue. This analysis is based on speculation that the former storm drain was an 8-inch diameter pipe; no maps are provided supporting the hydraulic analysis and runoff calculations. Storm drain maps provided for Questa's review (Garcia, 1972, cited in the DEIR) show a network of 12-inch diameter storm drain pipes for collection and routing of flows to Corralitos Creek.

5. Mattern previously stated that there would be no discharge from Lakes D and E, based on the assumption that these lakes would always be maintained at a low-enough level to capture all winter runoff. In the revised analysis, this assumption has been changed, and a detention-runoff analysis is provided to estimate the outflow (to Foothill Ave.) from the Lake D-Lake E drainage area.

Of particular concern are the assumptions used to predict the outflow from Lake D into the 15-inch storm drain to Foothill Avenue. Review of the model shows a discrepancy of more than 2.0 feet in the Lake D starting water surface elevation as compared with the outlet "spillway" elevation information shown on the as-built drawings. Also, the irregular, rock-framed outlet structure at Lake D was not taken into account in the modeling of outflow from Lake D; this is critical to determining the hydraulic capacity of the 15-inch outlet pipe from Lake D. These two factors, in turn, dictate how high the water level may rise in Lake D during a peak runoff event, and whether or not the lake will overflow onto Foothill Avenue. This is critical, since topographic information shows that Lake D has very little freeboard above the 15" outlet pipe.

Lastly, Mattern's analysis does not account for the additional direct runoff flow from the maintenance area that is now reported by the project proponent as being connected to the 15-inch storm drain outfall line from Lake D. This also may severely limit the capacity of the 15-inch outlet pipe to convey outflow from Lake D. Review of information provided to date indicates a strong possibility that Lake D could overflow during peak conditions, creating uncontrolled runoff conditions at the project entrance and Foothill Avenue.

Based on inconsistencies and lack of documentation in critical areas, the Supplemental Drainage Analysis report by Mattern & Associates does not provide a basis for revision of the findings of significance and mitigation measures presented in the Revised Draft EIR regarding hydrologic impacts of the project.

COMMENT AI-68: EXHIBIT F - Sorenson - Additional detailed response to significant impacts

Detail Comments On the Significant Impacts Listed in Section II Of the Revised Draft EIR

Significant Impact: Erosion and Siltation
Significant Impact #: 1
RDEIR Page #: 26

The previous owner of the property graded residential streets and building pads into the hillside. The applicant restored the site to contours that more closely resemble the natural contours that were on the site prior to the attempted residential development.

Prior to development, the applicant commissioned a civil engineering firm to perform a geotechnical study of the site. This geotechnical firm, Klienfelder, has experience engineering local golf courses. Klienfelder did a geotechnical report on the entire site. Prior to development, this geotechnical report was supplied to the City

Prior to development a grading plan for the entire site was provided to the City. This grading plan was stamped by a licensed engineer.

After construction, the City requested an "as built" grading plan. The applicant contracted with a license civil engineer to perform the survey. This "as built" grading plan was provided to the City and to the consultants for the City.

After construction was completed, the first DEIR requested two additional geotechnical studies. The first study was of the berm that runs along Foothill Avenue. This is the same berm that the City of Morgan Hill requested that the applicant add to the grading plan. This berm had already been approved by a civil engineer, and permitted by the City. Despite this, the applicant performed the requested geotechnical study. The berm passed the geotechnical inspection.

The second requested geotechnical study requested by the DEIR was of bank of the northern most pond. This study was also performed. The bank of the pond also passed geotechnical inspection.

Both of these studies were provided to the City and its consultants.

The applicant has provided all the grading plans (before and after) and geotechnical studies (before and after) requested by the City and the DEIR.

The golf course has been in operation for five years. During that five years, there have been no instances of erosion or soil instability.

This is NOT a significant impact. In the Final EIR, this should be reduced to Less Than Significant.

CEQA guidelines (1 5003) constrain the scope of EIR's stating: "it must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

The repeated requests for the same information, when there is no evidence to support any concern, subverts the intent of CEQA.

Mitigation
Suggested Mitigation #: 1
RDEIR page #: 27
The RDEIR requests yet another geotechnical study.
Applicant's mitigation: The consultants for the City will use the existing grading plans (before and after) and the existing geotechnical reports (before and after) to get comfort.

RESPONSE AI-68: Two geotechnical reports were submitted for the project site. One was prepared in 1997 and the other in 2003. The report prepared in 1997 recommended additional analysis prior to finalizing the golf course plans. The additional analysis recommended in the 1997 geotechnical report was never completed or, if it was done, was never provided to the City despite repeated requests.

The City therefore specifically requested that a geotechnical report be completed for the entire site that documents that all slopes of the golf course are stable, consistent with the 1997 report prepared by the property owner's own consultants. In response to this request, the project proponent prepared a geotechnical report that addressed only two locations on the site (the berm along Foothill Avenue and the southern edge of Pond G). The stability of all of the slopes on the site have not, as of the date of this Final EIR, ever been reflected in a report submitted to the City of Morgan Hill by a Certified Geologist or Civil Engineer. For these reasons, the RDEIR can not conclude that soils on the site are stable.

COMMENT AI-69: Significant Impact: Seismic
Significant Impact #:2
RDEIR Page #: 27

Mitigation
Suggested Mitigation #: 2
RDEIR page #: 27
The RDEIR requests that the applicant not occupy the structure until after building is demolished and re-construction.

Applicant's mitigation: Applicant will not occupy the structure until it is remodeled or re-constructed.

RESPONSE AI-69: The mitigation identified on page 27 of the RDEIR, that the existing structure would be demolished and a new building built, was previously proposed by the project proponent. The mitigation proposed in this comment is not consistent with the previously proposed mitigation.

COMMENT AI-70: Significant Impact: Use Might Adversely Affect Riparian Habitat
Significant Impact #:3
RDEIR Page #: 41
There is no evidence that the use adversely affects the habitat in the riparian area. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

RESPONSE AI-70: Page 41 of the RDEIR (and the rest of the Vegetation and Wildlife section of the RDEIR) relies upon the report provided in Appendix C-1 of the RDEIR, an extensive analysis of the conditions on the site and the impacts of the project prepared by a firm of qualified biologists.

Page 41 of the report prepared by the City's consulting biologist (Appendix C-1 of the RDEIR) states the following:

"Riparian areas in central California support a rich and diverse wildlife component. Wildlife use of these habitats is adversely affected by the close proximity of human activity and the placement of structures. The quality of the riparian habitat and type of structures or activities adjacent to it determines the overall effect on wildlife use. In general, the greater the amount of human activity and the closer that activity occurs to riparian areas, the greater the potential for negative impacts to wildlife use.

"Therefore, it is generally desirable to minimize human activities adjacent to riparian habitats. This reduction in human use has led to the development of the setback or buffer concept along riparian areas as an attempt to reduce impacts to riparian areas. While empirical evidence exists to support the hypothesis that wildlife values of the riparian corridor can be compromised by adjacent human activity, little empirical data presently exists for the establishment of a precise setback area. Nonetheless, riparian setbacks of 100 feet are often recommended by CDFG as appropriate for streams with high quality riparian habitat. These setbacks are typically measured from either the top of bank or the outer edge of riparian vegetation, whichever is greater.

"Though the City of Morgan Hill has no policy requiring a setback, the extent of golf course maintenance and use adjacent to the CDFG jurisdictional drainages and the riparian corridor constitutes a significant impact, warranting some setbacks. The golf course is immediately adjacent to these areas along most of their lengths. This includes approximately 4,240 feet along the lower quality drainages, and 1,413 feet along the riparian corridor. Since the riparian habitat and drainages offer different wildlife values, however, it is recommended that only a 25-foot setback be established along the drainages with low-quality riparian habitat, and a 100-foot setback be established along most of the length of the remaining riparian corridor that is well vegetated and of higher quality. "

This does not constitute "bare conclusion or opinions".

COMMENT AI-71: The RDEIR states that 0.5 acres of riparian area was removed during construction. This is not true.

This should NOT be included as a Significant Impact.

RESPONSE AI-71: This statement is inaccurate. Please refer to Response AI- 41 for a discussion of the project's impacts to approximately 0.5 acres of riparian habitat and how those impacts were calculated and corroborated by information provided by the project proponent's representatives.

COMMENT AI-72: Mitigation:
Suggested Mitigation #: 3
RDEIR page #: 53

The RDEIR requests a buffer around the riparian area.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-72: The USFWS was unable to identify a nexus for federal consideration of impacts to riparian habitat. Please refer to Response AI-15 for a discussion of why the draft USFWS agreement does not address project impacts to riparian areas.

COMMENT AI-73: Suggested Mitigation #: 4
RDEIR page #: 53
The RDEIR suggests that the riparian area be replanted with native species plants.

Applicant's mitigation: Applicant will replant the riparian area based on the agreement with the USFWS. A creek restoration plan has been submitted to the USFWS.

RESPONSE AI-73: The proposed draft USFWS agreement never addresses riparian impacts or mitigation for those impacts. Please refer to Response AI-15 for a discussion of why the draft USFWS agreement does not address project impacts to riparian areas.

COMMENT AI-74: Suggested Mitigation #: 5
RDEIR page #: 53
The RDEIR suggests that lighting be minimized in the riparian area.
Applicant's mitigation: Applicant agrees to the suggested mitigation.
Suggested Mitigation #: 6
RDEIR page #: 53

RESPONSE AI-74: The mitigation on page 53 of the RDEIR referred to in this comment states that lighting within the setback areas should be avoided. All lighting associated with the proposed project should be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor.

COMMENT AI-75: The RDEIR suggests that a fence be constructed around the riparian area.

Applicant's mitigation: Applicant will maintain the riparian area in a manner consistent with the agreement with the USFWS and the creek restoration plan submitted to USFWS.

RESPONSE AI-75: The draft USFWS agreement does not refer to fences or any other aspect of the impacts to riparian habitat. Please refer to Response AI-15 for a discussion of why the draft USFWS agreement does not address project impacts to riparian areas.

COMMENT AI-76: Suggested Mitigation #: 7
RDEIR page #: 53
The RDEIR suggests setbacks around the riparian area.

Applicant's mitigation: Applicant will create setbacks based on the agreement reached with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-76: The project proponent's proposed mitigation do not comply with the mitigation measures identified in the RDEIR for impacts to riparian habitat and will not mitigate the project's ongoing significant impacts on riparian habitat.

The draft USFWS agreement makes no reference to setbacks from riparian habitat. Please refer to Response AI-15 for a discussion of why the USFWS agreement does not address project impacts to riparian areas.

COMMENT AI-77: Significant Impact: Use Might Adversely Affect CRF or CTS or WPT
Significant Impact #: 4
RDEIR Page #: 43
There is no evidence that the use adversely affects the CRF, CTS, or the WPT. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

In fact, Mark Jennings Ph.D., a noted expert on frogs, states that the golf course and frog habitat are compatible uses. Frogs are nocturnal. The golf course is inactive at night (other than irrigation, which the frogs may like.) The applicant has created dispersal corridors running across the property. These corridors allow animals, including frogs, to traverse the property using forested pathways.

The evidence supports the findings of Dr. Jennings. Red legged frogs are flourishing on site. Please see the results of the frog survey.

Since the evidence points toward a conclusion that the project is good for frogs, there should NOT be a significant impact in the Final EIR. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

In addition, all issues (past, present, and future) with respect to CRF, CTS, and WPT have been resolved. The applicant and the USFWS (the lead agency for issues related to endangered species) have agreed to a set of on-site and off-site mitigations. Since this agreement exists, all impacts to CRF, CTS, and WPT, as well the associated mitigations, should be removed from the EIR.

RESPONSE AI-77: The RDEIR contains an extensive analysis of the project's impacts on the various special status species found on and near the site, and includes the reasons why the City's biological consultants reached the conclusions reflected in the RDEIR. It is indicative that the trustee and responsible agencies charged with protecting special status species have recommended that all of the mitigations measures identified in the RDEIR be implemented by the project. There is no basis for characterizing the RDEIR as containing "bare conclusions or opinions".

Appendix C-1 (the biologists' report) discusses the potential for the site to create a population sink. This phenomenon results when a location becomes a temporarily attractive magnet for an endangered species, drawing members of the species from other, less attractive locations. If the newly attractive site maintains its viability for a limited time and then suddenly loses its ability to support the newly concentrated population (because the water becomes contaminated by a chemical spill, or bullfrogs or other predators invade the site,

or damage to the adults precludes breeding), a substantial segment of the remaining population could be destroyed.

Please refer to Response AI-15 for a discussion of why the USFWS agreement does not address project impacts to any species other than red-legged frogs and species associated with serpentine habitat.

COMMENT AI-78: Mitigation:
Suggested Mitigation #: 8
RDEIR page #: 50
The RDEIR suggests an agreement with USFWS.

Applicant's mitigation: Applicant has an agreement with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-78: There is no formal, signed agreement with the USFWS known to exist at this time.

COMMENT AI-79: Suggested Mitigation #: 9
RDEIR page #: 50
The RDEIR suggests that the applicant purchase land as off-site mitigation.

Applicant's mitigation: Applicant will purchase acreage for off-site mitigation per the agreement with the USFWS.

RESPONSE AI-79: The mitigation on page 50 of the RDEIR and referred to in this comment states the following:

> Implement USFWS Mitigation Recommendations - Implement all mitigation measures included in the USFWS letter of July 15, 2003 (Appendix C of this EIR) to reduce impacts to the California red-legged frog, as summarized below:
>
> - Purchase 51 acres of currently unprotected serpentine habitat and fund it's management as habitat in perpetuity.
> - Purchase 51.2 acres of currently unprotected California red-legged frog habitat and fund it's management as habitat in perpetuity.
> - A riparian buffer with an average width of 70 feet and a minimum width of 30 feet will be planted and maintained on each side of Corralitos Creek and its tributaries, measured from the centerline of the creek.

Please refer to Response AI-9 regarding the status of the USFWS agreement.

COMMENT AI-80: Suggested Mitigation #: 1 0
RDEIR page #: 50
The RDEIR suggests that the applicant purchase land as off-site mitigation.

Applicant's mitigation: Applicant will purchase acreage for off-site mitigation per the agreement with the USFWS.

RESPONSE AI-80: The mitigation on page 50 of the RDEIR and referred to in this comment states the following:

> Implement USFWS Mitigation Recommendations - Implement all mitigation measures included in the USFWS letter of July 15, 2003 (Appendix C of this EIR) to reduce impacts to the California red-legged frog, as summarized below:
>
> - Purchase 51 acres of currently unprotected serpentine habitat and fund it's management as habitat in perpetuity.
> - Purchase 51.2 acres of currently unprotected California red-legged frog habitat and fund it's management as habitat in perpetuity.
> - A riparian buffer with an average width of 70 feet and a minimum width of 30 feet will be planted and maintained on each side of Corralitos Creek and its tributaries, measured from the centerline of the creek.

Please refer to Response AI-9 regarding the status of the USFWS agreement.

COMMENT AI-81: Suggested Mitigation #: 11
RDEIR page #: 50
The RDEIR requests buffers.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-81: This comment is unclear. There are not 11 mitigations measures on page 50 of the RDEIR. The discussion of Mitigation Measures Not Presently Incorporated Into the Proposed Project, which begins on page 50 in the Vegetation and Wildlife section, there is a requirement for buffers around the on-site ponds and a water quality setback from Corralitos Creek. There is also a discussion of buffers in Mitigation Measure Package II, which does not include the USFWS mandated off-site mitigation.

If this comment is suggesting that the pending draft USFWS agreement addresses all of the setbacks and buffers needed to reduce the impacts from this project to less than significant, please refer to the first and third bullets on page 51, which identify mitigation for impacts not addressed in the USFWS draft agreement because, as discussed in the response to Comment AI-15 above, there is not a federal nexus for USFWS to require such mitigation. Please also refer to the discussion of mitigation for water quality impact mitigation (starting on page 72), which addresses additional mitigation that is not covered by the USFWS agreement because there is not yet a federal nexus.

COMMENT AI-82: Suggested Mitigation #: 12
RDEIR page #: 50
The RDEIR suggests managing the bullfrog.

Applicant's mitigation: Applicant will manage the bullfrog. However, experts indicate that draining the ponds (while it may help control the bullfrog) may be harmful to the CRF. So, bullfrogs will be managed directly.

Suggested Mitigation #: 13
RDEIR page #: 50
The RDEIR suggests managing the bullfrog by draining ponds.

Applicant's mitigation: Applicant will manage the bullfrog. However, experts indicate that draining the ponds (while it may help control the bullfrog) may be bad to the CRF. So, bullfrogs will be managed directly.

RESPONSE AI-82: The mitigation proposed in this comment is not consistent with the mitigation identified in the RDEIR. The methods proposed by the project proponent for controlling bullfrogs are dependant on careful monitoring and consistent implementation.

The City's consulting biologist and the USFWS both agree that draining the ponds is the best method for controlling bullfrog on the project site. As stated previously, draining the ponds will not harm red legged frogs if done correctly and supervised by a qualified biologist.

COMMENT AI-83: Suggested Mitigation #: 14
RDEIR page #: 51
The RDEIR requests buffers.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-83: If this comment is suggesting that the pending draft USFWS agreement addresses all of the setbacks and buffers needed to reduce the impacts from this project to less than significant, please refer to the first and third bullets on page 51, which identify mitigation for impacts not addressed in the USFWS draft agreement because, as discussed in the response to Comment AI-15 above, there is not a federal nexus for USFWS to require such mitigation. Please also refer to the discussion of mitigation for water quality impact mitigation (starting on page 72), which addresses additional mitigation that is not covered by the USFWS agreement because there is not yet a federal nexus.

COMMENT AI-84: Suggested Mitigation #: 15
RDEIR page #: 51
The RDEIR requests that water quality in the ponds be monitored monthly.

Applicant's mitigation: Applicant will monitor water quality based on existing regulations covering the SWPPP and the NPDES for the site. In addition, the applicant will monitor water quality on an

episodic basis. For example, the applicant will monitor surface water quality after the applicant applies fertilizer or pesticides.

RESPONSE AI-84: The mitigation measure is not unnecessary or infeasible, since there are no records currently available to prove that chemical levels in these ponds do not vary significantly over time. Once monthly records exist to support a contention that water quality does not vary in the ponds, the City may be in a position to revise the monitoring requirements. The SCVWD and RWQCB both agree with the mitigation measures identified in the RDEIR.

COMMENT AI-85: Suggested Mitigation #: 16
RDEIR page #: 51
The RDEIR requests that "shelves" be constructed in the ponds.

Applicant's mitigation: The ponds are currently home to many red legged frogs. Only one bullfrog was found during the most recent survey. With success like this, the applicant is reluctant to change the habitat in which the CRF is currently flourishing (and the bullfrog is not). So, shelves will not be constructed.

RESPONSE AI-85: The project proponent's consulting herpetologist, Mark Jennings, documents in a report attached to this comment letter as Exhibit C, that creating vegetated pond side cover will improve the quality of the ponds as habitat for red-legged frogs. Please refer to page 44 of Appendix C-1 of the RDEIR for an explanation of why vegetative shelves in the ponds are required.

COMMENT AI-86: Suggested Mitigation #: 17
RDEIR page #: 51
The RDEIR requests that the drainage system be re-routed.

Applicant's mitigation: There is no evidence of harmful run-off to the surface water. Many samples of the surface water have been taken. The surface water is free of pesticides and low in nitrates. The surface water on-site is better than the water from the wells.

The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (1 51 26.4). Since all the evidence points toward clean water on site, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

RESPONSE AI-86: The mitigation on page 51 of the RDEIR referred to in this comment is to maintain water quality in the ponds and is supported by the SCVWD and the RWQCB. The RDEIR states on page 68 that much of the concern with pesticides and other chemicals relates to spillage and drainage of leachate from golf course sub-drains. These chemicals can be concentrated, and the golf course is apparently routing this drainage into the ponds that support the frogs. The reasons why the minimal sampling data provided do not support a

conclusion that no impact would result from chemical runoff in surface water entering on-site waterways is discussed in the RDEIR on page 68.

COMMENT AI-87: Suggested Mitigation #: 18
RDEIR page #: 51
The RDEIR requests setbacks.

Applicant's mitigation: Applicant will create setbacks based on the agreement reached with the US Fish and Wildlife Service (USFWS).

RESPONSE AI-87: If this comment is suggesting that the pending draft USFWS agreement addresses all of the setbacks and buffers needed to reduce the impacts from this project to less than significant, please refer to the first and third bullets on page 51, which identify mitigation for impacts not addressed in the USFWS draft agreement because, as discussed in the response to Comment AI-15 above, there is not a federal nexus for USFWS to require such mitigation. Please also refer to the discussion of mitigation for water quality impact mitigation (starting on page 72), which addresses additional mitigation that is not covered by the USFWS agreement because there is not yet a federal nexus.

COMMENT AI-88: Significant Impact: Burrowing Owls
Significant Impact #: 5
RDEIR Page #: 44
No burrowing owls have been observed on site.

Mitigation
Suggested Mitigation #: 19
RDEIR page #: 46
The RDEIR requests that the applicant adhere Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

Applicant's mitigation: For all future construction, such as the math research center, the applicant will adhere to Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

With respect to the existing golf course, burrowing owl studies have been completed. No burrowing owls were found. In addition, no evidence of burrowing owls was found. So, the existing golf course is not subject to the City's burrowing owl plan and the associated fee.

Also, four years ago when this EIR was begun, Morgan Hill's City Wide Burrowing Owl Mitigation Plan did not exist. The existing project is not subject to ex post facto regulations, such as Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

RESPONSE AI-88: All development projects proposed in the City of Morgan Hill are subject to the *Citywide Burrowing Owl Mitigation Plan*. Since this project has not yet received its entitlement from the City of Morgan Hill, the proposed discretionary action would be subject to the City's requirements.

COMMENT AI-89: Significant Impact: Raptors
Significant Impact #: 6
RDEIR Page #: 44

There is one raptor on site. A female red tail hawk lives on site. She has lived on site since the applicant purchased the property. During that time, she has successfully mated and produced young. As a humorous aside, this hawk lives in a "non-native" eucalyptus tree next to the second green.

Mitigation
Suggested Mitigation #: 20
RDEIR page #: 46
The RDEIR suggest that construction only occur from September through December.

Applicant's mitigation: This is one of the many conflicts in the RDEIR. The CRWQCB recommends that no construction occur during the rainy season from October 15 through April 15. So, suggesting that construction be limited to September through December is at odds with another suggested mitigation.

This type of mitigation is, of course, not mitigation at all. This is a subversion of the intent of CEQA. The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (1 5003) constrain the scope of EIR's stating: "it must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Since all the evidence points toward a continuing habitat that supports raptors, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

Suggested Mitigation #: 21
RDEIR page #: 46
The RDEIR suggests pre-construction surveys.

Applicant's mitigation: Applicant agrees to perform pre-construction surveys for raptors.

RESPONSE AI-89: The project proponent appears to have overlooked the alternative mitigation measures identified in the RDEIR because not all of the identified measures will always be feasible. Not scheduling construction during the nesting season is the best and most obvious way to not effect nesting raptors; some of the construction will probably occur during the nesting season, just as some of the construction will probably occur during the rainy season. If the breeding season cannot be avoided, as stated in the RDEIR on page 46, pre-construction surveys accompanied by appropriate avoidance measures (if necessary) are identified as alternative mitigation.

As a point of clarification, the nesting raptor mitigations identified on page 46 of the RDEIR were previously proposed by the project proponent in the letter dated March 3, 2003, and, therefore, were

included in the RDEIR as mitigation proposed by project (please refer to page 46 of the RDEIR).

COMMENT AI-90: Significant Impact: Swallows
Significant Impact #: 7
RDEIR Page #: 45
Mitigation
Suggested Mitigation #: 22
RDEIR page #: 47
The RDEIR suggest that construction only occur from September through February.

Applicant's mitigation: This is one of the many conflicts in the RDEIR. The CRWQCB recommends that no construction occur during the rainy season from October 15 through April 15. So, suggesting that construction be limited to September through December is at odds with another suggested mitigation.

This type of mitigation is, of course, not mitigation at all. This is a subversion of the intent of CEQA. The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (1 51 26.4). Since all the evidence points toward a continuing habitat that supports raptors, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

Suggested Mitigation #: 23
RDEIR page #: 47

The RDEIR suggests removal of old nests.
Applicant's mitigation: Applicant agrees to remove old swallow nests.

Suggested Mitigation #: 24
RDEIR page #: 47

The RDEIR suggests pre-construction surveys.
Applicant's mitigation: Applicant agrees to perform pre-construction surveys for swallows.

RESPONSE AI-90: The project proponent appears to have overlooked the alternative mitigation measures identified in the RDEIR because not all of the identified measures will always be feasible. Not scheduling construction during the nesting season is the best and most obvious way to not effect nesting swallows; some of the construction will probably occur during the nesting season, just as some of the construction will probably occur during the rainy season. If the breeding season cannot be avoided, as stated in the RDEIR on page 47, pre-construction surveys accompanied by appropriate avoidance measures (if necessary) are identified as alternative mitigation.

As a point of clarification, the nesting swallow mitigations identified on page 47 of the RDEIR were previously proposed by the project proponent in their letter dated March 3, 2003, and, therefore, were included in the RDEIR as mitigation proposed by project proponent (please refer to page 47 of the RDEIR).

COMMENT AI-91: Significant Impact: Bats
Significant Impact #: 8
RDEIR Page #: 45
No bats have been observed on site.
Mitigation
Suggested Mitigation #: 25
RDEIR page #: 47
The RDEIR suggests pre-construction surveys.

Applicant's mitigation: Applicant agrees to perform pre-construction surveys for bats.

Suggested Mitigation #: 26
The RDEIR suggests that if a maternity roost found, re-design project.

Applicant's mitigation:
Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (1 51 26.4). Re-designing the math conference center is not proportional to the finding of a bats nest. This is an example of something that could be worked out on-site with a bat expert.

If maternity roost found, consult a bat expert. Work with the bat expert to develop options that are reasonable and feasible for the bats and the project.

Suggested Mitigation #: 27
RDEIR page #: 48
The RDEIR suggests that if a maternity roost found, re-schedule project.

Applicant's mitigation:
This is another example of conflict within the RDEIR. The time period that is recommended for re-scheduling is the time that another agency recommends that construction not occur.

Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (1 51 26.4). Re-scheduling the construction of the math conference center is not proportional to the finding of a bat's nest. This is an example of something that could be worked out on-site with a bat expert.

If maternity roost found, consult a bat expert. Work with the bat expert to develop options that are reasonable and feasible for the bats and the project.

Suggested Mitigation #: 28
RDEIR page #: 48
The RDEIR suggests that if a "non-breeding" nest found, evict the bats.
Applicant's mitigation: Applicant will evict "non-breeding" bats.

Suggested Mitigation #: 29
RDEIR page #: 48
The RDEIR suggests that prior to applying for any permits, the applicant must present proof that the property has been inspected for bats.

Applicant's Mitigation:
Bats have not been observed on site. Permits are routinely issued without inspections for bats. Requiring the applicant to provide proof of bat inspection prior to ALL permit applications might be viewed by some as a punitive measure. Clearly, such a suggestion is a subversion of the intent of CEQA, which is to inform.

The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (1 5003) constrain the scope of EIR's stating: "it must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

The event that has triggered this EIR is the request for approval of a PUD to operate a math conference center in a building at the site of the old Flying Lady restaurant. The applicant agrees to have the old Flying Lady restaurant inspected for bats prior to demolition. However, it is unreasonable to require an inspection for bats for ALL permits- no matter how small.

RESPONSE AI-91: The bat mitigation in the RDEIR was previously agreed to by the project proponent in their letter dated March 3, 2003. This comment overlooks the remainder of the text in which the means of avoiding significant impacts to a maternity roost is "redesign *if possible*" (italics added).

This comment also mis-characterizes the general requirement for avoiding impacts to bats. The RDEIR states that prior to issuance of any grading, demolition, or construction permits by the City, the project proponent will provide either: (1) verification that any structures effected have been inspected by a qualified bat biologist who found no evidence of use by bats, or (2) a permit from the USFWS.

If no structures or major trees are to be removed, then there is no requirement to have an inspection done.

COMMENT AI-92: Significant Impact: Downstream surface water
Significant Impact #: 9
RDEIR Page #: 45
The surface waters on site have been sampled many times. The lab results from these studies indicate that the water is free of fertilizers and pesticides. There is no evidence of this impact, but there is plenty of evidence that the impact is not occurring. Therefore, this should be reduced to Less Than Significant in the Final EIR.

Mitigation
Suggested Mitigation
RDEIR page
None
Applicant's mitigation:

RESPONSE AI-92: The RDEIR acknowledges the recent sampling results provided by the project proponent regarding non-detectable concentrations of pesticides in the golf course lakes. However, the sampling conducted by the project proponent , including the sampling results from November and December attached to this comment letter, is limited and provides only a "snapshot" in time at a few selected locations. There is no information on when the samples were taken, exactly where they were taken, or how the sampling was coordinated with chemical applications, irrigation schedules and rainfall.

COMMENT AI-93: Significant Impact: Run-off to Foothill Avenue
Significant Impact #: 10
RDEIR Page #: 62
A more complete analysis of the run-off from the site indicates that the run-off from the site is less than before the project was completed. A letter, from a local hydrologist, describing this analysis is attached.

RESPONSE AI-93: The report referenced in this comment (Exhibit D) was reviewed by the City's consulting hydrologist. The report does not support the opinion expressed in this comment. For more detailed information regarding the Supplemental Drainage Analysis, please refer to Response AI-67 above.

COMMENT AI-94: The RDEIR mentions one example of localized flooding. This event occurred in 1 999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill Avenue and the property. Due to an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event, and without any prompting, had a pipe installed under the new apron. After the pipe was installed, no localized flooding has occurred.

Shortly, after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is built below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court. To get to Bartlett Court, one would go south on Foothill, west on Middle, and then north on Bartlett. The person admitted that his flooding problem has two causes. The first cause is that his property is below grade. The second cause is that a drainage culvert does not exist on the west side of Foothill (not the golf course side). The lack of a culvert allows water to travel from the crest of Foothill across lots on west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

The one instance of localized flooding was not caused by golf course flows. It was caused by a construction error. This event is fully explained and remedied. This is not a significant impact. It should be reduced to Less Than Significant in Final EIR.

RESPONSE AI-94: This comment seems to rely on hearsay and reports in the press. Please refer to Response AI-27 for additional discussion of the ongoing issues associated with flooding. Response AI-67 also provides clarification of the adequacy of the most recent drainage and flooding analysis attached to this comment letter. This two responses explain why the EIR cannot conclude that all flooding and drainage impacts should be identified as less than significant.

COMMENT AI-95: Mitigation
Suggested Mitigation #: 30
RDEIR page #: 73
Re-design the drainage system

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

RESPONSE AI-95: This comment is not correct. Please refer to Response AI-27 for additional discussion of the ongoing issues associated with flooding. Response AI-67 also provides clarification of the adequacy of the most recent drainage and flooding analysis attached to this comment letter. This two responses explain why the EIR cannot conclude that all flooding and drainage impacts should be identified as less than significant.

COMMENT AI-96: Suggested Mitigation #: 31
RDEIR page #: 73
Eliminate outflow pipe. Contain 100 year storm on site.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

RESPONSE AI-96: Please refer to Responses AI-27 and AI-67 for explanation of why the conclusions in the RDEIR about flooding and drainage impacts from the proposed project cannot be changed at this time.

COMMENT AI-97: Even if there was a significant impact, the goal of the mitigation would be to reduce the impact to less than significant. The applicant suggests that some small additional out flow of water from the property would be an impact, but not a significant impact. A large increase in the outflow of water would be a significant impact. So, goal of the mitigation should be to reduce the impact to less than significant. The requested mitigation goes well beyond what is needed to reach the less than significant level. Some might interpret such a mitigation request as punitive.

Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (1 51 26.4).

Suggested Mitigation #: 32
RDEIR page #: 73
Submit new drainage plan.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

The applicant submitted a drainage plan to the City and to its consultants. The City requested an as-built grading plan. The applicant submitted an as-built grading plan to the City and to its

consultants. The City then asked for the as-built drainage plan to be layered over the as-built grading plan. The applicant provided the as-built drainage plan on the as-built grading plan.

In addition, the applicant has provided a complete water flow analysis to the City and to its consultants. After submitting the water flow analysis, the consultant for the City indicated some misunderstanding of the analysis. So, the applicant provided the City and its consultant more explanation of the analysis.

The request for more analysis of this issue is pointless and abusive.

RESPONSE AI-97: The report referenced in this comment (Exhibit D attached to the comment letter) was reviewed by the City's consulting hydrologist. The review found that the Supplemental Drainage Analysis (Exhibit D) generally lacks documentation and contains inconsistencies in several respects which preclude meaningful review of the analysis. For more detailed information regarding the inadequacy of the Supplemental Drainage Analysis (Exhibit D), please refer to Response AI-67.

COMMENT AI-98: Suggested Mitigation #: 33
RDEIR page #: 73
Empty ponds in the winter.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

This is another example of conflict within the RDEIR. One suggested mitigation in the RDEIR says that the project should create more ponds. In this suggested mitigation (33), the RDEIR recommends that the applicant drain the ponds that are on site now. Two frog experts have stated that draining ponds puts the CRF at risk. So, the experts recommend that the applicant not drain the ponds.

CRF's are flourishing on site. So, the current environment is conducive to the CRF. So, the applicant is reluctant to change that environment.

RESPONSE AI-98: This comment takes information out of context and draws an erroneous conclusion.

The mitigation referred to in this comment is identified as necessary to avoid off-site flooding impacts in winter. As stated in previous responses, the Supplemental Drainage Analysis, which this appears to rely on in concluding that "no mitigation is required", is inadequate to support such a conclusion. (See Response A-67 above.)

Draining the ponds will not harm Red-legged frogs if done properly under the supervision of a qualified biologist. Please refer to Response AI-7.

COMMENT AI-99: Significant Impact: Soil erosion from future construction
Significant Impact #: 11
RDEIR Page #: 63

The applicant has applied for a change of use. The applicant has not applied for a building permit. The consideration of construction erosion control should occur at the time of application for the

building permit. The vast majority of construction does not require an EIR. However, all construction has the responsibility to control erosion. The City of Morgan Hill routinely requires an erosion control plan (ECP) with a permit application. So, the practice in the City of Morgan Hill is to consider construction erosion control at the time of building permit evaluation, and not to require each project to perform an EIR on erosion control.

It is not appropriate to consider erosion control abstractly in the EIR when the practice in the City of Morgan Hill is to consider it during the permit application process. In particular, it is a stretch to label an abstract notion of construction erosion control as a significant impact of a change in use.

This should be reduced to less than significant in the Final EIR.

RESPONSE AI-99: The top of page 63 of the RDEIR states that the golf course has already been constructed; however, additional grading activity is anticipated as part of on-going golf course maintenance, demolition of the existing restaurant building and construction of the Mathematics Institute headquarters in its place, and/or implementation of identified mitigation measures. Consequently, the threat of construction-related erosion remains.

COMMENT AI-100: Suggested Mitigation #: 34
RDEIR page #: 73
National Pollutant Discharge Elimination System (NPDES) permit.
Applicant's mitigation: Applicant will apply for NPDES permit

Suggested Mitigation #: 35
RDEIR page #: 73
Prepare ECP prior to any construction

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 36
RDEIR page #: 74
Prepare ECP including fiber rolls and sedimentation basins.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 37
RDEIR page #: 74
Prepare ECP including protecting graded slopes.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 38
RDEIR page #: 74
Prepare ECP including protecting storm drains from sedimentation.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ERP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 39
RDEIR page #: 74
Prepare ECP that excludes construction from October 15 through April 15.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ERP in conformance with the City of Morgan Hill grading ordinance.

Excluding construction from October 15 through April 15 is not feasible, nor is it a reasonable request. For example, indoor construction activities will have no affect on erosion. Even outdoor construction, provided effective erosion control measures are in place, will not result in erosion. So, the date restriction is arbitrary and unnecessary.

Suggested Mitigation #: 40
RDEIR page #: 74

City of Morgan Hill to inspect erosion control measures.

Applicant's mitigation: Applicant agrees to allow the City of Morgan Hill to inspect the erosion control measures to assure conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 41
RDEIR page #: 74

Clear debris and sediment from channels.

Applicant's mitigation: Applicant will clear debris and sediment from drainage channels.

Suggested Mitigation #: 42
RDEIR page #: 74

Establish program to clean culverts, drains, etc..

Applicant's mitigation: Applicant will establish a program to maintain drainage culverts, drains inlets, and energy dissipaters.

RESPONSE AI-100: Page 73 of the RDEIR identifies the following soil erosion measures to reduce potential erosion and sedimentation impacts that may result from construction on the site. It should be noted that these measures are currently considered best management practice (BMP) and reflect requirements of all grading and construction in Santa Clara County.

It appears from the comment that the project proponent is unwilling to implement all of the soil erosion mitigation measures identified in the RDEIR. If all of the following mitigation measures are proposed by the project and/or required as conditions of approval, the potential for a soil erosion impact will be less than significant.

Soil Erosion

Erosion and sedimentation impacts from the proposed project would generally result from construction on the site. It is also likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. Construction-related erosion and sedimentation shall be mitigated by the implementation of the following measures:

- The project proponent must apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES), as required by the State Water Resources Control Board for any grading of more than five acres; this includes the preparation of a Storm Water Pollution Prevention Plan prior to any additional work necessary to reduce flooding and drainage impacts.

- The project proponent shall prepare an Erosion Control Plan for review and approval by the City of Morgan Hill and the Central Coast RWQCB prior to any construction or grading on the site. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:

  - use of fiber rolls and temporary sedimentation basins to retain sediment on the project site;

  - protecting all finished graded slopes from erosion through re-vegetation, drainage diversion, and other appropriate methods;

  - protecting any downstream storm drainage inlets from sedimentation; and

  - No construction shall occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.

- Inspection must be conducted by City of Morgan Hill during the construction period to ensure that the erosion control techniques are performing as designed. Erosion control features shall be checked after major winter storm events.

- Following completion of construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The

project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.

- Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices*.

"*Santa Clara County, Planning Department, Santa Clara County Environmental/Design Guidelines & Standard Development Requirements for Golf Courses, July 23, 1996."

COMMENT AI-101: Significant Impact: Non point source run-off
Significant Impact #: 12
RDEIR Page #: 64
Suggested Mitigation #: 43
RDEIR page #: 74
Provide dikes around maintenance areas and roofing over areas where potential for oil or fuel spillage is high

Applicant's mitigation: Applicant has installed a wash station with a waster water recycling system. In addition, equipment is maintained in a building with a concrete floor and a roof. The "use" of the building in which equipment maintenance is performed has already been changed to include equipment maintenance.

Suggested Mitigation #: 44
RDEIR page #: 74
Provide oil/grease separators in catch basin in parking lots.
Applicant's mitigation: Agreed.
Suggested Mitigation #: 45
RDEIR page #: 74
Control liter and other debris.
Applicant's mitigation: Agreed.
Suggested Mitigation #: 46
RDEIR page #: 75
Modify golf course design to provide run-off buffers.

Applicant's mitigation: There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

A significant impact may not be claimed, and a mitigation may not be required, without "substantial evidence".

The applicant agrees to create buffers per the agreement with the USFWS.

Suggested Mitigation #: 47
RDEIR page #: 75
All the mitigations as for erosion (see mitigations 34 through 42).
Applicant's mitigation:
The response of the applicant is the same as for mitigations 34 through 42, respectively.

RESPONSE AI-101: From this comment, it appears the project proponent is not willing to implement all of the mitigation measures identified on page 74 of the RDEIR for Non-Point Source Runoff Pollutants. It should be noted that these measures are currently considered best management practice (BMP) and are routinely required of all similar project in the San Francisco Bay Area and Santa Clara County.

The mitigation measures identified in the RDEIR for Non-Point Source Runoff Pollutants are listed below. If all the Non-Point Source Runoff Pollutants measures identified in the RDEIR are not implemented by the project, it may result in significant Non-Point Source Runoff Pollutant impacts. Please refer to response AI-5 and AI-6 regarding the provision of buffers on the project site.

Non-Point Source Runoff Pollutants

The following mitigation, if incorporated, would reduce the surface runoff impacts to a less than significant level:

- Provide containment dikes around maintenance areas, and provide roofing over any area where the potential for oil, grease and fuel spillage is high;

- Provide oil/grease separators for all catch basins the parking area drainage system;

- Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainages (i.e., weekly street sweeping, oil spill clean-up, etc.);

- Modify the golf course design along the riparian corridor of Corralitos Creek to provide a minimum buffer distance of 50 feet (from the center line of the creek) that contains only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams; and

- Adopt and implement as part of on-going site operations, all applicable mitigation measures identified for soil erosion (refer to page 70).

The objections in this letter to providing buffers from all of the water bodies on-site are repeated in this comment, as in other comments. The documentation for requiring buffers from water bodies are discussed in the RDEIR and in Responses AI-5 and AI-6 above. The buffers identified in the pending draft USFWS agreement do not reflect the water quality buffers identified in the RDEIR as necessary to avoid significant impacts.

COMMENT AI-102: Significant Impact: Nitrogen loading in ground water
Significant Impact #: 13
RDEIR Page #: 66

Significant Impact: Nitrogen loading in surface water
Significant Impact #: 14
RDEIR Page #: 67
Surface Water

There is no evidence to support these two significant impacts. In fact, there is evidence that shows that the project is improving the quality of surface water. The surface waters have been sampled many times. The lab analysis of these samples demonstrates that the nitrogen level in the surface water on site is less the nitrogen levels in the water from the wells.

The decline in nitrogen level in the water is likely due plant life consuming the nitrogen. This occurs two ways. First, the turf consumes the nitrogen in the water before it enters the bodies of water. During the time that the water is captured in the bodies of water, the aquatic plant life consumes some of the nitrogen.

Since there is no evidence that the project is adding nitrogen to the surface water, this impact should be reduced to less than significant in the Final EIR.

Ground Water

There is no evidence that the project is contributing to nitrogen in the ground water. In fact, the nitrogen level in the ground water wells on site is significantly better than the average for the region. The SCVWD assumed that the project was contributing to nitrate in the ground water and then tried to find evidence to support their conclusion. The SCVWD examined a well across the street from the project. The SCVWD noted that the level of nitrate has increased over the life of the well. Examination of the data shows that the increase in nitrate level in that well occurred BEFORE the golf course began operation. Since the golf course has been in operation, the level of nitrate in that well has actually gone down.

Moreover, the SCVWD did not mention that the well across the street from the project (the well that SCVWD attempted to use to blame the project for increasing the level of nitrate) is actually one of only three wells in the region that meets the nitrate standard in the Safe Drinking Water Act.

RESPONSE AI-102: Please refer to response AI-3 regarding groundwater nitrogen loading and AI-5 and AI-6 regarding nitrogen loading of surface waters. Additional response is provided in AI-64 to the information included in Exhibit A attached to this comment letter.

COMMENT AI-103: The applicant has been executing a Nitrogen Control Plan (NCP). Before applying fertilizer the applicant does the following:

1) Take a soil sample. Send to lab to determine the needs of the soil.
2) Take turf tissue samples. Send to lab to determine the needs of the plant.
3) Take an irrigation water sample. Send to lab to determine the nitrogen available from the irrigation water.

Based on these analyses, the applicant only applies the amount of fertilizer that can be used by the turf. This process has resulted in low nitrate in the surface waters on site and no contribution to nitrates in the ground water. The applicant developed and implemented this NCP on its own- without any prompting from any agency.

The cynical among us may think that an unscrupulous golf course operator may implement a NCP for a period of time. Then, when "no one is looking", switch to a higher nitrogen application rate. This would not be in the best interest of the golf course operator. Excess nitrogen promotes growth of thatch in turf (a bad thing), and leaves the grass prone to many disease that occur only when too much nitrogen has been applied.

The applicant agrees to formalize this process described above in a written Nitrogen Control Plan.

Since there is no evidence that the project is adding nitrogen to the ground water, and no rational incentive to apply excess nitrogen, this impact should be reduced to less than significant in the Final EIR.

RESPONSE AI-103: Implementation of the Nitrogen Loading mitigation measures identified on pages 75 and 76 of the RDEIR will reduce the nitrogen loading impact to a less than significant level.

COMMENT AI-104: Suggested Mitigation #: 48
RDEIR page #: 75
Prepare a NCP.

Applicant's Mitigation: The applicant will prepare a NCP that documents the existing practices that have successfully controlled nitrates in the ground water and in the surface water.

RESPONSE AI-104: The RDEIR identifies mitigation measures on page 75 and 76 necessary to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-105: Suggested Mitigation #: 49
RDEIR page #: 75
Prepare an annual accounting of nitrogen application rates.

Applicant's Mitigation: The applicant will prepare annual accounting of nitrogen application rates and nitrogen content of the irrigation water.

RESPONSE AI-105: The RDEIR identifies the necessary mitigation measures on page 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-106: Suggested Mitigation #: 50
RDEIR page #: 75
Prepare an analysis that shows that current nitrogen loading to the aquifer is less than use prior to project.

Applicant's Mitigation: This is not possible. However, the applicant has already submitted an analysis that shows that if any water from the project reached the aquifer, it would dilute the nitrate in the ground water. This analysis has been provided to the City's consultants. The applicant considers this mitigation to be complete.

RESPONSE AI-106: The amount of nitrogen loading that occurred during pre-project conditions can be estimated with reasonable accuracy, based on historical data. The current nitrate analysis is incorrect. Please refer to Response AI-64 for detailed information regarding the inadequacy of the nitrogen loading analysis provided in attachments to this comment letter.

COMMENT AI-107: Suggested Mitigation #: 51
RDEIR page #: 75
Submit above to SCVWD and RWQCB for review and approval and recommendations.

Applicant's Mitigation: The applicant has already produced evidence that the project is not contributing to nitrate loading in the ground water or the surface water. The RDEIR has produced no evidence that the project is contributing to nitrogen loading. This mitigation is intended to be penal.

The nitrogen application will be based on the NCP.

RESPONSE AI-107: This letter provides no explanation of why this mitigation could be considered penal. The SCVWD and the RWQCB are the trustee agencies for water resources, and the recognized authorities on the water quality of the project area. Please refer to Response AI-64 for detailed information regarding the inadequacy of the nitrogen loading analysis provided by the project proponent.

COMMENT AI-108: Suggested Mitigation #: 52
RDEIR page #: 75
Test irrigation water for nitrates and adjust fertilization accordingly.
Applicant's Mitigation: Agree

RESPONSE AI-108: The RDEIR identifies the necessary mitigation measures on pages 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-109: Suggested Mitigation #: 53
RDEIR page #: 75
Monitor irrigation water monthly.

Applicant's Mitigation: The nitrate level in the irrigation water does not vary greatly over time. Testing water for nitrates is expensive. Applicant agrees to test the irrigation water for nitrate and TKN once each quarter.

RESPONSE AI-109: As stated on page 66 of the RDEIR and confirmed by the project proponent's consulting hydrologist, the denitrification of the irrigation water in Pond D is is due to unknown circumstances or causes. Therefore, it cannot be dependably relied upon to continue.

COMMENT AI-110: Suggested Mitigation #: 54
RDEIR page #: 75
Application of fertilizer shall be determined based on irrigation rates, site specific conditions, and turf requirements.

Applicant's Mitigation: Agree.

RESPONSE AI-110: The RDEIR identifies the necessary mitigation measures on page 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-111: Suggested Mitigation #: 55
RDEIR page #: 75
A soil monitoring program shall be implemented to determine appropriate application rates, in accordance with the recommendations provided by the SCVWD.

Applicant's Mitigation: The applicant will implement a soil monitoring program as part of the NCP. The soil monitoring program will include soil samples and laboratory analysis. The NCP will include a section that determines the type of fertilizer and the application rate of that fertilizer based on the lab analysis of the soil (among other factors).

RESPONSE AI-111: The RDEIR identifies the necessary mitigation measures on page 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-112: Suggested Mitigation #: 56
RDEIR page #: 76
Use slow release fertilizer when possible.

Applicant's Mitigation: The applicant will use slow release fertilizer when it does not present a risk of entering the surface water.

RESPONSE AI-112: A revision is proposed for the EIR text on page 76 to reflect the earlier comment in this same letter on this issue.

COMMENT AI-113: Suggested Mitigation #: 57
RDEIR page #: 76
Limit irrigation to EVT + mineral dilution.

Applicant's Mitigation: The irrigation formula suggested in the RDEIR does not take into account some important factors. The process of determining irrigation quantities is more complicated than the simplistic equation proposed by the City's consultant. For example, the EVT is based on the past weather. The irrigation amount should be based on passed weather, the weather forecast, the amount of water that has been applied recently (through irrigation or rain), and other factors.

The applicant will apply the minimum irrigation necessary to maintain healthy turf. Note: in the long run, healthy turf requires less water, fewer pesticides, and less fertilizer.

RESPONSE AI-113: The mitigation measure referred to in this comment has been revised per comments from the SCVWD. EVT has been defined as Crop EVT. Please refer to Comment E-9.

COMMENT AI-114: Suggested Mitigation #: 58
RDEIR page #: 76
Time fertilization plant need and weather.

Applicant's Mitigation: Agree.

RESPONSE AI-114: The RDEIR identifies the necessary mitigation measures on page 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

COMMENT AI-115: Suggested Mitigation #: 59
RDEIR page #: 76
Reduce turf.

Applicant's Mitigation: The suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because it does not attain the most basic objectives of the project. The suggested mitigation is not a mitigation, so it should be removed from the EIR.

RESPONSE AI-115: The CEQA Guidelines define mitigation as including among other possibilities, "Avoiding the impact altogether by not taking a certain action or parts of an action; and "Minimizing impacts by limiting the degree or magnitude of the action and its implementation." [§15370(a) and (b)] Additionally, an EIR is required to distinguish between mitigation measures "which are proposed by the project proponent and other measures proposed by the lead, responsible or trustee agency or other persons" which the lead agency determines "could reasonably be expected to reduce adverse impacts if required as conditions of

approving the project". [§15126.4(a)(1)(A)] The fact that this project was built illegally and did not include appropriate mitigation measures in its design does not constrain the lead or responsible agencies from identifying mitigation measures not already incorporated into the project.

As discussed in Response T-3, there are recently constructed golf courses in northern California that contain substantially less irrigated turf than this project. This mitigation measure is not, therefore, either infeasible or punitive.

COMMENT AI-116: Suggested Mitigation #: 60
RDEIR page #: 76
Provide buffers.

Applicant's Mitigation: There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

A significant impact may not be claimed, and a mitigation may not be required, without "substantial evidence".

The applicant has a pre-existing agreement with the USFWS to provide buffers. The applicant will provide buffers per that agreement.

RESPONSE AI-116: Please refer to responses AI-5 and AI-6 for a discussion regarding the need for buffers on the project site. As stated previously, the mitigation measures recommended by the USFWS do not address water quality impacts. A possible alternative to the 50 foot setbacks for protecting water quality is identified in the proposed text amendments in Section IV of this Final EIR (amendments proposed for page 74 of the RDEIR).

COMMENT AI-117: Suggested Mitigation #: 61
RDEIR page #: 76
Provide buffers for outfalls.

Applicant's Mitigation: There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

With this in mind, this mitigation should be removed because it involves mitigating an impact that is not occurring.

There is a history here that is worth recounting. At different times different agencies have requested that the outfalls be built in different ways. At one time, it was asked that the outfalls continue to the base of the creek to minimize erosion. At other times, it was requested that the outfalls be at the creek bank with rip-rap added to slow and spread the flow of water. In an attempt to conform to the desires of agencies, the outfalls on site have been built and re-built. Now, the consultant for the City suggests a third version.

The applicant has a pre-existing agreement with the USFWS to provide buffers. The applicant will provide buffers per that agreement.

RESPONSE AI-117: The confusion regarding outfall design could have been minimized by obtained appropriate permits in advance of construction. Please refer to responses AI-5 and AI-6 for a discussion regarding the need for buffers on the project site. In particular, reference is made to the discussion of the reasons why the very limited and poorly document sampling is not adequate to conclude that water quality would be unaffected. As stated previously, the pending USFWS agreement is not intended to and does not address water quality impacts on the site. Nothing in this comment supports the contention that setbacks should not be required from outfalls.

The information and water sampling results provided by the project proponent were reviewed by the City's consulting hydrologist and the SCVWD. This limited amount of information regarding the water quality on the project site are not sufficient to forego the standard mitigation practices recommended by the City, RWQCB, and SCVWD.

COMMENT AI-118: Suggested Mitigation #: 62
RDEIR page #: 76
Remove turf at the creek channel at hole 3 and create buffers.

Applicant's Mitigation: The applicant agrees to remove the turf. The applicant agrees to re-vegetate the area with native species per the creek restoration plan submitted to the USFWS. The applicant agrees to create buffers in that area based on the pre-existing agreement with the USFWS.

Suggested Mitigation #: 63
RDEIR page #: 76
More buffers.

Applicant's Mitigation: The applicant agrees to provide buffers per the USFWS agreement.

RESPONSE AI-118: The RDEIR identifies the necessary mitigation measures on pages 75 and 76 to reduce Nitrogen Loading impacts to a less than significant level. Implementation of all of the Nitrogen Loading mitigation measures on pages 75 and 76 of the RDEIR will reduce the Nitrogen Loading impact to a less than significant level.

As stated previously, the pending USFWS agreement does not mitigate water quality impacts.

COMMENT AI-119: Significant Impact: Pesticides in surface water
Significant Impact #: 15
RDEIR Page #: 68

Significant Impact: Pesticides in ground water
Significant Impact #: 16
RDEIR Page #: 69

There is no evidence, substantial or otherwise, of contamination of the surface waters by pesticides. In fact, the surface waters on site have been sampled and analyzed at a laboratory on numerous occasions. These analyses demonstrate that the surface waters are free of pesticides.

Certainly pesticides are a concern for all of us. However, in this case, there is no basis for a conclusion that pesticides in the surface water are a significant impact of this project. This should be reduced to less than significant in the Final EIR.

RESPONSE AI-119: Please refer to Responses AI-5, AI-5 and AI-64 for discussion regarding the water quality issues on the existing golf course and the reasons why the limited sampling information available does not support a conclusion that mitigation measures are not required. Implementation of all of the Pesticide and Herbicide mitigation measures identified on pages 76, 77, and 78 of the RDEIR will reduce water quality impacts from pesticide and herbicide use on the golf course to a less than significant level.

COMMENT AI-120: Suggested Mitigation #: 64
RDEIR page #: 76
Prepare a Chemical Application Management Plan (CHAMP) and submit to City of MH and to RWQCB for review and approval.

Applicant's Mitigation: The applicant agrees to prepare a CHAMP consistent with other the CHAMPs of other golf courses in the area.

Suggested Mitigation #: 65
RDEIR page #: 77
Prepare a Chemical Application Management Plan (CHAMP) that meets 15 additional conditions.

Applicant's Mitigation: The applicant agrees to prepare a CHAMP consistent with other the CHAMPs of other golf courses in the area.

RESPONSE AI-120: Based on the comments above, it appears the project proponent is willing to implement some but not all of the mitigation measures identified in the RDEIR for potential water quality impacts that may result from the proposed project. A CHAMP must be prepared specifically for the existing golf course; preparation of a CHAMP that is consistent with other CHAMPs prepared for other golf courses at other locations in the project area may or may not reduce potential water quality impacts from the application of chemicals to a less than significant level. The specific components that must be included in the CHAMP to reduce the potential water quality impacts of the existing golf

course are identified on pages 76, 77, and 78 of the RDEIR, including review and approval by the City of Morgan Hill, SCVWD, and RWQCB.

COMMENT AI-121: Significant Impact: Pesticides in run-off to Foothill Avenue
Significant Impact #: 17
RDEIR Page #: 71

There is no evidence, substantial or otherwise, of contamination of the surface waters by pesticides. In fact, the surface waters on site have been sampled and analyzed at a laboratory on numerous occasions. These analyses demonstrate that the surface waters are free of pesticides.

Certainly pesticides are a concern for all of us. However, in this case, there is no basis for a conclusion that pesticides in the surface water are a significant impact of this project. This should be reduced to less than significant in the Final EIR.

RESPONSE AI-121: The impact to which this comment refers is identified in the RDEIR as contamination in the ponds being carried by runoff to the Foothill Avenue drainage and San Martin Creek or to Corralitos Creek.

The water quality sampling done on this site has been relatively limited. The limited amount of sampling conducted on the project site is not sufficient to allow a conclusion in the RDEIR that no significant impact would occur as a result of the uncontrolled runoff from ponds on the golf course.

COMMENT AI-122: Suggested Mitigation #: 66
RDEIR page #: 78
National Pollutant Discharge Elimination System (NPDES) permit.

Applicant's Mitigation: The applicant will apply for a NPDES permit from the CRWQCB.

RESPONSE AI-122: The NPDES permit is identified on page 78 as one of the measures necessary to reduce impacts associated with lake water discharges. All of the mitigation measures identified on pages 78 and 79 of the RDEIR must be implemented to reduce Lake Water Quality Management and Discharge impacts to a less than significant level.

COMMENT AI-123: Suggested Mitigation #: 67
RDEIR page #: 78
Prove that lakes can contain a 100 year storm.

Applicant's Mitigation:
A more complete analysis of the run-off from the site indicates that the run-off from the site is less than before the project was completed. A letter describing this analysis that makes it easier for the City's consultant to understand is attached.

The RDEIR mentions one example of localized flooding. This event occurred in 1 999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill Avenue and the property. Due to

an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event, and without any prompting, had a pipe installed under the new apron. Since, the installation of the pipe no localized flooding has occurred.

Shortly, after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is built below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court. To get to Bartlett Court, one would go south on Foothill, west on Middle, and then north on Bartlett. The person admitted that his flooding problem has two causes. The first cause is that his property is below grade. The second cause is that a drainage culvert does not exist on the west side of Foothill (not the golf course side). The lack of a culvert allows water to travel from the crest of Foothill across lots on west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

The one instance of localized flooding was not caused by golf course flows. It was caused by a construction error. This event is fully explained and remedied. This is not a significant impact.

Even if there was a significant impact, the goal of the mitigation would be to reduce the impact to less than significant. The applicant suggests that some small additional out flow of water from the property would be an impact, but not a significant impact. A large increase in the outflow of water would be a significant impact. So, goal of the mitigation should be to reduce the impact to less than significant. The requested mitigation goes well beyond what is needed to reach the less than significant level. Some might interpret such a mitigation request as punitive.

RESPONSE AI-123: Please refer to Responses AI-27 and AI-67 for a complete discussion of flooding impacts in the project area. At this point in time, there is not sufficient documented information available for the City's consulting hydrologist to conclude that the past grading and ongoing operations of the golf course will not result in significant off-site flooding impacts.

COMMENT AI-124: Suggested Mitigation #: 68
RDEIR page #: 78
Provide yet another drainage plan and water flow analysis.

Applicant's Mitigation:
The applicant submitted a drainage plan to the City and to its consultants. The City requested an as-built grading plan. The applicant submitted an as-built grading plan to the City and to its consultants. The City then asked for the as-built drainage plan to be layered over the as-built grading plan. The applicant provided the as-built drainage plan on the as-built grading plan.

In addition, the applicant has provided a complete water flow analysis to the City and to its consultants. After submitting the water flow analysis, the consultant for the City indicated some misunderstanding of the analysis. So, the applicant provided the City and its consultant with more explanation of the analysis.

The request for more analysis of this issue is pointless and abusive.

The State and the courts have ruled against this type of activity in an EIR. CEQA guidelines (1 5003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

RESPONSE AI-124: As reflected in Response AI-67, the City of Morgan Hill has never received either an accurate as-built grading plan for this project or an accurate drainage plan. Please refer to Response AI-67 for details of the inadequacy of the drainage analysis attached to this comment letter.

COMMENT AI-125: Suggested Mitigation #: 69
RDEIR page #: 79
Provide a list of chemicals that are added to the ponds.

Applicant's Mitigation:
Applicant has provided numerous laboratory analyses of the water in the ponds.
These analyses show that no pesticides or herbicides are in the ponds.

RESPONSE AI-125: The fact that water quality sampling from the golf course lakes has not revealed detectable concentrations of pesticides or herbicides does not constitute evidence that no chemicals are added to the lakes for algae control. Algae control can be achieved using chemicals that would not be detected through the usual pesticide tests. Copper sulfate is one example.

COMMENT AI-126: Significant Impact: Depletion of ground water
Significant Impact #: 18
RDEIR Page #: 82

A local hydrogeology consultant, Aquifer Sciences, performed a wide ranging study of water levels in the aquifer surrounding the project. The study from Aquifer Sciences found that during the five years that the project has be operational, the water level in the aquifer is unchanged.

From their study, Aquifer Sciences did uncover one interesting correlation. The water level in the aquifer goes up after rainy years and goes down following dry years. Aquifer Sciences notes that water levels in wells in the basin that are separated by relative large distances rise and fall simultaneously following significant weather changes.

The upshot is that the project does not affect the water level in the aquifer, but the weather does.

We all depend on the water in the aquifer. The applicant shares this dependency and a concern for the aquifer. However, the data indicates that ground water depletion is not a significant impact of this project. This should be reduced to Less Than Significant in the Final EIR.

RESPONSE AI-126: The groundwater investigation prepared by the project proponent's consulting hydrologist was reviewed by the City's consulting hydrologist. The conclusion about the groundwater investigation reflected in this comment is not supported by the analysis. Please refer to Response AI-64 for more information.

COMMENT AI-127: Suggested Mitigation #: 70
RDEIR page #: 83
Use a computerized irrigation management system.

Applicant's Mitigation: Agree. A computerized irrigation system is in place and has been inspected by SCVWD.

RESPONSE AI-127: All of the Groundwater Resource Depletion mitigation measures identified on pages 84 and 85 of the RDEIR must be implemented to reduce the groundwater depletion impacts to a less than significant level. Please see Response AI-64 for a discussion of why the current information on groundwater depletion does not support a conclusion that this project would not have significant impacts without mitigation.

COMMENT AI-128: Suggested Mitigation #: 71
RDEIR page #: 84
Reduce turf.

Applicant's Mitigation: The suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because "it does not attain the most basic objectives of the project.". The suggested mitigation is not a mitigation, so it should be removed from the EIR.

RESPONSE AI-128: The CEQA Guidelines define mitigation as including among other possibilities, "Avoiding the impact altogether by not taking a certain action or parts of an action; and "Minimizing impacts by limiting the degree or magnitude of the action and its implementation." [§15370(a) and (b)] Additionally, an EIR is required to distinguish between mitigation measures "which are proposed by the project proponent and other measures proposed by the lead, responsible or trustee agency or other persons" which the lead agency determines "could reasonably be expected to reduce adverse impacts if required as conditions of approving the project". [§15126.4(a)(1)(A)] The fact that this project was built illegally and did not include appropriate mitigation measures in its design does not constrain the lead or responsible agencies from identifying mitigation measures not already incorporated into the project.

As discussed in Response T-3, there are recently constructed golf courses in northern California that contain substantially less irrigated turf than this project. This mitigation measure is not, therefore, either infeasible or punitive.

COMMENT AI-129: Suggested Mitigation #: 72
RDEIR page #: 84
Perform yet another ground water study.

Applicant's Mitigation: The applicant has already provided a study of water levels in the aquifers. The study from Aquifer Sciences found that during the five years that the project has be operational, the water level in the aquifer is unchanged.

From their study, Aquifer Sciences did uncover one interesting correlation. The water level in the aquifer goes up after rainy years and goes down following dry years. Aquifer Sciences notes that water levels in wells in the basin that are separated by relative large distances rise and fall simultaneously following significant weather changes.

The applicant will continue to monitor the water levels in the wells on site.

RESPONSE AI-129: As stated in the RDEIR, the only groundwater information provided by the project proponent's consultants indicate that the project may be depleting groundwater. There have been no definitive study of groundwater levels done. The groundwater information prepared by the project proponent's consulting hydrologist was reviewed by the City's consulting hydrologist. The information contained in this comment that groundwater levels rise in rainy years and fall in dry years is widely known. The conclusion in the Aquifer Sciences report (Exhibit A attached to this comment letter) that the project is not causing groundwater depletion was not supported by any information provided. Additionally, it appears that the revised data on water use was incorrect. Please refer to Response AI-64 for more information.

COMMENT AI-130: Suggested Mitigation #: 73
RDEIR page #: 84
Use re-cycled water.

Applicant's Mitigation: Applicant agrees to use re-cycled water if the re-cycled water is as good or better than the water from the aquifer, and the City provides the re-cycled water.

RESPONSE AI-130: The use of recycled water to irrigate the golf course is one of three mitigation options available to reduce groundwater resource depletion impacts to a less than significant level. The qualifications in this comment appear to be the basis of not using recycled water.

COMMENT AI-131: Significant Impact: Potable water
Significant Impact #: 19
RDEIR Page #: 82
Suggested mitigation #74:
RDEIR page #: 83
Prior to issuing building permits for the proposed Math Conference Center, apply for and obtain approval for connection to an approved public water system.

Applicant's Mitigation: As a condition of approval of the building permit for the proposed Math Conference Center, the applicant will apply for and obtain approval for connection to an approved public water system prior to receiving a Certificate of Occupancy.

The applicant has already applied to the City of Morgan Hill for connection to the public water system.

Or Suggested mitigation #75:
RDEIR page #: 84
Investigate hydrogeology of the site and the ground water quality to ensure a source of potable water.

Or Suggested mitigation #76:
RDEIR page #: 84
Modify the project to eliminate the need for potable water.

This suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because "it does not attain the most basic objectives of the project." The suggested mitigation is not a mitigation, so it should be removed from the EIR.

RESPONSE AI-131: As stated in Responses AI-115 and AI-128, modifying a project to reflect an appropriate reduction of its impacts is mitigation as defined by CEQA. Reducing the size of the project to avoid the need for potable water is an appropriate method of avoiding the impact of not having potable water.

Operation of the golf course also requires connection to an approved public water system. The mitigation proposed in this comment would mean continuing to operate the golf course with a substantial number of on-site employees and continuing to use the existing buildings on the site for the Mathematics Institute. This means that whenever the project probably already has 25 or more people on-site at least 60 days of the year and is, therefore, already in violation of state law requiring connection to a potable water supply.

Three mitigation options for mitigating the impact of not having a potable water supply are listed on pages 83 and 84 of the RDEIR. This comment indicates the project is pursuing the option of connecting to an approved public water system. In which case, additional environmental review may be needed for any expansion of the existing public water system, prior to obtaining a permit.

COMMENT AI-132: Significant Impact: Water for fire protection
Significant Impact #: 20
RDEIR Page #: 83
Suggested mitigation #77:
RDEIR page #: 84
Prior to issuing building permits meet the requirement of the fire marshall.

Applicant's Mitigation: As a condition of approval of a building permit for the Math Conference Center, the applicant will meet the requirement of the Fire Marshall for water for fire protection prior to receiving a Certificate of Occupancy.

RESPONSE AI-132: Issuance of a building permit indicates that the structure can be built in conformance with relevant codes and ordinances. This proposed mitigation would suggest that the City should issue a building permit for a structure, even if there is no certainty that adequate fire protection can be provided.

COMMENT AI-133: Significant Impact: Construction noise
Significant Impact #: 21
RDEIR Page #: 91
To label construction noise as a significant impact seems a logical stretch. If construction noise is a significant impact, then should all construction projects require an EIR?

In addition, CEQA (15125) states that: "Knowledge of the regional setting is critical to the assessment of environmental impacts".

In the case of this project, the site is in a noisy regional setting. The site adjoins Foothill Avenue. Foothill Avenue is a major thoroughfare. Pre-existing traffic noise exists. The property is in the flight path of the San Martin Airport. The airplanes contribute to noise on and around the site. Farm machinery contributes to the noise in the area. Noise from construction would be an insignificant addition to a region characterized by mechanical noise.

In the FEIR, construction noise should be reduced to a less than significant impact.

Suggested mitigation #78:
RDEIR page #: 91
Obey noise ordinances of the City of Morgan Hill.

Applicant's Mitigation:
Agree.
Suggested mitigation #79:
RDEIR page #: 91
Use noise suppression devices and proper mufflers.

Applicant's Mitigation:
All equipment will have the noise suppression devices that were installed on the equipment at the time of manufacture.

RESPONSE AI-133: The project site is in a relatively quiet rural area. As discussed in the RDEIR, most of the major grading has already been done. If additional grading is required, in addition to the construction noises associated with the new structure, construction noises could be significant (page 90). Implementation of all of the temporary noise impact mitigation measures identified on page 91 of the RDEIR will reduce construction noise impacts to a less than significant level.

COMMENT AI-134: Significant Impact: Asbestos and lead
Significant Impact #: 22
RDEIR Page #: 94
Suggested mitigation #80:
RDEIR page #: 94
Use hazardous waste disposal company

Applicant's Mitigation: Agree

Suggested mitigation #81:
RDEIR page #: 94
Inspect for lead and asbestos before construction
Applicant's Mitigation: Agree

RESPONSE AI-134: These mitigation measures were previously proposed by the project proponent in the letter of March 3, 2003, which is why the RDEIR does not identify a significant hazardous materials impact.

COMMENT AI-135: Significant Impact: Dust from construction
Significant Impact #: 23
RDEIR Page #: 98

If construction dust is a significant impact, then should all construction projects require an EIR?

In the FEIR, construction dust should be a less than significant impact.

Suggested mitigation #82:
RDEIR page #: 99
Comply with 13 conditions purported to be BAAQMD conditions.

Applicant's mitigation:
Applicant will comply with BAAQMD regulations that apply to the construction of the math center at the time of the construction.

RESPONSE AI-135: The mitigation proposed by the project proponent is not consistent with the mitigation identified on pages 98, 99, and 100 of the RDEIR. The mitigation measures must also be implemented during any future construction activities (including grading) on the project site. The qualification that the project will comply with "BAAQMD regulations" is also not appropriate. BAAQMD would not regulate construction on this site, but the BAAQMD recommended measures are necessary to reduce construction impacts to less than significant.

COMMENT AI-136: Significant Impact: Odors from grass

Significant Impact #: 24

RDEIR Page #: 98
To label construction odors from grass as a significant impact is inappropriate.
CEQA guidelines (15125) state that: "Knowledge of the regional setting is critical to the assessment of environmental impacts."

In this case, the City's consultants have not fully sensed the regional setting. The area surrounding the project is characterized by foul odors from:

Garlic processing
Horse manure from stables across the street
Manure based fertilizer used in agriculture on Foothill Avenue

Odors from grass are minor and will not be noticed in the regional setting. In the FEIR, odors from grass should be a less than significant impact.

Suggested mitigation #83:
RDEIR page #: 100

Either compost on site and develop a plan and submit same to City,
Or
Haul clippings off site
Or
Compost in situ
Applicant's mitigation:

Applicant will continue current practice of composting on site. Current practice has not created any objectionable odors.

RESPONSE AI-136: The comment that the area is characterized by foul odors is acknowledged.

The RDEIR does not identify construction odors from grass, since the statement is meaningless. Composting grass on the project site could result in significant odor impacts if the composting is done inappropriately and anaerobic conditions are produced. The mitigation identified in the RDEIR is that the project zoning should address on-site composting if it is proposed to continue, or the grass clippings should be hauled off-site and recycled.

COMMENT AI-137: Comments to Correct the Revised Draft EIR

The intent of this section is to correct seven statements made in the RDEIR that are factually incorrect.

Topic: Grading
RDEIR Page: 57
The RDEIR states: "Grading of the golf course fairways and greens may have involved importation of soil, and a fertilization program; but no details are available on what was done."

During grading of the golf course soil was not imported. The grading was balanced on site to eliminate the need to import or export soil.

The one exception is that sand was purchased and placed beneath the greens and tees. The greens were constructed to the United States Golf Association specification.

Prior to seeding the fairways, the soil was amended with gypsum. Gypsum is a form of calcium. The intent of amending the soil with gypsum is twofold. 1) Gypsum increases its permeability of the soil. 2) Gypsum improves the ability of the soil to release nutrients to the turf. Klienfelder, a civil engineering firm, recommended amending the soil with gypsum. The report from Klienfelder was provided to the City prior to beginning construction.

After the fairways were seeded, the fairways were fertilized with "starter fertilizer." Starter fertilizer provides the new turf with a low dosage of nitrogen and other nutrients that the plant needs.

RESPONSE AI-137: The project proponent's quote from page 58 of the RDEIR is incorrect. There is no mention of golf course greens in the sentence. The second complete sentence on page 58 of the RDEIR states, "Grading of the golf course fairways and rough may have involved importation of soil, and a fertilization program; but no details are available on what was done.".

The sentence on page 58 is factually correct. At the time the RDEIR was prepared it was not known if grading was balanced on the site. Therefore, the RDEIR states import or export of soil may have occurred along with a fertilization program. This comment supports the sentence in the RDEIR that and soil amendments were imported to build the golf course.

It could be noted that crushed marble was also imported onto the project site for the construction of the sandtraps.

COMMENT AI-138: Topic: Lake System
RDEIR Page: 59
The RDEIR states: "None of the water treatment systems were installed and construction documentation is not available to confirm if and how the lakes were lined."

The water treatment systems were installed. Even a cursory inspection of the lakes would find the large vaults that operate the water treatment systems. These large vaults have electrical connections, large water pumps, and ozone generators. At the base of the lakes, the ozone is released. It bubbles to the surface in much the same way that air bubbles to the surface in an aquarium.

The consultant for the City never asked to see the vaults or the equipment. The consultant for the City never asked to see the system operate. However, that did not stop the consultant for the City from lying about the project in the RDEIR.

All of the lakes are lined. Construction documentation is available to verify the installation. Photographs showing the liners being installed as well as the technique used to seal the liners at the bank are available.

The consultant for the City never asked to see the construction documentation. The consultant for the City never asked if the liner had been installed. However, that did not stop the consultant for the City from lying about the project in the RDEIR.

RESPONSE AI-138: The consulting hydrologist discussed the details of the filtration system and lining with the golf course maintenance superintendent. Page 59 of the RDEIR states, "Based on site inspection and discussions with the maintenance supervisor, the existing lakes on the golf course do not conform to the plans provided to the City of Morgan Hill by the project proponent. None of the lake water treatment systems were installed and construction documentation is not available to confirm if and how the lakes were lined.".

The RDEIR reflected the best information available, including information obtained from on-site employees. The construction documents showed the water treatment system. Since other site plans, including grading and drainage, were not accurate reflections of as-built conditions, the City's consultants tried to verify all of the information. It was not clear that the underground vaults and pond liners were in place, much less that the systems were installed as designed.

Subsequent on-site visits by City inspectors have confirmed that the lakes are lined, which is reflected in the text revisions in Section IV.

COMMENT AI-139: Topic: Wildlife
RDEIR Page: 34
The RDEIR states: "Because of the disturbance these wetlands and the habitat surrounding the wetlands have undergone, the wildlife species present in these wetlands are primarily common, widespread species, or species more typically associated with the adjacent ruderal or developed habitats."

The wetlands have not been disturbed.

The consultant for the City offers no evidence or logic linking the project to the wildlife observed at one moment in time. Such conclusions without factual evidence are not allowed under CEQA.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32 nd district Agricultural Association.

RESPONSE AI-139: The information page 34 is a description of the existing biological setting of the project based upon surveys completed by the City's biologist, who recognized the conditions on the site as disturbed seasonal wetlands. The wetlands on the project site are not pristine and have been disturbed in the past. There is no claim made or inferred that the construction of the existing golf course resulted in the disturbance of the seasonal wetlands on the project site.

COMMENT AI-140: Topic: Ordinance Size Trees
RDEIR Page: 39
The RDEIR states: "A formal tree survey was not conducted prior to the golf course development."

Before beginning construction, the applicant hired a certified professional, Tree Health Professionals, to survey and report on the trees on site. This report went beyond a simple survey. Tree Health Professionals commented on the health of the ordinance size trees on site. In addition, Tree Health Professionals provided some suggestions for the care of the trees.

Prior to construction, this report was provided to the City and was accepted by the City.

The applicant has gone to great lengths to care for the existing trees on site, and to augment the number of trees on site. The ordinance trees have survived the construction and are flourishing.

RESPONSE AI-140: The tree survey provided to the City does not address all of the trees that were present on the project site prior to construction of the existing golf course. Please refer to response AI-59 for additional discussion of this topic.

COMMENT AI-141: Topic: Riparian Habitat
RDEIR Page: 41
The RDEIR states: "in addition, approximately 0.5 acres of riparian habitat were removed during development of the golf course."

No riparian habitat was removed during construction. Statements of conclusion without facts and analysis are not allowed in an EIR.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32 nd district Agricultural Association.

RESPONSE AI-141: According to the report prepared by the biologist hired by the project proponent and submitted to the City by the project proponent, riparian habitat was removed. Please also refer to Responses AI-2, AI-41, AI-58, and AI-71 regarding the removal of riparian habitat on the project site.

COMMENT AI-142: Topic: Mitigation for Impacts to Burrowing Owls RDEIR Page: 46

The RDEIR states: "The following measure is proposed by the project proponent to reduce the impacts to Burrowing Owls: The project will comply with the City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan."

The date of the City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan is June 2003. The most recent opportunity for the applicant to comment on the DEIR was February 2003. So, it appears to be an assumption that the applicant has agreed to this.

The point here is not to argue that the applicant will or will not comply with the City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan. The point is that the applicant has not had the opportunity to agree or disagree.

Another issue is that of ex post facto regulations. The applicant submitted a complete application four years ago. Are the applicable regulations to this application those at the time of application or those at the time of approval.

RESPONSE AI-142: This project has not obtained its entitlements or project approvals from the City of Morgan Hill. Conformance with the City of Morgan Hill Citywide Burrowing Owl Mitigation Plan is required for all projects within the City of Morgan Hill, as part of the project approval process. The application submitted four years ago was not found to be complete by the City of Morgan Hill.

COMMENT AI-143: Topic: Irrigation Water Supply
RDEIR Page: 81
The RDEIR states: "The pumping of groundwater for golf course irrigation will, however, substantially increase the amount of water extracted from the groundwater basin as compared to with pre-development conditions and will greatly exceed the groundwater recharge that occurs locally."

This is a statement in the RDIER is a conclusion without any facts or analysis. No facts concerning the ground water re-charge are provided. So, no conclusion about groundwater depletion can be drawn.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32 nd district Agricultural Association.

To get the facts, the applicant commissioned a study of the water levels in the aquifer. This study was performed by a local hydro-geology firm, Aquifer Sciences. This study shows that after five years of operation of the golf course, the water level in the aquifer has not changed.

The facts demonstrate that the baseless accusations made by the RDEIR are not only unfounded, but incorrect.

RESPONSE AI-143: As discussed in greater detail in Response AI-64, the conclusion in this comment is not supported by the information provided by Aquifer Sciences. The newly provided graphical plots provided by the hydrologist's report attached to this comment letter clearly support the analysis and conclusions in the RDEIR regarding the significant drawdown effect of groundwater pumping for the golf course.

With respect to pre-development groundwater pumping, the RDEIR analysis of water use for pre-development conditions is based on the historic uses of the property for irrigation of a 40-acre golf course, dry-farming of hay, a restaurant, and for other miscellaneous uses such as livestock watering. The City's consulting hydrologist concluded that the water requirements for these prior uses would have been significantly less than the 400 to 500 acre-feet per year currently used by the new golf course. This does not constitute "speculation", as suggested by the project proponent. Please refer to Response AI-64 for a detailed response to the analysis in Exhibit A of this comment letter.

IV. REVISIONS TO THE TEXT OF THE RECIRCULATED DRAFT EIR

The following are revisions to the text of the of the Revised Draft Environmental Impact Report entitled *The Institute Golf Course*, dated December 2003. Additions to the text are shown underlined; deletions are indicated with strikeouts through the text.

Page #

1 Section I.C. Description of the Project; Background:

REVISE the second sentence in the first paragraph as shown:

The grading and construction of the existing golf course was completed in advance of obtaining all of the required permits and approvals. In April 1997, the City of Morgan Hill issued a grading permit for the reconstruction of an existing ~~9-hole~~ 18-hole golf course on the project site. The April 1997 permit also allowed for the construction of a new access driveway and an irrigation pond. The....

5 Proposed Project:

REVISE the sixth sentence in the first paragraph on the page as shown:

...with the City. The existing driveways and 118 stall parking area is proposed to remain as is. The project proponent has stated that the headquarters o the American Institute of Mathematics will have a permanent staff of about ~~10~~ 25 employees and plans to hold a maximum of 24 Mathematics Research Conferences per year. Each conference....

8 I.E.1. Consistency with Adopted Plans and Policies; Federal State and Regional Policies; Clean Water Act:

REVISE the sixth line of the first paragraph as shown:

The existing storm water program (Phase I) of the National Pollutant Discharge Elimination System (NPDES) requires municipalities serving more than 100,000 persons to obtain a NPDES storm water permit (final rule, November 1990). Phase II NPDES storm water regulations, finalized in October, 1999, expanded the national program to smaller municipalities with a population of 10,000 or more and construction sites that disturb more than one acre of land~~; however, these requirements have not yet taken effect.~~ Phase II Storm Water Regulations took effect in March 2003. As of 2003, the City of Morgan Hill is required to comply with the National Clean Water Act regulations regarding the reduction of non-point source pollutants from storm water discharges within the City. At a minimum, this includes the following six measures aimed at reducing the discharge of storm water pollutants for protection of water quality:...

10 2. Local Plans and Policies; Morgan Hill General Plan 2001:

REVISE the first paragraph in this section as shown:

~~Most of the~~ The project site is currently designated as Open Space in the Morgan Hill General Plan. ~~A small portion of the property in the area of the existing restaurant building, is designated as Commercial by the General Plan.~~ The relevant General Plan goals and policies are provided in italics, and are followed by a discussion of the project's consistency.

16 I.F. Uses of the EIR:

REVISE the section as shown:

This Environmental Impact Report (EIR) will be used to provide the environmental review necessary for the development of the proposed project. The EIR provides the City of Morgan Hill, as the Lead Agency, and other responsible agencies, with relevant information to use in considering the approval of the project as it is proposed or with appropriate modifications.

The City of Morgan Hill will use the EIR in its decision making process for the discretionary approvals to implement the project, as listed below:

- Planned Development Rezoning, City of Morgan Hill
- Site, Architectural and Landscape Plan Review by Architectural Site Review Board, City of Morgan Hill
- Notice of Non-renewal or Cancellation of Williamson Act Contract, City of Morgan Hill

Other agencies who may have jurisdiction over this project, or some aspect of it, include the Regional Water Quality Control Board (~~Clean Water Certification~~ Section 401 Water Quality Certification), the California Department of Fish and Game (Streambed Alteration Agreement), the United States Fish and Wildlife Service (Section 10 Incidental Take Permit), and the United States Army Corps of Engineers (Section 404 Permit).

17 Section II.A. Land Use; Existing Setting; Existing General Plan and Zoning Designations:

REVISE the paragraph in this section as shown:

~~Most of the~~ The project site is designated *Open Space* on the City of Morgan Hill General Plan, and is zoned *Open Space*. The area surrounding the existing restaurant building (approximately five acres) is ~~designated *Commercial* on the General Plan, and is~~ zoned *Planned Unit Development (PUD)*. The *PUD* zoning allowed the restaurant, gift shop, and other ancillary uses supporting the restaurant to operate on the project site. A small area in the northwestern portion of the site is zoned *Floodway Combining District*. Development within a floodway such as fill, new construction, substantial improvement, and other new development is prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in the base flood elevation during the occurrence of the base flood discharge.

Existing On-site Land Uses:

REVISE the last sentence in the first paragraph in this section as shown:

...and chemical storage associated with the golf course. The residence is presently occupied by a caretaker and the former church structure is currently used as an office and for meetings. No information is available on the present uses of the milk barn, hay barn, or other ancillary structures.

20 Land Use Impacts:

ADD the following paragraph just before the heading for "Land Use Compatibility":

The discussion in Section I.E. of this EIR concluded that the proposed project does not conform to the Basin Plan or to a number of adopted General Plan policies. Since many of those policies were adopted for the purpose of avoiding or mitigating an environmental effect, the nonconformance also results in a significant environmental impact. The specific impacts and availability of mitigation measures are addressed in those sections of this EIR that evaluate impacts to the specific type of resource impacted (including Section II.C. Vegetation and Wildlife, Section II.D. Hydrology and Water Quality, and Section II.E. Water Supply), or in Section III. Secondary Impacts, which evaluates the impacts that would occur if the City does not require the project proponent to return the site to the conditions that existed before the existing golf course was built without permits.

The following discussion focuses on impacts that could result to the proposed land use, to neighboring land uses, and on visual and aesthetic impacts, which impacts are not addressed elsewhere in this EIR.

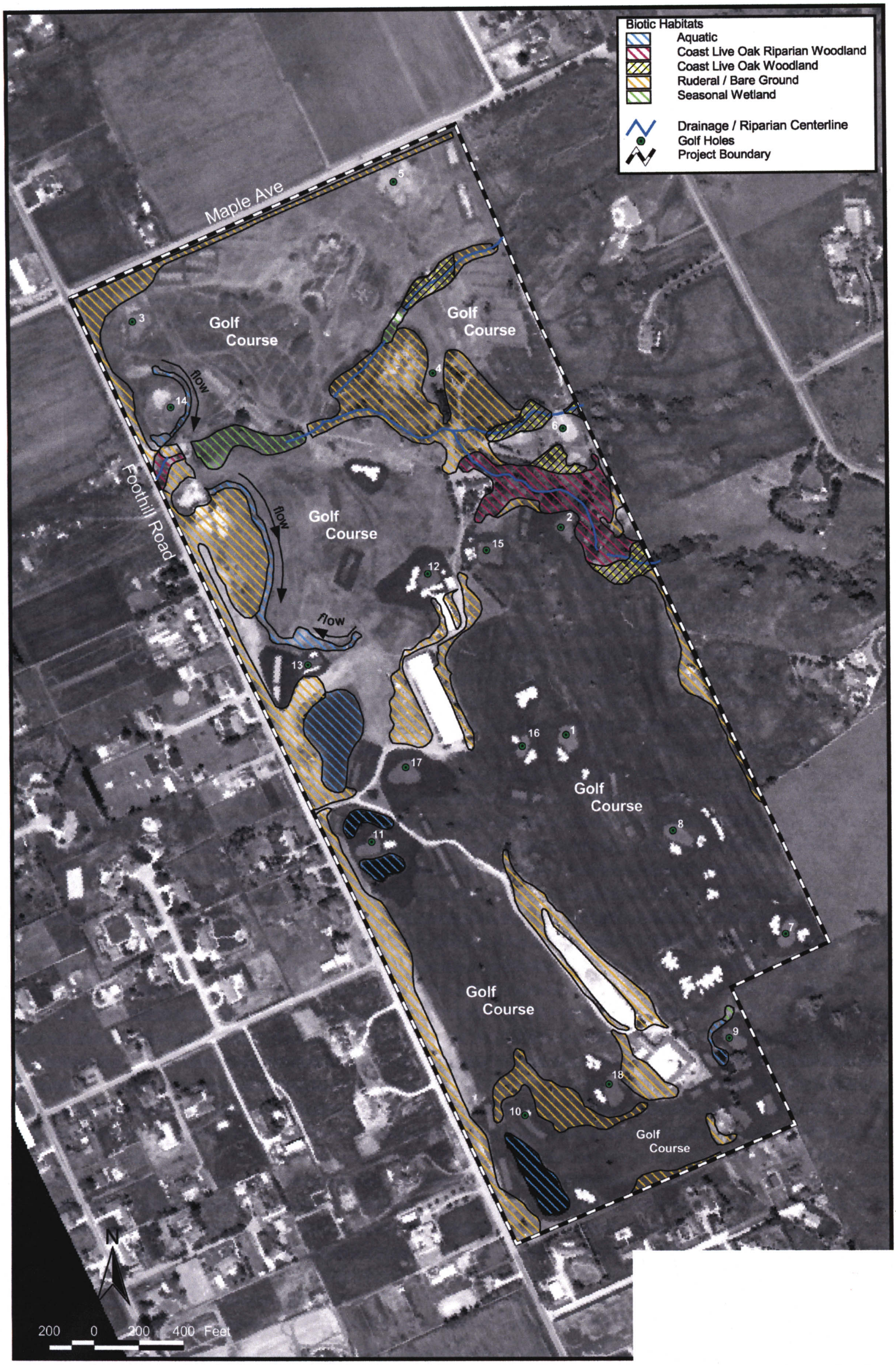
22 Visual and Aesthetics:

INSERT the following paragraph just prior to the impact statement at the end of this subsection:

...conflict with any relevant General Plan policies. The project, therefore, will not result in a significant visual impact.

While not creating a significant environmental impact, the dense row of trees on top of a berm along Foothill Avenue is not part of an approved landscape plan that was developed through the City's site and architectural review process, and reviewed for compatibility with adjacent land uses. According to some nearby residents, the trees planted on a berm are disruptive of their existing views and will eventually eliminate the view of the hills they currently enjoy. If the proposed PD rezoning is approved by the City of Morgan Hill, the City must approve a landscape plan as part of the Site, Architectural and Landscape Plan approval process. The City may determine that the row of trees must be removed or diminished or, alternatively, that the trees are an appropriate part of the overall use on the site and can remain.

29 Figure 6 is replaced with Figure 6 (Revised), which is included on the following page.



BIOTIC HABITATS

REVISED FIGURE 6

51 II.C.3. Vegetation and Wildlife; Mitigation and Avoidance Measures; Mitigation Measures Not Presently Incorporated into the Proposed Project; Red-legged Frog Mitigation Measure Package I:

REVISE the measures identified as the third bullet on the page, and the last bullet in this section, as shown:

- *Water Quality Setback from Corralitos Creek* - Both the USFWS and H.T. Harvey and Associates identified buffers to avoid wildlife disturbance. As stated in Section II., D., Hydrology and Water Quality of this EIR, a minimum setback of 50 feet from the centerline of Corralitos Creek and tributaries is necessary to avoid significant impacts to the creek from pollutants in surface runoff.

  To reduce the water quality setback below 50 feet without resulting in significant water quality impacts, the areas adjacent to the on-site creek channels must drain away from the creek. The surface water can simply drain back over the golf course as sheet flow, or it can drain to a catch basin system that drains to the internal ponds. This reduction would need to be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within 50 feet of Corralitos Creek and all tributaries within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within 50 feet of all of the creek channels on the project site will be regraded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern can be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances can the setback from the creek channels be reduced below 30 feet, or the minimum setback required by the USFWS.

ADD the following bullets to the end of this list:

- All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.

- Monitoring of the on-site population of red-legged frogs should be done for at least five years after implementation of the program, and the results of the monitoring reports to the City of Morgan Hill and the U.S. Fish and Wildlife Service.

52 Red-legged Frog Mitigation Measure Package II:

REVISE the second bullet point on the this page and the last bullet in this section as shown:

- *Water Quality Setback from Corralitos Creek* - Both the USFWS and H.T. Harvey and Associates identified buffers to avoid wildlife disturbance. As stated in Section II., D., Hydrology and Water Quality of this EIR, a minimum setback of 50 feet from the centerline of Corralitos Creek and tributaries is necessary to avoid significant impacts to the creek from pollutants in surface runoff.

  To reduce the water quality setback below 50 feet without resulting in significant water quality impacts, the areas adjacent to the on-site creek channels must drain away from the creek. The surface water can simply drain back over the golf course as sheet flow, or it can drain to a catch basin system that drains to the internal ponds. This mitigation would need to be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within 50 feet of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within 50 feet of all of the creek channels on the project site will be regraded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern can be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances can the setback from the creek channels be reduced below 30 feet, or the minimum setback required by the USFWS.

ADD the following bullet to the end of this list:

- All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.

53 Riparian Habitat:

REVISE the heading for the riparian habitat mitigation as follows:

RIPARIAN HABITAT (Required for Mitigation Package I and II)

INSERT the following bullet as the sixth bullet point in the section:

- The riparian setbacks identified above (100 feet from high quality habitat, 25 feet from poor quality habitat) are methods for reducing or avoiding habitat degradation. If encroachment within the identified setbacks is allowed by the City, mitigation (described below) could be required to offset the impacts to habitat quality that would result from the encroachment.

Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, could be provided at a 1:1 ratio elsewhere along the same drainage. Uses or activities within the encroachment areas within the 100-foot riparian setback should be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; unmaintained rough could be as close as 15 feet to the edge of the riparian habitat. A revegetation and maintenance plan prepared by a qualified revegetation ecologist that illustrates: (a) all planting within 100 feet of the edge of the riparian habit, and (2) all replacement riparian habitat proposed as mitigation for riparian habitat lost and for encroachments into the riparian habitat setback, would be submitted to and approved by the City of Morgan Hill as part of the Site, Architectural and Landscape Plan Review process.

ADD the following to the end of the section:

Prior to approval of a grading permit for the subject property, the project proponent could be required by the City of Morgan Hill to obtain from the U.S. Army Corps of Engineers, and provide to the City of Morgan Hill Director of Planning, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.

57 Section II.D.1. Hydrology and Water Quality; Existing Conditions; Groundwater:

ADD the following to the end of the section:

In February 2003, it was announced that groundwater in the San Martin area has been contaminated with perchlorate. The contamination is the result of an emergency flare manufacturing plant in Morgan Hill that used the chemical. A number of public and privately owned wells in the project area have been found to be contaminated with perchlorate. According to information on the Santa Clara Valley Water District web site (http://www.valleywater.org/Water/WaterQuality/Protecting_your_water/_Lustop/_Perchlorate/Area%20_of_Invest_Map_08152003.pdf), the plume of contamination now reaches to within approximately one-half mile of the project site.

59 Ancillary Golf Course Facilities, Lake System

REVISE the paragraph in the section as shown:

The existing golf course includes a series of seven artificial water bodies (A through G) that serve as golf course amenities and an equalizing reservoir for the irrigation system (refer to Figure 3). All seven lakes receive drainage from the golf course. According to the system plans by Waterscapers (1998) and Aquatic Environments (2000), lake water treatment was to have included aeration, utilizing an activated oxygen system, and

diffusers on the bottom of the lakes and all of the lakes are lined with PVC membrane that is 20 millimeters thick. Lake G was also to have a Gravel Bed Biological Filter System at the bottom of the lake to remove nitrogen. Based on information provided in the letter dated January 29, 2004 from the Institute LLC, the lake water treatment systems were installed. Inspection of the ponds on the site by the City confirmed that the lakes are lined. ~~Based on site inspection and discussions with the maintenance supervisor, the existing lakes on the golf course do not conform to the plans provided to the City of Morgan Hill by the project proponent. None of the lake water treatment systems were installed and construction documentation is not available to confirm if and how the lakes were lined~~. Currently, the lakes only provide wet detention basins for collection and potential treatment through sedimentation, vegetative uptake, and bacterial composition. The lakes are raked to remove vegetation, which further reduces their effectiveness for water quality treatment. Based on observations on October 1, 2003, all of the lakes are unusually high in water clarity, with no evidence of any algal growth in the water. The project proponent has not disclosed that any chemicals are added to the lakes for algae or water quality control.

62 Section II.D.2. Hydrology and Water Quality Impacts; Off-Site Flooding:

REVISE the impact statement at the section:

- ❑ Substantial changes were made on the project site which included grading that transfers surface runoff from the Corralitos Creek drainage to the San Martin Creek drainage. As a result, the redirected ~~increased~~ runoff from the project site onto Foothill Avenue resulting from development and continued operation of the existing 18-hole golf course will exacerbate previous conditions, causing worse and more frequent flooding problems on the roadway and on other properties than would be the case without the golf course. (Significant Impact)

63 Water Quality Impacts, Soil Erosion:

ADD the following to the end of the second paragraph in the section and modify the impacts statement as shown:

...Although most golf course construction has been completed, additional work is likely to be required (including restoration of the riparian corridor), if the City requires that the project reduce all of its water quality and biotic impacts to less than significant, which may involve grading activity and the associated risks of soil erosion. Outfalls installed to channel on-site drainage into the swale adjacent to Foothill Avenue may not have been constructed with adequate dissipaters to prevent erosion and subsequent deposition of sediment downstream into San Martin Creek.

Soil erosion can cause numerous types of impacts. Eroded soil contains nitrogen, phosphorus, and other nutrients. When carried into water bodies, these nutrients can

stimulate algae growth that reduce water clarity, deplete oxygen and create odors. Accumulated sediments can also lead to the obstruction of drainage facilities (e.g., culverts) increasing the potential for overtopping and localized flooding. The greatest soil erosion hazard will exist during and immediately following construction. The completed project should cause minimal long term erosion and sediment discharges to downstream water bodies, due to the addition and maintenance of turf grass and other landscaping in the areas of soil disturbance.

- ❑ Future grading and ongoing operation of the previously constructed on-site drainage system may cause substantial soil erosion on the site. (Significant Impact)

65 Water Quality, Nitrogen Loading, Groundwater Impacts:

REPLACE the first sentence of the second paragraph in the section as shown:

Four hundred and thirty six acre-feet of irrigation water are applied to the existing 18-hole golf course per year. ~~The existing 18 hole golf course uses approximately 491 acre-feet of water per year.~~

66 Water Quality, Nitrogen Loading, Groundwater Impacts:

REVISE the second sentence on the page as shown:

According to the project proponent's data, the average nitrate concentration for Wells 1, 2, and 3 is about 50 mg/L, and the average for samples taken from Pond D and the irrigation system is about 19 ~~20~~ mg/L.

REVISE the third sentence on the page as shown:

The volume of the pond is estimated to be about nine million gallons, which should provide roughly 20 days of residence time at the average irrigation flow, estimated to be about 397,000 ~~437,500~~ gpd.

REVISE the last sentence of the first paragraph on the page as shown:

Accordingly, for purposes of project analysis, it can only be concluded that significant reduction of well water nitrate concentrations via detention in Pond D is likely, such that the nitrate concentration of golf course irrigation water would be in the range of 19 ~~20~~ to 50 mg/L.

REVISE the second paragraph in the section as shown:

Golf course turf areas represent about 70 percent of the area on the project site that is irrigated. Assuming that the irrigation water is applied to the golf course (and associated landscaping) at the reported rate of about 436 ~~491~~ acre-feet per year, the yearly nitrogen loading to the golf course from irrigation water would be in the range of approximately 3,500 to 9,400 ~~6,000 to 15,000~~ pounds. This means that the nitrogen content in the irrigation water would satisfy a substantial portion, but likely not all ~~and possibly all,~~ of the projected total fertilizer requirement (10,716 lbs/year) for the golf course.

REVISE the third sentence in the third paragraph in the section as shown:

Seepage from the existing golf course is estimated to contribute nitrate in the range of 43 ~~45~~ to 96 milligrams per liter.

70 Water Quality; Construction Activities, Water Quality Management Discharges:

REVISE the eighth line of the first paragraph in the section as shown:

All of the golf course lakes, except the spring-fed pond near the 7th green, are equipped with overflow pipes that discharge directly to Corralitos Creek or to the Foothill Avenue drainage ditch that leads to San Martin Creek. Each of the lakes, except Pond G, collect runoff from golf course turf areas, and some collect other site runoff (e.g., from streets and parking areas, maintenance area, and other site landscaping). The lakes meet the definition of "landscape pool drainage", and are subject to regulation under the Central Coast RWQCB "Order No. 01-119, NPDES No. CAG993001 - Waste Discharge Requirements, General Permit for Discharges with Low Threat to Water Quality", another general permit, or a site/discharge-specific permit. In order to obtain coverage under this General Permit, the discharges from the lakes must meet the following criteria:....

73 Section II.D.2. Mitigation and Avoidance Measures; Mitigation Measures Not Presently Incorporated Into the Proposed Project, Off-site Flooding and Drainage:

ADD the following work to the first bullet item in this section as shown:

- In order to mitigate the localized and downstream flooding problems at Foothill Avenue caused or exacerbated by the project, the project proponent shall re-design the drainage system for the golf course to reduce the redirected peak runoff flows to levels that are equal to or less than pre-development conditions. This will require the following measures:

Section II.D.2. Mitigation and Avoidance Measures; Mitigation Measures Not Presently Incorporated Into the Proposed Project, Soil Erosion:

MODIFY the introductory paragraph and the first bullet in this section as shown:

Erosion and sedimentation impacts from the proposed project would generally result from construction on the site. It is also likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. Ongoing operations of the previously constructed drainage system may result in erosion at outfalls. Construction-related erosion and sedimentation shall be mitigated by the implementation of the following measures:

- The project proponent must apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES), as required by the State Water Resources Control Board for any grading of more than ~~five acres~~ one acre; this includes the preparation of a Storm Water Pollution Prevention Plan prior to any additional work necessary to reduce flooding and drainage impacts or to achieve compliance with permits issued pursuant to approval of this proposed PD rezoning.

74 Soil Erosion; second bullet in the section:

REVISE the fourth sub-bullet point as shown:

- No construction activity that includes grading, soil movement or excavation, or which could result in any soil erosion shall occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.

75 Water Quality; Non-Point Source Runoff Pollutants,

ADD the following text to the first bullet point on this page, which is the fourth bullet point in the section:

- Modify the golf course design along the riparian corridor of Corralitos Creek to provide a minimum buffer distance of 50 feet (from the center line of the creek) that contains only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams.

An alternative to providing the minimum buffer distance of 50 feet described above is to ensure that the areas withing 50 feet of Corralitos Creek and its tributaries on the site drain away from the creek channels. This will allow the water quality setback to be under 50 feet without resulting in significant water quality impacts. The surface water can simply drain back over the golf course as sheet flow, or it can drain to a catch basin system that drains to the internal ponds. This mitigation would need to be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within 50 feet of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within 50 feet of all of the creek channels on the project site will be regraded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern can be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances can the setback from the creek channels be reduced below 30 feet, or the minimum setback required by the USFWS; and

Nitrogen Loading:

REVISE the first, second and sixth bullet points after this heading:

- The project proponent shall prepare a nitrogen control plan (NCP) which is based upon a determination of appropriate nitrogen application rates, based upon site specific soil testing and plant requirements. The NCP can be a component of the Chemical Application Management Plan (CHAMP) described under the heading "Pesticides and Herbicides" below.

- Annual accounting of all sources of nitrogen application ~~rates~~ to the golf course, including ~~both~~ fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water.

- Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD.

76 REVISE the first bullet on the page as shown:

- Fertilizer application will be consistent with the CHAMP. The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.

REVISE the second bullet point on the page as shown:

- Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.

ADD to the fifth bullet on the page as shown:

- Modify the golf course design as specified previously, including the provision of a minimum buffer distance of 50 feet (from creek centerline) of native grasses and non-maintained rough along all branches of Corralitos Creek, within which fertilizers will not be applied.

  The 50 foot setback from creek centerline may only be reduced in a manner that is consistent with the restrictions reflected above in the non-point source pollutants setback.

Pesticides and Herbicides:

REVISE the second sentence in this section as shown:

The golf course operator shall prepare a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct or reconstruct, operate and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals to be used on the golf course, as well as methods of application and handling.

77 Pesticides and Herbicides:

INSERT the following language into the text of the ninth bullet on the page, as shown:

- As described previously, modify golf course design to provide enhanced vegetative buffer areas for retention of pesticide residue, including the following:

- Modify the golf course design along the riparian corridor of Corralitos Creek to provide a minimum buffer distance of 50 feet (from the center line of the creek) or a modified setback similar to that described under Non-Point Source Runoff Pollutants above, that contain only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams;

78 ADD to the first paragraph on the page as shown:

- Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining a minimum 50-foot buffer between the turf grass and the centerline of the creek channel.

  As described previously, there is an alternative to providing a 50-foot water quality setback. To reduce the water quality setback below 50 feet without resulting in significant water quality impacts, the areas adjacent to the drainage channel must drain away from the creek. The surface water can simply drain back over the golf course as sheet flow, or it can drain to a catch basin system that drains to the internal ponds. This mitigation would need to be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within 50 feet of drainage channel drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that the ground surfaces within 50 feet of all of the drainage channels will be regraded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern can be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances can the setback from the channel be reduced below 30 feet, or the minimum setback required by the USFWS

REVISE the fourth bullet point on this page as shown:

- The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB (If the RWQCB accepts regulatory authority for the CHAMP, reports ~~tot he~~ to the City and SCVWD may be informational only).

79 ADD the following to the end of the section:

Preparation and implementation of a Turfgrass Management Program and Integrated Pesticide Management Program in conformance with the standards of Golf Course Superintendents Association of America, which would include ongoing training and recordkeeping, and which includes the elements identified above for a CHAMP, would satisfy the requirements for a CHAMP discussed above.

81 Section II.E.2. Water Supply, Water Supply Impacts, Irrigation Water Supply:

REVISE the first sentence of the second paragraph in this section as shown:

Based on data supplied by the project proponent, water demand for golf course irrigation is estimated to average approximately 397,000 ~~437,500~~ gallons per day (gpd), which equates to about 2.5 ~~3.83~~ acre-feet per acre per year, for the estimated 128 acres of irrigated turf grass plus approximately 50 acres of adjacent trees and landscaping area (178 acres of total irrigated area).

ADD the following text to the end of this section:

The neighboring properties use groundwater for a variety of purposes including domestic use, irrigation, and livestock watering. Drawdown of the aquifer could adversely impact the availability of water for these purposes, especially in the summer when water use is high.

84 Mitigation Measures Not Presently Incorporated Into the Proposed Project, Groundwater Resource Depletion:

REVISE the section as shown:

The significant impact of the golf course irrigation on groundwater resources in the project vicinity can be mitigated by implementing one of the following mitigation measure:

- Reduce the amount of irrigated turf within the golf course to a maximum of approximately ~~55 to 60~~ 85 to100 acres of total turf and associated landscaping area, or otherwise reduce the irrigation water demand of the existing golf course by approximately 50 percent. The as-built golf course currently has approximately 128 acres of irrigated turf, including tees, greens, fairways and rough, plus approximately 50 additional acres

of irrigated trees and other landscaping[2]. This is a relatively large amount of turf for an 18-hole golf course. There are examples of golf courses recently constructed in the region with as little as 50 acres of irrigated turf. Reduction of the maintained turf areas by this amount will bring the water demand into an approximate balance with the local groundwater recharge conditions, thereby reducing the potential effect on groundwater levels by an equivalent amount. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project.

- While the information currently available indicates that the project could substantially impact groundwater levels, ~~much more detailed studies could modify that information.~~ a detailed groundwater investigation can be conducted to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) described above. The project proponent ~~and the City of Morgan Hill~~ could complete a much more detailed groundwater investigation to confirm that the proposed pumping of groundwater for golf course irrigation would not cause a significant decline in the water table at neighboring properties. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope of work and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District.

- Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site can be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on the project site must be reduced by approximately 50 percent, as described above.

The implementation of either of the above measures would be sufficient to reduce water supply impacts to a less than significant level. In the absence of sufficient and appropriate mitigation measures, the impacts remain significant.

- Subject to further research, the use of recycled water to irrigate the golf course could be implemented to reduce the use of groundwater.

[2]Conversation between the Questa Engineering and the project proponent's representatives during a meeting on March 16, 2004.

85 Mitigation Measures Not Presently Incorporated Into the Proposed Project, Groundwater Resource Depletion:

ADD the following after the third bullet in the section, and modify the concluding paragraph as shown:

- To ensure that future draw-down of the groundwater table by the proposed project does not adversely impact nearby wells, the golf course operator could also (in combination with one of the above measures) be required to monitor the groundwater table in the area over time. If the water table falls below a critical level,[3] then the golf course would be required to further reduce water usage in increments to be agreed upon by the City of Morgan Hill and the Water District.

The implementation of ~~either~~ one of the first three ~~above~~ measures listed above, would be sufficient to reduce water supply impacts to a less than significant level. The fourth bullet could also be required in combination with one of the other measures. In the absence of sufficient and appropriate mitigation measures, the impacts remain significant.

87 Section II.F.2. Traffic and Circulation; Traffic Impacts:

ADD a new section after Project Traffic Estimates, as shown:

Construction Impacts

Construction that would occur in the future if the project is approved could include regrading part of the site, removal of some turf and/or replanting some vegetation, removal and possible planting of trees, demolition of the existing restaurant building, construction of a new Institute building, and upgrading existing pavement. Traffic associated with this work could include construction workers' vehicles and heavy trucks hauling construction equipment to the site. Virtually all of the building demolition and building construction would occur prior to the completion and occupancy of the Institute building, so the traffic would not be in addition to that associated with the operation of the Institute.

Construction traffic would be intermittent and temporary, as the grading and building construction phases occur. Construction traffic would not exceed the capacity of the roadway system.

[3] A "critical level" would be defined by the Santa Clara Valley Water District in consultation with the City of Morgan Hill prior to issuance of any further grading permits for the project.

- ❑ Traffic associated with future grading and construction of the Institute building would not exceed the capacity of the existing roadway system. (Less Than Significant Impact)

107 III.1. Secondary Impacts; Impacts to Special Status Plant Species (Serpentine) Habitat:

ADD the following to the end of the second paragraph in the section:

Based on the opinions of both Trustee agencies and the consulting biologists, it is likely that the grading done for the existing 18-hole golf course resulted in the removal of serpentine soils and the habitats associated with those soils. Specifically, the U.S. Fish and Wildlife Service believes that the reconstruction of the golf course may have resulted in damage or destruction of many federally listed plants, including Tiburon paintbrush, coyote ceanothus, Santa Clara Valley dudleya, and Metcalf Canyon jewelflower. This was a significant impact. The existing soils across most of the site also tend to be alkaline influenced, increasing the likelihood that non-serpentine endemic special-status species were present on the site.

It is also possible that the serpentine soils and habitats on this site could have supported a population of bay checkerspot butterfly. While the presence of serpentine soils and associated habitats is considered likely, the possibility of bay checkerspot butterfly habitat having been present is a more complex issue (dependent on factors and conditions that cannot now be verified) and can no longer be determined.

- ❑ Approval of the proposed project will result in the permanent loss of habitat that may have contained Special-Status Plant Species. (Significant Impact)

110 California Red-legged Frog Habitat/Aquatic Habitat:

REVISE the text after the second sentence in the paragraph, as shown:

Consulting biologists found numerous California red-legged frogs on the site. Because construction on the project site has already occurred, it is not possible to determine if and/or how many individual California red-legged frogs were destroyed during past maintenance, therefore, the impact to individual frogs is identified here as less than significant. The U.S. Fish and Wildlife Service has stated that they believe that construction of the existing golf course likely resulted in damage or destruction of red-legged frog habitat and take of red-legged frogs. It is known~~, however,~~ that approximately three acres of former golf course irrigation ponds were filled between golf holes 10 and 17 to construct the current golf course. Given the extensive populations of California red-legged frogs that remain on the site, the ponds likely harbored populations and must have constituted breeding habitat. The loss of this breeding habitat is a significant impact.

California Tiger Salamander Aestivation/Breeding Habitat:

REVISE the text after the second sentence in the paragraph, as shown:

Because construction on the project site has already occurred, it is not possible to determine if and/or how many individual California tiger salamanders were destroyed. The impact to individual salamanders is identified as having been less than significant. The U.S. Fish and Wildlife Service have stated that they believe that the construction of the existing golf course likely resulted in impacts to the California Tiger salamander. It is known~~, however,~~ that approximately three acres of former golf course irrigation ponds were filled between golf holes 10 and 17 to construct the current golf course. Given the observation of a California tiger salamander individual on the site, it is likely that the site previously harbored a population of California tiger salamanders and provided both breeding and upland aestivation habitat. Remnant individuals of this population were and are probably coming from off-site aestivation habitat to use the ponds as breeding sites. The loss of these aestivation and breeding habitats were and are a significant impact.

116 Section IV. Cumulative Impacts; Cumulative Water Supply Impacts:

ADD the following text to the paragraph in this section:

Most planned and new development projected to occur in the project area ~~will occur on agricultural land and undeveloped land, such as the proposed project. In general, agricultural land uses require more water than urban land uses.~~ , including other future golf courses and "induced" growth, will occur on land that is currently in active agricultural use and/or is land designated as "Prime Farm Land" or "Farmland of Local Importance". Land designated as "Prime Farmland" has been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. Irrigated land use is determined by Farmland Mapping and Monitoring Program staff during examination of current aerial photos, local comment letters and field verification. Most urban uses would not use more water than agricultural uses; most would use less water. While the project itself is identified as having substantial water supply impacts, other pending and foreseeable projects would not be cumulatively significant. The pending projects listed on page 117 of the RDEIR are estimated to use approximately 207 acre-feet of water per year when development is complete. Most of these projects are occurring on "Prime Farmland" or "Farmland of Local Importance". Agricultural uses on these same properties (which are allowed by right) would use an estimated 241 acre-feet of water per year under pre-development conditions.

According to Elish M. Ryan of the Santa Clara County staff, the Board of Supervisors approved a future golf course at Harvey Bear Park with the proviso that it would not have significant water demands; the golf course will use native plants and may be

delayed until recycled water is available from the Gilroy/Morgan Hill Wastewater Treatment Plant.

Therefore, the anticipated conversion of agricultural land uses to urban land uses is not likely to result in a substantial increased demand on the existing groundwater supply. The proposed project will not contribute to a significant cumulative groundwater supply impact.

117 Cumulative Special-Status Plant Species (Serpentine) Habitat Impacts:

REVISE the paragraph as shown:

As stated above, much of the development projected to occur in the project area will occur on undeveloped land. Undeveloped land in ~~the Morgan Hill~~ hillside areas around Morgan Hill frequently supports special-status plant species (serpentine) habitat, similar to the proposed project site. Other than Harvey Bear County Park, the other projects listed in Table 5 are not on serpentine soils. The EIR prepared for Harvey Bear County Park states that the adverse impacts to serpentine habitat will be avoided or habitat on the site will be improved through measures included in the project.

The USFWS states in their biological opinion, dated 7/31/01, that regional projects throughout the county will have cumulative impacts on serpentine habitats and the special-status plant species found on serpentine habitat. The construction of the golf course, and its continued operation as proposed, would result in a significant secondary impact due to the loss of serpentine habitat. The proposed project would therefore contribute to a significant cumulative loss of special-status plant species (serpentine) habitat.

Table 5 Pending Development				
Project Name	**Type of Development**	**Status**	**Existing Land Use**	**Approximate Acreage**
Coyote Lake-Harvey Bear Ranch Golf Course	Golf Course	In Process	~~Undeveloped~~ Rangeland	175 Acres
Morgan Meadows	Residential	Partially Complete	~~Remnant Orchard~~ Agriculture	10 Acres
Pritam Gerwal	Residential	Approved	~~Undeveloped~~ Vacant	1 Acre
East Dunne-Trovare	Residential	Under Construction	~~Orchard~~ Agriculture	20 Acres
Condit-Patel	Commercial	Approved	~~Undeveloped~~ Vacant	1.5 Acres
Condit-City of Morgan Hill Soccer Complex	Park	In Process	~~Actively Farmed~~ Agriculture	35 Acres
Condit Road Harley Davidson Dealership	Commercial	Under Construction	~~Orchard~~ Vacant	3.5 Acres
Condit Ford Store	Commercial	Approved	~~Undeveloped~~ Agriculture	6 Acres
Condit-City of Morgan Hill Aquatics Center	Public Facility	Under Construction	~~Undeveloped~~ Agriculture	9 Acres
E. Dunne-Ho	Commercial	Approved	~~Undeveloped~~ Residential	2.5 Acres
Shafer-Bamdad	Residential	Approved	~~Undeveloped~~ Vacant	8.5 Acres

Page 118 Cumulative Surface Water Quality Impacts:

ADD the following to the end of the section:

...The proposed project will contribute to the significant cumulative degradation of surface water quality primarily resulting from the project's use of fertilizers and pesticides on the golf course.

Cumulative Increase In Surface Water Runoff Impacts

Last sentence in the paragraph:

REVISE as shown:

> ...The proposed project will contribute to impacts resulting from significant cumulative increases in surface water runoff, including flooding, because it will divert surface water runoff from one drainage to another. Additional localized flooding problems are anticipated to occur in the project area.

119-120 Section IV.2. Mitigation for Cumulative Impacts:

REVISE the pages as shown:

Mitigation for Cumulative Loss of
Special-Status Plant Species (Serpentine) Habitat

The mitigation measures described in Section III., Secondary Impacts for impacts to special-status plant species (serpentine) habitat would fully mitigate ~~reduce cumulative~~ the project's impacts to serpentine habitat ~~to a less than significant level, but they are not proposed by the project at this time~~. The mitigation recommended by the USFWS has been agreed to by the project proponent, although no legally binding agreement has yet been executed. These measures could be required as conditions of project approval by the City of Morgan Hill

Conclusion: The existing golf course, as currently proposed, will result in impacts to special-status plant species (serpentine) habitat; considered in combination with other regional projects, this impact would be cumulatively considerable. Conformance with the USFWS mitigation for serpentine habitat would fully mitigate the project's impact. The project would not then contribute to cumulatively significant impacts on special-status plant species that are dependent on serpentine habitat. ~~therefore, the proposed project will result in cumulatively considerable impacts to special-status plant species (serpentine) habitat.~~ (Significant Cumulative Impact)

Mitigation for Cumulative Loss of
Special-Status Animal Species and Their Habitat

The project proponent's proposed mitigation measures for the California red-legged frog, California tiger salamander, and western pond turtle are described in the March 3, 2003 letter to the City of Morgan Hill. The letter is included in Appendix C of this

EIR. As proposed, the project proponent's mitigation measures are inadequate to reduce project specific impacts or the project's contribution to cumulative impacts to red-legged frogs, tiger salamanders, and western pond turtles, and to their habitats, to a less than significant level. Two mitigation measure packages, either of which would compensate for loss of habitat and avoid future impacts to the on-site populations ~~reduce the impacts to~~ of red-legged frogs, tiger salamanders, and western pond turtles ~~to a less than significant level,~~ are described in Section II., C., Vegetation and Wildlife. Neither of the mitigation packages are proposed by the project at this time, but they could be required as conditions of project approval by the City of Morgan Hill.

Conformance to the City of Morgan Hill's adopted *Citywide Burrowing Owl Mitigation Plan*, which was adopted for the purpose of mitigating cumulative impacts within the City of Morgan Hill, would reduce the project's cumulative impact to Burrowing Owl.

Conclusion: The existing golf course, as currently constructed, will result in impacts to special-status animal species and their habitat; therefore, the proposed project will ~~result in~~ have cumulatively considerable impacts to special-status species and their habitat. (Significant Cumulative Impact)

Mitigation for Cumulative Surface Water Quality Impacts

INSERT the following into this section:

The mitigation measures identified in the EIR for water quality Impacts, Section II.D. Hydrology and water Quality, would also reduce the project's contribution to cumulative surface water quality impacts to a less than significant level. The mitigation measures include controlling on-site use of chemicals to what is actually required for the immediate needs of the golf course, avoiding runoff of excess chemicals, and protecting on-site waterways through the use of grading and buffers. With these combined measures, contamination of surface runoff will be reduced to negligible levels. ~~They~~ These measures are not proposed by the project at this time, but they could be required as conditions of project approval by the City of Morgan Hill.

Conclusion: The existing golf course, as currently constructed, will result in significant surface water quality impacts; therefore, the proposed project will result in cumulatively considerable surface water quality impacts. (Significant Cumulative Impact)

Mitigation for Cumulative Increase in Surface Water Runoff Impacts

REVISE as shown:

The mitigation measures identified in the EIR for flooding impacts, Section II.D., Hydrology and Water Quality, would reduce the project's contribution to the cumulative increase ins surface water runoff impacts to a less than significant level by reducing surface runoff to levels that existed before the project was constructed. This would consist of diverting runoff now occurring to the Foothill Avenue drainage and San Martin Creek back into Corralitos Creek.

Conclusion: The existing golf course, as currently constructed, will result in flooding impacts; therefore, the proposed project will ~~result in~~ contribute to a cumulatively considerable increase in surface water runoff ~~impact~~. (Significant Cumulative Impact)

125 Section V. Alternatives, B. Reduced Impact Alternative,

REVISE the last bullet on this page as shown:

- Provide confirmation to the satisfaction of the City of Morgan Hill and the SCVWD, that the pumping of groundwater for golf course irrigation will not cause a significant decline in the water table at neighboring properties with the preparation of a detailed groundwater investigation, or by immediately reducing the amount of irrigated turf on the golf course to a maximum of ~~50~~ 100 acres of total turf and associated landscaping area, or otherwise reduce the irrigation water demand of the existing golf course by 50 percent.