



**COMMITTEE FOR
GREEN FOOTHILLS**

Tuesday, February 18, 2014

City of Morgan Hill
Planning Division/Development Services Center
17575 Peak Avenue
Morgan Hill, CA 95037-4128
Attn: Rebecca Tolentino, Senior Planner

Re: Draft EIR for Citywide Agricultural Preservation Program and Southeast Quadrant Land Use Plan

Dear Rebecca,

Thank you for opportunity to comment on the draft Environmental Impact Report for the Citywide Agricultural Preservation Program and Southeast Quadrant Land Use Plan (DEIR). The Committee for Green Foothills (CGF) has submitted comments in the past on the draft Citywide Agricultural Preservation Program, the Notice of Preparation for this DEIR, and the Mitigated Negative Declaration for the Urban Limit Line and Greenbelt Study General Plan Amendment and Related Actions.

After carefully reviewing the DEIR, we have found the document to be substandard in its compliance with the requirements of CEQA. The DEIR violates CEQA by, among other deficiencies, (1) failing to adequately describe the Project, (2) failing to adequately disclose and analyze the significant environmental impacts of the Project, and (3) failing to propose and analyze feasible mitigation measures to reduce the Project's significant environmental impacts.

The 'Project' as defined is a swollen, unmanageable composite of over a dozen individual projects, each of which requires its own separate analysis under CEQA. If the City were considering undertaking any of these new policies, policy changes, and projects separately rather than in a lump, an EIR would be required for each one. However, the DEIR as written not only fails to distinguish between the impacts potentially caused by one component as opposed to another component, it fails in nearly every instance to analyze these impacts at all.

The separate components of the DEIR include:

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1. the Citywide Agriculture Preservation Program (Ag Program)
2. annexation of County lands into City limits
3. expansion of the Urban Service Area (USA)
4. expansion of the Urban Growth Boundary (UGB)
5. expansion of the Urban Limit Line (ULL)
6. creation of a brand-new Sports-Recreation-Leisure (SRL) land use designation
7. creation of a brand-new Sports-Recreation-Leisure zoning district with two subdistricts
8. amendments to the text of the General Plan and the Zoning Ordinance to establish rules and regulations for the new land use designation and zoning district
9. the Craiker Sports Retail/Restaurant project
10. the Puliafico Sports-Recreation-Leisure project
11. the Jacoby Sports-Recreation-Leisure project
12. the Chiala Planned Development project (Chiala PD)
13. the private High School project

Although four of the specific projects above (Craiker, Puliafico, Jacoby, and Chiala) are reported to be not yet at the stage of submitting a project application that may be analyzed at a project level, it is clear that sufficient information is available about the projected type of use on each parcel to analyze reasonably foreseeable impacts at a programmatic level.

The DEIR first lumps together these components into a total of only 7, by combining the annexation and expansions of the USA, UGB, and ULL into one component, by combining the new General Plan land use designation and the new zoning district into one component, and by combining the 4 projects analyzed at the programmatic level into one component. However, the DEIR does not even analyze these 7 components separately. Instead, the DEIR divides its analysis into 2 sections: programmatic impacts (all of the first 12 components above) and project-level impacts (the High School). This improper lumping together of disparate policies, General Plan and zoning code amendments, and individual projects results in a 'project' that is too amorphous, vague and unmanageable to analyze adequately.

In fact, the DEIR suffers from an astonishing lack of analysis on every level, to the point where nearly every potential environmental impact on a programmatic level is either ignored, waved aside as 'self-mitigating,' or dismissed as too speculative.

In addition, the Citywide Agricultural Preservation Program is, as its title suggests, applicable throughout the entire city of Morgan Hill, not only in the Southeast Quadrant. However, the DEIR examines no impacts anywhere outside the boundaries of the SEQ. This alone is a sufficient flaw in the DEIR to render it fatally inadequate under CEQA.

Where, as here, the environmental document fails to fully inform decision-makers, and the public, of the environmental consequences of the proposed actions, it does not satisfy the basic goals of CEQA. See CEQA § 21061. ('The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.') The DEIR should be revised to include a full analysis of each separate component listed above, treating the Ag Program, the USA, the UGB, the ULL, the new Sports-Recreation-Leisure designation and zoning district as separate projects as it does the project-level analysis of the High School.

As a result of the DEIR's inadequacies, the City must revise and recirculate the DEIR to provide the public a complete, comprehensible description of the project, an accurate assessment of the environmental issues at stake, and mitigation measures that fully address the Project's significant impacts.

Due to the gross inadequacy of the DEIR, CGF's comments are not comprehensive but are intended to reflect as many of the shortcomings of the CEQA analysis as time and resources allowed.

THE DEIR'S DESCRIPTION OF THE PROJECT IS INADEQUATE

While extensive detail is not necessary, CEQA mandates that an EIR describe a proposed project with sufficient detail and accuracy to permit informed decision making. See CEQA Guidelines § 15124 (describing the requirements for an EIR). As explained below, the DEIR fails to meet this basic standard.

As discussed above, the Project as proposed is extraordinarily complex, ordinarily requiring an EIR of any one of these project elements, if presented as a stand-alone. Yet the DEIR fails to provide sufficient description in many instances. For example:

Agricultural Lands Preservation Program. The Project location of the Citywide Agricultural Lands Preservation Program (Ag Program) is not defined, the physical conditions of the location are not identified, and a map identifying the boundaries and land uses of the location is not provided.

Sports-Recreation-Leisure Land Designation/Uses. There is no explanation of how the private education, commercial sports/recreation/leisure, and other uses within a portion of the SEQ Area are 'complementary' to the preservation of agricultural lands. DEIR at 2-35. Similarly, the

SRL definition includes an additional goal to support local agriculture and provide markets for 'locally produced goods.' DEIR at 2-45. How will such uses be in harmony with the preservation of agricultural lands when their use necessitates the conversion of agricultural lands and places an urban use adjacent to any remaining agricultural lands? What locally produced goods are they referring to? Where will they be produced? Are the goods in reference to local agricultural products? How will the SRL uses which have negatively impacted agricultural lands provide a market for locally produced goods? This information is necessary to determine the project's environmental impacts, including conversion of Important Farmland to non-agricultural uses, traffic impacts, greenhouse gas emissions, energy consumption and possible hazards, among other impacts.

The DEIR defines SRL 'to allow a wide range of sports-recreation-leisure themed uses that are private commercial, retail, and/or public/quasi-public at a scale that creates a destination area for both regional and local users, and offers a high-quality, attractive, health-oriented, fun destination for regional and local users in a manner that supports the city's economic development, city identity and greenbelt goals.' DEIR at 2-45. However, it does not explain why certain commercial uses currently included in the zoning code are permitted in the SEQ Area, such as gas stations, boutique hotels and County Fairgrounds, and others, such as day spas and campgrounds, are not. No explanation is given as to what lesser physical impacts these conditional uses would have on the environment that justifies their inclusion in the SRL zoning district versus others. Further, the DEIR does not explain how the consumption of agricultural land is needed for commercial uses when the City already has an adequate supply of this type of land.¹ See CEQA Guidelines §15126.2 (c) ('Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.')

Boundary Changes. The proposed boundary changes surround 329 acres of the Agriculture Priority Area (DEIR at Appendix K, Page 11) with urban boundaries, essentially creating an urban island. The Project needs to acknowledge this impact and evaluate its land use planning and growth inducing impacts, and its compatibility with the proposed objective of continued agricultural uses in this Agricultural Priority Area.

¹ Per City of Morgan Hill Community Development Department Memorandum to Planning Commission dated July 23, 2012 (<http://www.morganhill.ca.gov/DocumentCenter/View/11154>) 'Morgan Hill has more retail than is currently supported by demand as identified in the General Plan Update 'Economics White Paper.' See also Morgan Hill 2035 Existing Conditions White Paper on Economics, 1-25, http://morganhill2035.org/wp-content/uploads/2013/05/1_Economics.pdf

It is reasonably foreseeable that establishment of these boundaries, including the ULL, will ultimately lead to a conversion of farmland. In fact, it is more than reasonably foreseeable, it is quite obvious since the nature of establishing a ULL boundary is to provide an envelope for future development. DEIR 2-41. It is the clear intent and purpose of establishing the ULL to outline future development, a main purpose of the Project, and if this purpose is not even a remotely foreseeable possibility, there would be no reason to include it as the major component of this project.

Programmatic Project Applications. Of the four programmatic Project applications, the Craiker and Chiala PD projects have in the past provided the City with high level schematics of their proposed projects.² In addition, in August 2013, the City of Morgan Hill entered into a Letter of Intent (LOI) with NMSBPCSLDHB LP (i.e. Jacoby project) for the purposes of examining, planning, and evaluating that property for potential ball fields. The City also contracted with Verde Design which fully developed preliminary plans³ for the site that was presented to Council at their December 4, 2013, meeting at which time the Council voted to extend the due diligence period of the LOI by 120 days.

Although we recognize that these projects may not yet have reached the level of project (vs. programmatic) level CEQA analysis, it is clear that the City has sufficient information available about the projected type of use on each of these projects to better define and analyze reasonably foreseeable impacts at a programmatic level. See CEQA Guidelines §21159.

Much more detail is required for each of these Project elements for an adequate analysis of the environmental impacts of this complex project. In the comments CGF submitted on the Notice of Preparation (NOP) for this DEIR, we urged the City not to begin preparation of a DEIR until it

² See February 18, 2010 City of Morgan Hill Public Workshop Presentation – Overview and Land Uses <http://www.morganhill.ca.gov/DocumentCenter/Home/View/3333>

³ See December 4, 2013 City Council Staff Report for Acquisition of Ball Field Property <http://www.morganhill.ca.gov/DocumentCenter/View/11748>. 'Verde presented three optional designs for the site which are presented as Exhibit C. All three designs have the following features in common:

- Total of six fields (four fields with 300' fences suitable for softball and youth baseball and two fields with 360' fences suitable for softball, youth baseball, and teen baseball)
- Remainder parcel reserved for economic development on the north portion of the site
- Minimum of 454 parking stalls (75 stalls per field)
- Supporting features included (lights, drinking fountains, batting cages, etc.)
- Require over 23 acres of the site

had a better defined project, at which point it should have re-circulated the NOP inclusive of those specific project definitions. The unforced error of having proceeded in the absence of accurate information, but with the inclusion of proposed significant amendments to General Plan and Zoning Ordinance language, is made even more regrettable considering the General Plan Update currently taking place presents a more comprehensive and more detailed opportunity to understand the impacts of these changes. Unfortunately, the City has chosen not to include review and discussion of this Project within the Morgan Hill 2035 update, prohibiting intelligent evaluation of the potential environmental effects of the proposed Project within a more appropriate context.

THE DEIR FAILS TO ADEQUATELY DISCLOSE AND ANALYZE THE IMPACTS OF THE PROJECT

AESTHETICS, LIGHT AND GLARE

Conclusion of Less Than Significant Impact Unsubstantiated by Evidence. The DEIR completely dismisses the possibility that there could be any aesthetic impacts from a project that proposes the conversion of what is currently primarily agricultural land with a few low-lying structures, into a highly developed Sports-Recreation-Leisure district where uses ranging from a gas station, to boutique hotels, to indoor rock climbing facilities, to restaurants and retail shops, will be allowed. The DEIR claims that the new proposed uses will be ‘compatible’ with existing uses and thus will have no impact on scenic vistas, the visual character of the area, or sources of light and glare. However, it is not credible to argue that an area that is currently almost entirely undeveloped could be turned into an urban district with structures of 3 stories or more, without having any impact on aesthetic resources. As the DEIR recognizes, the aesthetic values of the Project area include views of the well-known visual landmark of El Toro, as well as of the Santa Cruz Mountains and Mount Hamilton Range. Yet, somehow the DEIR claims that allowing structures of 3 stories and higher throughout the Sports-Recreation-Leisure district will not have a significant impact on these vistas. Finally, the DEIR claims that the creation of the Agricultural Lands Preservation Program will act to protect the scenic and visual characteristics of the SEQ Area, even though, as stated elsewhere in these comments, the Ag Program will rather act to encourage agricultural mitigation elsewhere than in the SEQ Area. The DEIR’s claims are unsubstantiated by evidence.

Scenic Vistas Would Be Significantly Impacted by the Project. CEQA requires that an EIR evaluate impacts to scenic vistas in the project area. In this case, as the DEIR recognizes, both the City of Morgan Hill and the County of Santa Clara General Plans consider the views of the

hillsides from the valley floor to be scenic characteristics of the area. In particular, El Toro, a distinctive hill dominating the views to the west of Morgan Hill, is such an iconic landmark for the area that it is incorporated into the City's seal and official logo. The DEIR states that under current conditions, views of these hillsides from the project area are largely unobstructed.

Under the proposed project, structures would be allowed of up to 3 stories (40 feet) in Subdistrict A, and there would be no maximum height limit in Subdistrict B. In fact, the high school has proposed a site plan that will include at least one structure of 55 feet. The DEIR claims that, since Subdistrict B would be near Highway 101 and there are existing 'commercial and athletic facilities' adjacent to this location, there would be 'little to no impact' on views of El Toro or the hillsides. DEIR at 3.1-12. However, since the 'athletic facility' in question consists of an outdoor swimming pool with associated low-lying structures, this is hardly an argument that new structures for which there would be no maximum height limit would have no impact on existing views. In addition, this argument only applies to Subdistrict B. Subdistrict A, which would allow structures of up to 40 feet, would extend into the center of the SEQ Area, hardly adjacent to Highway 101. As for the eastern portion of the SEQ Area (including the Chiala Planned Development), the DEIR states that adding new Sports-Recreation-Leisure uses would 'not be significantly different from a visual perspective' from the existing open farmland and rural residential uses. The DEIR cites the 35-foot height limit that would be imposed as ensuring that new development would be 'compatible' with existing uses. DEIR at 3.1-12. However, the great majority of this area is currently open farmland, not existing residential uses; and of the existing residences and structures, all are low-lying. Adding 35-foot-tall buildings would certainly impact views from this area.

The DEIR also relies on the Agricultural Lands Preservation Program to avoid any impacts to scenic vistas in the Project area, stating that this program 'would be expected to keep a large portion of the SEQ in agricultural production for the foreseeable future' (DEIR at 3.1-13). However, as stated elsewhere in these comments, the Ag Program is more likely to encourage preservation of agricultural land outside of the SEQ Area. Thus, the Ag Program cannot be expected to prevent development in the SEQ or reduce impacts to scenic vistas.

Visual Character Would Be Significantly Impacted by the Project. CEQA requires that an EIR evaluate impacts to the visual character of an area. In this case, the visual character of the SEQ Area is of undeveloped open space with an occasional rural residence or low-lying agriculture-related structures such as sheds or greenhouses. The DEIR states that there is 'a feeling of rural open space' in this area (DEIR at 3.1-1). The photos provided in the DEIR, which show flat,

grassy fields or expanses of row crops, with views of the hills in the background, demonstrate this visual character of the SEQ Area.

What the Project proposes is the wholesale conversion of this rural, open-space farmland into a highly urbanized and developed Sports-Recreation-Leisure district. As described in the DEIR, even in the less intensively-developed Subdistrict A, allowable uses would include 'high-tech sports and recreation facilities' such as paintball, lasertag, and arcades; indoor facilities for rock climbing, gymnastics, and martial arts; outdoor theaters; grandstands and bleachers; and many other uses. The notion that these uses would not alter the visual character of what is currently quiet, undeveloped land is ludicrous.

Again, the DEIR claims that the new uses proposed by the Project would be 'compatible' with the existing visual character of the area, and again, the DEIR relies on the Agricultural Lands Preservation Program to ensure that the SEQ will remain undeveloped. These arguments do not have credibility.

The DEIR even goes so far as to claim that the High School will not impact the visual character of the area because it would be contiguous to and compatible with the new proposed uses resulting from the Project. DEIR at 3.1-16. As CEQA makes clear, an EIR must evaluate a project's impacts against the existing baseline conditions – not against another aspect of the same project or against what the conditions will be after the project is built out.⁴

Insufficient Analysis of Effects of Light and Glare of the Proposed Project. As the DEIR recognizes, the existing levels of light and glare are very low, as is to be expected considering that the SEQ Area is predominantly open fields and farmland. Under the proposed Project, the sources of light and glare would increase dramatically. Parking lots, building-mounted exterior lights, street lighting, illuminated signage, and floodlighting of outdoor sports fields and recreational areas, would all contribute to a significant increase in the amount of light and glare.

The DEIR's analysis of these impacts is almost non-existent. The DEIR simply states, without reasoning or evidence, that the light and glare from the new proposed Project uses would be 'similar in intensity and nature' to the existing conditions. This is patently absurd, especially

⁴ Although the DEIR does not provide any visual simulations of the private high school, Project proponents have provided one at the bottom of their website page <http://morganhillfarmsandfields.com/interviews/> (accessed February 18, 2014).

coming directly after the DEIR's acknowledgement of the new sources of light and glare listed above.

The DEIR's discussion of the High School project illustrates the impacts that are likely to result from the Project as a whole. The High School is expected to have night lighting of the parking lots, football stadium, track/field facilities, and other areas for security purposes. The residences adjacent to the High School are considered sensitive receptors, and nighttime lighting is also a concern for the Lick Observatory on Mt. Hamilton (15 miles north of the Project site). All of these concerns are also present for the Project site as a whole.

In sum, the DEIR's analysis of the Project's potential impacts to aesthetics, light and glare is inadequate. The DEIR must be revised and recirculated for comment.

AGRICULTURAL RESOURCES

Insufficient Data to Estimate Conversion of Agricultural Lands. The DEIR does not provide the necessary information to adequately estimate the acreage of farmland that will potentially be converted to non-agricultural uses in the SEQ Area (Program Level). The DEIR claims there is a potential for approximately 120 acres of important farmland to be converted to non-agricultural uses in the SRL area. It does not include the potential acreage of important farmland that may be converted to non-agricultural uses under the Chiala Planned Development or those that will be inside the ULL. Such an approach conflicts with the requirements of CEQA. See CEQA Guidelines §15126 ('All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.').

In the program description, the Chiala PD proposes to have 76 acres for residential estate-sized lots (excludes existing 31 acre homesite) and 86 acres of sports-recreation-leisure in addition to the 114 acres of agricultural-related uses. DEIR at 2-55. The residential and SRL uses clearly point to uses that will cause the conversion of agricultural land to non-agricultural uses. The description of the Chiala PD needs to provide enough data to clarify its legitimate development potential in order to approximate the amount of agricultural land converted to non-agricultural uses. In addition, the lands proposed to be brought inside the ULL are intended for urban development in the long-term. Therefore the loss of these lands to development must be included in the analysis as well. Williamson Act lands should be included in these estimates as non-renewal of contracts is highly probable given the inclusion of these lands within the ULL.

The validity of the approximate acreage should be clarified using map overlays (i.e. boundary lines, parcel size) on the Project area or alternatively, provide a matrix identifying the Assessor Parcel Number of each parcel, the total acreage of the parcel, the farmland classification of the parcel, and the amount of acres per classification.

Changes to Environment Will Impact Surrounding Agricultural Lands. The DEIR claims that the proposed Project would not create land use compatibility conflicts that would result in the premature cessation of nearby agricultural land use activities. DEIR at 3.2-23, 3.2-24. The conclusion is based on 'land use changes and boundary adjustments having the effect of deterring the creation of pressures to convert agricultural land located outside of the USA to non-agricultural uses.' DEIR at 3.2-24. The DEIR fails to acknowledge that 329 acres of the Agricultural Priority Area is proposed to be brought inside (north of) the ULL. This boundary defines the ultimate limits of city urbanization beyond the 20-year timeframe of the UGB. DEIR at 2-41. It also fails to recognize that parcels with a Farmland Mapping and Monitoring Program designation of Prime Farmland – including three currently encumbered by Williamson Act contracts - are contiguous with the proposed USA boundary. These two boundary changes would immediately raise the speculative value of the lands. It would also place parcels with land designated as Prime Farmland adjacent to urban development, subjecting these lands to urban encroachment. By virtue of the City's General Plan *Policy 2c* and *Action 2.1* of the Community Development Element, these lands could be considered for future urban development. Taken together, it is fair to argue that the proposed Project would increase the probability of future urban development on the lands within the Agricultural Priority Area. So it is very reasonable to conclude that the land use changes and boundary adjustments could strongly facilitate land use compatibility conflicts resulting in the conversion of nearby agricultural lands. Therefore, the potential loss of these lands to development must be included in the analysis as well. See CEQA Guidelines §15126.2 ('Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.'), §15358 (2) ('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.'), and §15384 ('Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.')

Conflicts with Lands Encumbered by Williamson Act Contracts. Per the discussion above, there is substantial evidence to argue that Williamson Act lands will be impacted by the boundary changes. Inclusion of these lands inside the ULL and in some cases contiguous with the USA could reasonably cause the non-renewal of Williamson Act (WA) contracts on these parcels.

Indeed, one of the properties encumbered by an active WA contract is included in an area proposed for annexation. Thus all WA parcels north of the ULL should be included in estimating impacts to surrounding agricultural lands within the SEQ Area.

Furthermore, the DEIR states that should any of the WA contracts require cancellation as a prerequisite for annexation, termination via premature cancellation or protest on the part of the City would 'self-mitigate' the impact of cancelling an existing contract thus removing any conflict. Thus it concludes that the impacts would be less than significant. DEIR at 3.2-22. However, CEQA requires that impacts be determined based on the existing physical conditions in the affected area 'as they exist at the time of the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced.' See CEQA Guidelines §15125 (a) and §15126.2 (a). Premature termination of an existing WA contract for the purposes of implementing the Project is a significant effect and not a mitigation measure. See CEQA Guidelines Appendix G II (b). The DEIR must recognize the level of impact and either propose feasible mitigation or change the Project to avoid the impact. See CEQA Guidelines §15126.2 (b). The DEIR should analyze how the premature termination of any WA contract is consistent with the City's Open Space and Conservation Element *Policy 1f* and the County of Santa Clara General Plan Policy *R-RC 66*.

Conflicts with Existing Zoning for Agricultural Uses. The DEIR states that the 'proposed pre-zoning would reconcile any inconsistencies with the existing agricultural zoning for the areas proposed for annexation.' DEIR at 3.2-22. It further states that the inconsistencies with the existing designations or zoning is an element of the project itself and doesn't constitute an environmental effect. This is patently false. The CEQA requirement of evaluation of the impacts of failure to comport with local land use plans cannot be sidestepped by a mere statement that after the plan or zoning is amended to comply with the project, then the project will comply with the plan or zoning. General Plans are intended to guide land use policy and to control where various uses are located – they are not intended to be changed every time a landowner wishes to put land to some use not included in the General Plan. If it were so, General Plans would be completely useless.

The DEIR's assumption that the putative future state of the General Plan may be relied on to conclude that the project does not conflict with the actual current state of the General Plan, could be considered to be either an impermissible baseline (since it assumes that current conditions are other than what they are) or an impermissible mitigation measure (since it relies on tentative future agency action). The DEIR must evaluate the impact the change in zoning would have on the existing zoning for agricultural lands. In fact, an amendment to a General

Plan is itself an agency action requiring CEQA analysis. This highlights the fact that the impacts from the Project's proposed change in land use must be reasonably analyzed in this DEIR.

Use of LESA Model Will Impact Determination of Significant Effect of Agricultural Lands Converted to Non-Agricultural Uses. The DEIR should evaluate how the use of the Land Evaluation and Site Assessment (LESA) Model will impact the acreage of agricultural lands subject to mitigation. The LESA Model evaluates whether the conversion of farmland to non-agricultural use is considered a significant impact. The evaluation is divided into two categories. The Site Assessment category analyzes factors such as the size of the Project site, availability of water resources, the amount of surrounding farmland, and the amount of lands surrounding the Project that are protected. Should the Site Assessment category (or the Land Evaluation category) score less than 20 points, conversion of agricultural lands is found to be less than significant. The High School Site scored a Site Assessment total of 24.75; a mere 5 points less and the conversion of the more than 38 acres of Prime Farmland on that site would have been found to be less than significant under the LESA Model methodology. As agricultural lands in the SEQ Area are converted project by project to non-agricultural uses, it is likely that a substantial amount of Important Farmland converted to non-agricultural uses will fail to meet the 20 point threshold of the Site Assessment category and thus will not be subject to mitigation. So application of the LESA Model could severely impact achieving the stated goals of the Project, including those of the proposed Agricultural Lands Preservation Program. Since the LESA Model is an optional model to calculating the level of significance of converting agricultural lands to non-agricultural uses, the City should consider either an alternative methodology or modifications to the Model to ensure it can sufficiently meet its proposed Project goals.

BIOLOGICAL RESOURCES

The DEIR concludes that there is no significant impact to biological resources from the Project based on inadequate surveying. Several sensitive species have the potential to exist on or near the Project site, but the DEIR concludes based on a single survey that there are no significant potential impacts to these or other species. Adequate plant and wildlife surveys must be performed, and the DEIR must be revised and recirculated for comment.

According to the California Natural Diversity Database (CNDDDB), a total of 12 special-status plant species and 4 special-status wildlife species have been observed within 5 miles of the SEQ Area. DEIR at 3.4-7. The DEIR states that a reconnaissance survey was conducted in May 2011 that did not identify the presence of any of these species on the Project site. However, a single

survey is not adequate to evaluate the possible presence of special-status species on this site. For example, the Project site contains suitable breeding habitat for California red-legged frog (CRLF) in the ponds and wetland areas; however, it is unlikely that a survey conducted in May, after CRLF breeding season is over, would identify CRLF at the breeding sites. Additional surveys must be performed to properly evaluate the potential for impacts to special-status species.

The DEIR concludes that the Project site contains suitable habitat for several special-status species, including CRLF, tiger salamander, Pacific pond turtle, northern harrier, golden eagle, merlin, white-tailed kite, burrowing owl, pallid bat, and American badger. However, the DEIR dismisses the potential of impacts to these species by claiming that 'existing land use activities within these areas are expected to experience little to no change.' The DEIR does not identify these areas; however, considering the variety of special-status species with habitat present on the Project site, the argument that this habitat must be limited to areas where land use activities will not change makes no sense. The habitat identified in the DEIR comprises various different areas, including ponds and wetlands, grasslands, trees, and even structures (utilized by bats for roosting). Therefore, it is not possible to state that special-status species habitat is confined to a particular area of the Project site. In fact, the only project analyzed at a project level (the High School) was found to contain a known owl roosting site and likely owl nesting site.

The DEIR further claims that 'it would be speculative to attempt to predict such impacts at a programmatic level.' DEIR at 3.4-25. Programmatic EIRs are not expected to evaluate potential impacts with the same level of detail as project EIRs; however, some analysis is required when a project proposes, as this one does, to radically change the intensity and type of land use over a huge area. For example, it is not hard to predict that the conversion of hundreds of acres from farmland and grassy areas to developed uses with structures and impervious surfaces will have a significant impact on the presence of foraging ground for raptors such as golden eagle and northern harrier. Similarly, an increase in impervious surfaces due to parking lots and driveways may adversely affect levels of vehicle-related pollutants and contaminants in stormwater runoff into the creek, pond and wetland habitat present on the Project site and which provides habitat for CRLF and tiger salamander. These are impacts that can be identified, even at a programmatic level.

The DEIR uses similar arguments to claim that there are no significant impacts to riparian areas or wetlands on the Project site, or that they are too speculative to analyze at the programmatic level. Again, even in the area proposed to be designated as Open Space, the proposed Project would allow Sports-Recreation-Leisure uses, including a possible culinary center, equestrian

facility and sports fields. The increase in impervious surfaces for parking lots and driveways associated with these facilities alone may have a potential impact on riparian areas and wetlands, even if no other impacts can be identified at this stage. These impacts should be evaluated in the DEIR.

LAND USE

Inconsistency with City of Morgan Hill General Plan and Municipal Zoning Code. The DEIR proposes text amendments to the General Plan and states that these amendments are ‘self-mitigating’ and resolve any inconsistencies with the General Plan. DEIR at 3.9-11 and 3.9-25. As previously pointed out in our comments on the Agricultural Resources section, the CEQA requirement of evaluation of the impacts of failure to comport with local land use plans cannot be sidestepped by a simple statement that after the General Plan is amended to comply with the project, then the project will comply with the plan. It is speculative to assume the presumed future state of the General Plan may be relied on to conclude that the Project does not conflict with the actual current state of the General Plan. This is an impermissible baseline (since it assumes that current conditions are other than what they are) and an impermissible mitigation measure (since it relies on tentative future agency action). Again, an amendment to a General Plan is itself an agency action requiring CEQA analysis.

Inconsistency with County of Santa Clara General Plan. The DEIR erroneously claims that the Project is consistent with the County of Santa Clara General Plan. The DEIR fails to list General Plan Policies:

- *R-LU 170* – a policy specific to Morgan Hill’s UGB area (‘Consider modifications to the UGB location only in conjunction with a comprehensive City General Plan land use element update, which occurs on an approximately 10 year interval, unless triggered by the established criteria, findings, or prerequisites, to ensure coordination between relevant land use planning issues and growth management considerations.’) and,
- *C-GD 12* (‘Annexation outside of Urban Service Areas shall not be permitted.’)

While the City has insisted that the Project remain outside of the scrutiny and analysis of the Morgan Hill 2035 General Plan update, *Action 3.6* of the Morgan Hill General Plan Community Development Element (at p. 25) states that the ‘[p]lanning of the Southeast Quadrant may occur as part of the next comprehensive General Plan Update.’ Thus, both General Plans indicate a need to use the General Plan update in which to review the type of boundary changes proposed in the Project. Moreover, the County’s General Plan policies were adopted for the purpose of managing urban expansion and encouraging compact and concentric urban growth. Clearly, the Project’s proposal to significantly expand the UGB outside of a General Plan update and annexation of these lands outside of the USA (DEIR at 2.-55) is inconsistency

with these land use policies and implementation of the Project would constitute an adverse environmental impact. See CEQA Guidelines Appendix G, X (b).

CUMULATIVE IMPACTS

The DEIR's cumulative impacts analysis is inadequate. Because the DEIR concludes that the proposed project will not have any significant impacts on a variety of areas, including Aesthetics, Agricultural Resources, Biological Resources, Land Use, and other areas, the DEIR proceeds to conclude that there are no cumulative impacts in these areas to which the proposed Project contributes significantly. However, as explained above, the DEIR's reasoning as to the significance of the project's impacts is flawed and based on insufficient evidence. For example, the Project as bounded by the ULL together with actions to annex and convert away from farmland the parcels within the ULL is reasonably foreseeable as a cumulative impact. From a practical viewpoint, it should be clear that landowners within the ULL will seek annexation when possible, and will loudly trumpet the fact that they are inside the ULL as an additional reason for their annexation to proceed. This cumulative impact is one among others that are foreseeable, and must be addressed.

The DEIR must be revised to provide an adequate analysis of the Project's cumulative impacts.

GROWTH-INDUCING IMPACTS

CEQA Guidelines §15126.2(d) requires that an EIR analyze "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." The DEIR claims that growth-inducing impacts would be less than significant because "[t]he SRL land uses are non-residential in nature and thus do not have the potential to directly influence growth (i.e. develop new dwelling units)" and because the new residential development in the Chiala PD would constitute only 38 units. DEIR at p. 6-3.

CEQA analysis of growth-inducing impacts focuses not on whether the proposed project itself is residential in nature, but on whether the project has the potential to induce economic or population growth in the surrounding environment. Here, the Project clearly has the potential to induce growth. The stated objectives of enhancing job creation and economic development, and strengthening the City's identity as an active, healthy, quality, fun, family-friendly community, clearly anticipate drawing more economic development and growth to Morgan Hill as a result of the Project. The DEIR cannot rely on current zoning or land use designations to

claim that residential growth will not be possible; courts have held that current zoning is not determinative of potential for future growth.

Furthermore, the DEIR's claim that no residential growth will occur even on Project lands in the SRL district, disregards the fact that under the proposed SRL land use designation language, one of the permitted uses in the SRL would be single-family residences. See § 18.27.020 of draft text of 'Sports-Recreation-Leisure (SRL) Theme District,' proposed Chapter 18.27 of the General Plan. In addition, the assumption that 38 new residential units (the number cited as proposed for the Chiala PD) is per se an insignificant amount of residential growth is not supported by any evidence or reasoning in the DEIR.

The DEIR further claims that expansion of the USA will have no significant growth-inducing impacts because only 'portions' of the SEQ Area already contain water and sewer infrastructure. DEIR, p. 6-4. The DEIR seems to indicate that this infrastructure is not co-extensive with the entire area to be included in the new USA; therefore, to claim that there will be no significant growth-inducing impacts from expansion of the USA is without basis in evidence.

Finally, the establishment of the ULL clearly communicates that the City anticipates eventual urbanization of lands within the ULL. This expectation of future growth contradicts the claim that there are no significant growth-inducing impacts.

CEQA ANALYSIS OF CITYWIDE AGRICULTURAL LAND PRESERVATION PROGRAM REQUIRED

CEQA analysis of the Citywide Agricultural Land Preservation Program (Ag Program) was not included in the DEIR and is required per PRC §21080 and CEQA Guidelines §15378. Since the Ag Program is proposed to be adopted as a citywide program that 'is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies', the impacts of the policy must be analyzed as they apply to all applicable lands within the City's jurisdiction as well as the proposed expansion of this jurisdiction per the DEIR. A description of the applicable boundary, a boundary map, a map identifying the land classifications within the City of Morgan Hill's Sphere of Influence, and a matrix identifying parcels subject to the Ag Program needs to be included.

The Ag Program contains numerous components, policies, and statements that are contradictory not just amongst themselves, but with existing local and regional land use policies and plans. The following identifies just *some* of the many key issues of concern with the Ag Program as included in Appendix K.

Agriculture Priority Area. The Ag Program identifies the SEQ as being ‘of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI’. According to the Ag Program, the Agricultural Priority Area (Area) within the SEQ is intended to:

- identify the ‘priority location to preserve and encourage the long-term viability of agriculture and Open Agricultural Lands’ within Morgan Hill’s SOI;
- recognize ‘those lands within the Morgan Hill SOI most suitable for agricultural production and related uses’;
- provide ‘stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry’;
- ‘retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.’

However, there is a complete lack of evidence to support that the Area chosen meets these criteria or the criteria listed in the *Eligible Mitigation Lands* section of the Ag Program. The DEIR needs to provide substantiating documentation to clarify how the Area meets these criteria, especially in light of the fact that 329 acres of the Area are proposed to be included within the ULL and are therefore ultimately intended for urbanization.

Agricultural Preservation In-lieu Fee. The purpose of this fee is to acquire Agricultural Mitigation Land to provide mitigation at a 1:1 ratio. As stated in the Ag Program, one of its main purposes is the preservation of agricultural lands within Morgan Hill’s SOI with a specific focus on land preservation in the SEQ. DEIR at Appendix K, Page 1. However, the fee is based on the cost of acquisition of a conservation easement in the Gilroy area, which is \$12,750 per acre. The cost of acquisition of a conservation easement in Morgan Hill is \$47,500 (3.72 times greater). Therefore, in order to meet the main purposes of the Ag Program, approximately four acres of qualifying agricultural land would need to be developed to purchase a one acre agricultural conservation easement within Morgan Hill’s SOI. The Technical Memorandum on the Draft Morgan Hill Agricultural Mitigation Fee Nexus Study points out that due to the proposed fee ‘mitigation may not take place in the Morgan Hill target area’. The inescapable conclusion is that the proposed mitigation fee is far more likely to result in loss of agricultural land in Morgan Hill than in its preservation.

Thus the proposed fee conflicts with the proposed 1:1 mitigation ratio and the stated purpose of the Ag Program. DEIR at Appendix K, Page 1. Although, the Ag Program purports that 'funding from multiple sources' will help augment the funds available for acquisition of mitigation lands, it does not clarify what additional funding can reasonably be expected and from which sources.

Per CEQA Guidelines §15131, the DEIR should analyze the economic effects of the in-lieu fee on conversion of agricultural land within Morgan Hill city limits and the impact on the City's objective – and community's desire - to preserve land within Morgan Hill's SOI.

Qualifying Entity. The DEIR should substantiate why the City favors a 'nonprofit public benefit corporation' versus an established local government/public entity such as the Santa Clara Open Space Authority (OSA) which has a well-established public record, transparent governing process, and agricultural representation on its Citizens Advisory Committee. Since the City already participates with the OSA regarding acquisition and development of eligible open space projects and therefore should be very familiar with their qualifications and eligibility as a qualifying entity, this question needs to be addressed.

Measurement of Affected Area. The Ag Program calls for projects with a land use designation of Open Space, Public Facilities, or SRL to be subject to mitigation based on their developed footprint only, per the Santa Clara Valley HCP/NCCP. DEIR at Appendix K, Page 10. A nexus between the mitigation measure for endangered species habitat and agricultural lands within the City of Morgan Hill's SOI should be established to substantiate this measure.

The Ag Program claims that lands converted to uses allowed under these designations, such as the proposed private high school or sports retail/restaurant facility, could reasonably be expected to return to agricultural uses. DEIR at Appendix K, Page 10. It is extremely speculative to conclude that a private landowner or the City would pay to revert built-up, urban lands back to agricultural uses once converted. It is also speculative to assume that 10 acres of aggregated lands for 'open space/open fields' under these designations is comparatively more desirable for some speculative future agricultural operations than the same aggregated 'open space' designated areas of commercial, residential, or industrial projects.

Per the Ag Program, one of the criteria disqualifying land to serve as mitigation lands (see *Ineligible Mitigation Lands*) is property 'subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.' Pursuant to this, the undeveloped portion of a parcel/project site that has been rezoned for non-agricultural uses, should be subject in its entirety to mitigation as it could not serve as mitigation lands.

Simply put, agricultural lands that have undergone a change to their existing physical condition are for all intents and purposes taken out of agricultural use, which constitutes a significant impact and must be mitigated regardless of any unsubstantiated claim that they may revert to their previous use at some unknown point in the future.

Draft Agricultural Preservation General Plan Policies. The DEIR needs to analyze how these policies will achieve the stated purpose of the Ag Program, not conflict with current General Plan policies, and whether the SEQ Land Use Plan conflicts with the current and proposed policies. For instance, the DEIR should analyze how the SEQ Land Use Plan would not conflict with General Plan Policy 3i, 3m, and 3o in the Open Space and Conservation Element. Or, how termination of a Williamson Act contract because of its inclusion in the UGB encourages its contractual protection. Or, how abutting the USA and intensive urban land uses next to parcels encumbered by the Williamson Act encourages their contractual protection. Or, how abutting three sides of prime farmland in the Ag Priority Area with at least one city boundary line avoids the creation of small or isolated areas for Agricultural Mitigation Lands. Or, what would be the proposed language to amend the existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of the Ag Program? What would be the impacts of this change?

The Ag Program should clarify what criteria will be used to determine whether Planned Development Zoning and/or a Development Agreement will 'result in equal or greater agricultural benefit than would result from standard mitigation requirements'.

CONCLUSION

As previously stated, the DEIR's description of the project, its impacts, and mitigation measures are wholly inadequate under CEQA. The comments we have provided here are not exhaustive in any fashion as furnishing the City with comprehensive comments on the substandard analysis contained in this DEIR would require a greater effort than our time and resources allow by the comment deadline.

In conclusion, the DEIR should be revised to include sufficient data and analysis that meet CEQA requirements and recirculated for comment.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Julie Hutcheson". The signature is written in a cursive style with a large initial "J" and "H".

Julie Hutcheson
Environmental Advocate