



COMMITTEE FOR  
GREEN FOOTHILLS



Santa Clara Valley  
Audubon Society



Friday, April 7, 2017

David Rader  
Santa Clara County Planning Office  
County Government Center  
70 West Hedding Street, 7<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

**RE: Draft Environmental Impact Report Young Ranch Residential Project**

Dear Mr. Rader,

Committee for Green Foothills, the Santa Clara Valley Audubon Society, the Sierra Club Loma Prieta Chapter, and Greenbelt Alliance respectfully submit this joint comment letter for the Young Ranch Residential Project Draft Environmental Impact Report (DEIR).

Our environmental organizations represent thousands of members in Santa Clara County and in other counties throughout the Bay Area. Our members value open space and natural resources, and are concerned with sprawl and its direct and indirect impacts on natural resources.

We understand this iteration of the proposed Young Ranch residential project (Project) to be very similar in nature to the Young Ranch project the Santa Clara County Planning Commission, in April 2014, determined was inconsistent with the General Plan and Zoning Ordinance. The notable difference with this version of the Project is the introduction of a Zoning Ordinance text amendment to allow a site specific transfer of density from parcels located within the City of San Jose's jurisdiction to parcels within the County's jurisdiction. The previous application had instead proposed detachment/de-annexation of the San Jose parcels to gain the additional acreage for an increase in density.

The proposed Zoning Ordinance text amendment is no less problematic than the proposal for detachment because both require the consent of the City of San Jose (City) in order for the Project to be implemented. The City of San Jose's communications on the Project clearly indicate that the City does not support any of the proposed actions since they conflict with San Jose's General Plan and long-standing countywide rural and urban development policies.

The DEIR concludes that the Project would be inconsistent with a substantial number of General Plan policies resulting in significant and unavoidable impacts to areas of Aesthetics, Land Use and Transportation/Traffic. We concur, but further find the DEIR violates CEQA by (1) failing to adequately describe the Project; (2) failing to recognize the City of San Jose as a Responsible Agency (and to list agencies that were notified); (3) failing to adequately disclose and analyze environmental impacts; and (4) failing to analyze a feasible alternative to reduce the Project's significant environmental impacts while meeting project objectives.

#### **PROJECT DESCRIPTION IS INADEQUATE**

The DEIR at 3.10-15 finds the Project would conflict with general plan policies that have been adopted to mitigate significant environmental effects (*see* Impact LU-2) and that the impact would be significant and unavoidable. Approval of the Zoning Ordinance text amendment would create serious inconsistencies in both documents and therefore require amendments to County and City general plans.<sup>1</sup>

Per the City's June 20, 2016 letter, the Project proposes urban level development that would require amending the City's Urban Service Area (USA) and Urban Growth Boundary (UGB) in order to be consistent with most of the related General Plan policies. It would also require an amendment to the General Plan,<sup>2</sup> which would trigger a need for a ballot measure to amend the City's UGB which is voter approved (Measure K, 2000). Amending the City's USA would require approval from the Santa Clara County Local Agency Formation Commission (LAFCO).

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<sup>1</sup> County Zoning Code § 5.75.040 Findings. The proposed zoning amendment must be consistent with state law, the general purposes of the zoning ordinance and the general plan, and the land use designations in the general plan.

<sup>2</sup> "Major Strategy #10 states the City should limit urbanized areas to properties located within the Urban Growth Boundary (UGB), specifically within the Urban Service Area (USA) where services can be provided. The subject site is outside of both the USA and UGB boundaries and is, therefore, inconsistent with this Major Strategy... In order to move forward with the proposed development, the applicant would need to propose a General Plan Amendment and a significant modification to the UGB."

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 and so these necessary project components need to be included in the project description. See CEQA §§ 15124 and 15378.

The project description fails to list these crucial components and the discretionary actions they would entail: the approval by both the County Board of Supervisors and the San Jose City Council of amendments to their respective general plan; and/or amending the City's USA and UGB, and the passage of a ballot measure amending Measure K.

### **DEIR FAILS TO ANALYZE IMPACTS OF PROJECT COMPONENTS**

The DEIR's failure to include the County and City general plan amendments or the amendment of the City's USA and UGB and passage of a ballot measure amending Measure K improperly segments CEQA analysis of these important components of the Project. See CEQA §§ 15378 and 15003(h). Segmenting the analysis may diminish impacts resulting from implementation of the Project.

As a Responsible Agency under CEQA for this project,<sup>3</sup> the City must rely on the EIR to approve key elements of the Project (e.g. General Plan amendment, permitting road access, providing services). The DEIR should acknowledge the status of the City as a Responsible Agency and analyze all impacts associated with the discretionary approvals it will need to take.

### **DEIR SHOULD EVALUATE ALL RELEVANT ENVISION 2040 GENERAL PLAN POLICIES**

The same principal above applies here in that the DEIR fails to analyze the City's relevant General Plan policies related to discretionary approvals it will need to take and to public services, particularly police and fire protection services, which will be impacted by the Project. The DEIR at 3.14-7 claims that the City has not indicated that it would extend services to the unincorporated area. The reason is the City's General Plan policies that specifically object to the extension of services beyond San Jose's Urban Growth Boundary/Greenline and Urban Service Area. Some of these policies are listed in the DEIR at 3.10-10 to 3.10-11.

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<sup>3</sup> If an amendment to the City's USA is required, then LAFCO would also be a Responsible Agency under CEQA.

Given that the Project is adjacent to the city, located in a Wildland Urban Interface area, and that the County parcels are rated as high for fire hazard severity (DEIR at 3.8-4), it is reasonable to assume that City emergency response services may need to be called upon.<sup>4</sup>

Furthermore, if the City were to amend its USA and UGB to include the Project in its jurisdiction, the Project would receive city emergency and urban services.

Therefore, the DEIR should analyze relevant City General Plan policies related to emergency services despite DEIR claims that mitigation measures for the Project will allow for no impact or a less than significant impacts on County emergency services.

### **FEASIBLE PROJECT ALTERNATIVE THAT MEETS OBJECTIVES SHOULD BE CONSIDERED**

The No Project Alternative assumes that one single family dwelling unit could be permitted on each of the four San Jose parcels based on the City's General Plan. Yet, siting and constructing these homes is quite problematic, i.e. avoidance of the considerable expanse of highly sensitive biological resources<sup>5</sup> and the high economic cost (e.g. Habitat Agency fees) of building. This makes the construction of these four dwelling units highly unlikely and brings into question the feasibility of this component of the No Project Alternative.<sup>6</sup>

The Reduced Development Density Alternative assumes homesites will use an urban water supply instead of onsite well water and will require the City to permit primary road access (as does the proposed Project). The City has clearly indicated that the use of urban services is not acceptable for rural development projects. Therefore, the Reduced Development Density Alternative is not a feasible alternative either.

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<sup>4</sup> In the City of San Jose February 14, 2012 letter to YCS Investments, the claim is made that the Project would require City Fire protection services. Furthermore, the City's General Plan does include policy *ES-3.6 Work with local, State, and Federal public safety agencies to promote regional cooperation in the delivery of services. Maintain mutual aid agreements with surrounding jurisdictions for emergency response.*

<sup>5</sup> DEIR at 4-3: The applicant also considered developing the project site with proposed lots on both the County and City parcels at densities allowed under the County's and City's land use designations. This alternative was rejected due to its inability to avoid significant environmental impacts; and DEIR at 4-4: The City parcels contain the majority of biological resource areas within the project site, and development of the City parcels at allowable densities under the City's land use designations would likely cause significant and unavoidable impacts to biological resources.

<sup>6</sup> This also brings into question any attempt to justify a transfer of density which - based on the County's variable slope-density formula the proposed density transfer - amounts to 10 times that currently permissible under the City's Open Hillside land use designation.

In lieu of a transfer of density and the use of urban services, a more feasible and reasonable alternative would be for the owner to sell or donate<sup>7</sup> the San Jose parcels or the entire project site to the Santa Clara Valley Habitat Agency.

Please analyze a 'Habitat Plan Alternative' that allows the property owner to sell either the parcels under San Jose's jurisdiction or the entire project site to the Santa Clara Valley Habitat Agency. Selling or donating the land to the Agency could help meet the economic and conservation objectives outlined in the DEIR.

### **PROVIDING SIGNIFICANT LEVELS OF NEW INFRASTRUCTURE AND URBAN SERVICES OUTSIDE OF CITY USA AND UGB IS GROWTH INDUCING**

The DEIR at 5-4 recognizes that, if approved, the proposed text amendment to the Zoning Ordinance would set a precedent and be growth-inducing. However, the DEIR at 5-3 erroneously concludes that providing electric, natural gas and (urban) water utility infrastructure to the project area would not be growth inducing in other areas because the project site is partially surrounded by existing residential development. Providing new urban infrastructure outside the City's USA and UGB has the potential to induce growth in adjacent rural areas<sup>8</sup> and could result in significant environmental impacts, in addition to being incompatible with countywide urban and rural development policies.

### **EIR SHOULD OFFER SPECIFIC MITIGATION FOR BIOLOGICAL IMPACTS TO WILDLIFE SPECIES**

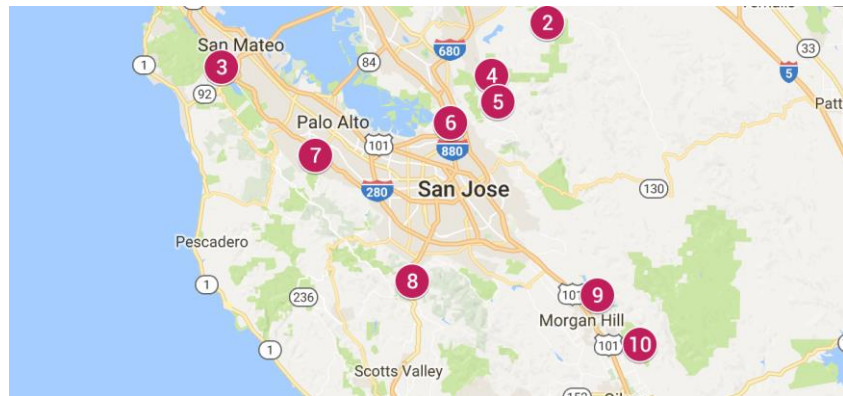
**Golden Eagle.** The EIR proposes that operations may have a significant impact to Golden Eagles, but states, "With implementation of a management plan required by the VHP intended to protect covered species, operational impacts on golden eagle would be less than significant." The Golden Eagle is not a covered species in the VHP. Initially, it was covered, but it was removed as a covered species since including it was determined to be too costly. The EIR should offer specific mitigations for the impact of operations on Golden Eagles.

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<sup>7</sup> Donating the land could provide the seller with considerable tax benefits.

<sup>8</sup> The DEIR at 3.6-2 recognizes that access to groundwater on the project would probably be economically and environmentally infeasible, "Groundwater is very deep (up to several hundred feet) below the ground surface of the site." Therefore, other parcels with a similar issue could potentially be developed regardless of lack of feasible access to onsite well water/groundwater.

**Bald Eagle.** The EIR should acknowledge the potential of Bald Eagles to forage and nest on site and offer analysis and mitigation. Bald Eagle population has expanded in recent years<sup>9</sup> and nest sites are known near the Young Ranch property (Figure 1).



**Domestic cats.** The DEIR (3.4-24) acknowledges the potential for pets (cats and dogs) to prey upon California Tiger Salamander, California Red-legged Frog, Burrowing Owl and San Francisco Dusky-footed Woodrat. All the special-status species listed in Table 3.4-4 should be included in the species that could be vulnerable to predation by domestic cats, and the impact of cats should be determined to be significant and unavoidable, since the proposed “Resource Management Plan” cannot remove domestic cats from their homes even if they evidently impose harm on individuals of listed species.

**Rodenticies.** The DEIR acknowledges the potential for poisoning of Burrowing owl (3.4.27), Golden Eagle (3.4.28), and San Francisco Dusky-footed Woodrat (3.4.30). All of the raptors and other special-status carnivorous species listed in Table 3.4-4 should be included in the species that could be impacted, as well as other species that are likely to be found on the property and have been identified as vulnerable<sup>10</sup> (see Figure 2). Listing of Rodenticides as hazardous materials



(3.8.1) and the proposed “Resource Management Plan” cannot mitigate the impact to a less than significant level because these mitigations cannot stop homeowners from using

<sup>9</sup> <http://www.mercurynews.com/2017/04/03/in-bay-area-bald-eagles-breed-and-soar-once-more/>

<sup>10</sup> <http://caforestpestcouncil.org/wp-content/uploads/2013/01/stella-Mcmillin.pdf>

rodenticides. Direct and secondary poisoning of wildlife should be recognized as significant and unavoidable.

## GENERAL COMMENTS

***Location of affordable housing units inappropriate.*** While it would appear commendable to propose including affordable housing units as a component of the Project, this type of housing is not appropriate for this location. Per the DEIR at 3.16-5, the Project site is not served by public transit and the closest service is almost 2 miles away. There are also no pedestrian or bicycle facilities on the Project site. The lack of reasonable access to public transit creates an auto-centric development that places a deleterious economic and environmental impact on the occupants of these very-low income units. This is not in keeping with City and County policies on circulation, transportation (see DEIR at 3.16-6 to 3.16-10) and health<sup>11</sup>. We oppose non-transit-oriented affordable housing sprawl just as much, if not more so than, market rate housing sprawl for the unnecessary burden it places on the tenants of these residences.

***Explain State density bonus calculation and enforcement of permanent restriction on affordable units.*** The Project proposes an additional density bonus of 9 lots via State law (Government Code Sections 65915 – 65918). To qualify for this density bonus, the Project will include four affordable secondary housing units that would be permanently restrict rent to very low-income household. Please explain how the State density bonus was calculated including the calculation for the affordable units.

The DEIR at 2-9 claims the “affordable units would likely be controlled by recorded covenants, conditions, and restrictions (CC&Rs) that run with the land. The CC&Rs would be enforced in perpetuity by the Young Ranch Homeowners’ Association or another entity approved by the County.” Please explain when the decision will take place to settle the means and the entity to permanently enforce the affordability of the units.

***Consider using City’s Open Hillside Slope Density Formula.*** The parcels from which the transfer of density is proposed are located under the City of San Jose’s jurisdiction and are designated Open Hillside in its General Plan. Since these parcels will remain within the City’s jurisdiction its Open Hillside Slope Density Formula should be used to calculate the potential density for the Zoning amendment.

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<sup>11</sup> See policies HE-C.10 and HE.C-12 of the County’s Health Element.

**Consider visual/aesthetic impact to adjacent residential area.** The DEIR at 3.1-25 concludes that the Project would have a less than significant impact on the existing visual character or quality of the site and its surroundings (Impact AES-3). While not identified as a scenic view or public viewpoint, the viewshed of the city residences directly looking out onto the project site will be significantly affected by the increase in density beyond that which is permissible under the County and City general plan. Residents in these homes have a reasonable expectation per the County and City general plan policies that any development in this area will be consistent with those general plans and be low density and rural in nature.

**Explain monitoring of County easement.** The DEIR at ES-2 states that open space areas on the County parcels would be preserved in perpetuity through dedication of an open space easement that would be owned by the County. Please explain how the County intends to monitor these open space areas to ensure they are being properly managed in support of their natural state/sensitive habitats to avoid potential future environmental impacts.

**Clarify that proposed project is not currently covered under SCVHP.** The DEIR at 2-21 states the proposed project is covered under Santa Clara Valley Habitat Plan (Plan). It should be noted that the proposed project is not currently covered under the Plan. One of the purposes of the Plan is to facilitate economic growth *compatible with approved local land use plans*.<sup>12</sup> The Local Partners' general plans (which included the County's) were used to help establish the context for future development in the Plan area. Therefore, the Plan recognizes what the County General Plan allows, that is the 30 lots per the existing variable slope-density formula, not the proposed 79 lots (and community center). The Habitat Agency, responsible for implementation of the Plan, has no authority as to approval of the project but will recognize it as a covered *only if* the County approves it as proposed.

**Require use of wildlife-friendly fencing.** *If* any form of the project is approved, please require that only wildlife-friendly fences be used on the property. While the DEIR makes no mention of permanent fencing<sup>13</sup> to be used on the homesites or within or around the perimeter of the project site, we urge the use of wildlife friendly fencing as it would allow wildlife permeability and access of wildlife to natural habitat areas.

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<sup>12</sup> SCVHP, 1-2

<sup>13</sup> Temporary CTS exclusion fencing is noted as mitigation measure BR-1b during construction as well as ESA fencing for archaeological resources in mitigation measure CR-1b



***Incorporate bird safe design.*** Collision with windows is a recognized mortality factor for birds, especially at the lower 40 feet of buildings that are surrounded by vegetation or natural landscapes. The DEIR claims that the potential for birds to collide with buildings is generally associated with large reflective glass buildings and buildings constructed along migratory corridors. This assertion is wrong. A recent study concludes that between 159 and 378 million birds die annually from colliding with homes in North America, representing 44% of all bird-building collision mortality.<sup>14</sup> There are simple, inexpensive solutions that, when incorporated in the design of homes, can prevent bird strikes. To achieve this, bird safe design principles should be required.

***Prohibit outdoor cats and feeding of feral animals.*** The project should not be permitted to introduce and support outdoor cats in the area.

***Prohibit the use of Rodenticides outdoors.*** The project should not be permitted to use rodenticides outdoors.

## **CONCLUSION**

Thank you for providing us with the opportunity to comment on this DEIR. The comments we have provided here are not exhaustive but demonstrate that the DEIR is inadequate under CEQA.

We understand that the County has yet to determine how the approval process will proceed with regards to the Zoning Ordinance Amendment which lies with the Board of Supervisors and the residential project application which lies with the Planning Commission. We also seek clarification as to how the County believes it can proceed with further evaluating the Zoning Ordinance Amendment and the project as proposed absent the City's consent per their June 20, 2016 response to the County.

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<sup>14</sup> Loss, Scott R., Tom Will, Sara S. Loss, and Peter P. Marra. Bird-building collision in the United States: Estimates of annual mortality and species vulnerability. *The Condor*. American Ornithological Society. 116(1): 8-23. 2014.

Respectfully submitted,



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