

April 7, 2017

VIA E-MAIL AND US MAIL ONLY

Mr. David Rader, Senior Planner
Santa Clara County Planning Office
70 W. Hedding Street, 7th Floor East Wing
San José, CA 95110

RE: City of San José's Comment Letter relating to the Young Ranch Residential Project Draft Environmental Impact Report (State Clearinghouse #2016092022)

Dear Mr. Rader,

On behalf of the City of San José ("City") we would like to express our appreciation for the opportunity to review and comment on the Young Ranch Residential Project Draft Environmental Impact Report ("DEIR").

This letter has been prepared pursuant to the California Environmental Quality Act. (Pub. Resources Code, § 21000 et seq.) ("CEQA"). As detailed in the comments below, the Draft EIR lacks sufficient analysis of the Project's potential environmental impacts in many areas. In order to remedy the deficiencies described below, we request that the County of Santa Clara ("County") undertake additional analysis and mitigation of the Project's significant impacts on the environment and thereafter recirculate the DEIR.¹

This comment letter is made to exhaust remedies under California Public Resources Code § 21177 concerning the Young Ranch Residential Project, as defined below, and incorporates by the reference all written and oral comments submitted on the proposed Project by any other individual, entity, public agency or otherwise. As explained in detail herein, the DEIR is wholly inadequate under CEQA.

PROJECT UNDERSTANDING

The City understands the Young Ranch Residential Project ("Project") as a Cluster Subdivision on six parcels with a total area of 2,150 acres. Two parcels (906 acres) are located within the

¹ Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when "significant new information" is added to the EIR after public review but prior to certification of the FEIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. "Significant new information" requiring recirculation may include a disclosure showing that new or more severe significant impacts would result, that feasible mitigation that would address impacts is not being adopted, or that the DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

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unincorporated area of the County but located within the City's Sphere of Influence and four parcels (1,244 acres) are in the City of San José. Development of the proposed Project would occur on the two County parcels, and includes a subdivision to create 79 single-family parcels with a minimum parcel size of two acres, the construction of a community center, the construction of a private roadway network, the extension of utilities beyond the Urban Services Area/Urban Growth Boundary to serve the new homesites, and the development of 16 second units (including four affordable second units). The proposed Project also includes improvements to an existing ranch road on the four City parcels to provide emergency access from Metcalf Road and modifications to Silver Creek Valley Road, a City street, to accommodate the Project's primary access road. To facilitate the requested 79 single-family parcels, the Project applicant proposes an amendment to the County Zoning Ordinance to transfer density equivalent to 40 single-family dwellings from the four City parcels and the construction of four affordable second units under the State's Density Bonus Law, yielding an additional nine single-family parcels. Finally, the Project applicant proposes to dedicate 1,947 acres as open space, including all 1,244 acres of the four City parcels. The four City parcels have a General Plan Land Use/Transportation Diagram designation of Open Hillside. All of the four City parcels are outside the City's Urban Growth Boundary and Urban Service Area as defined in the City's Envision San José 2040 General Plan (City's General Plan).

GENERAL COMMENTS

The DEIR is inadequate under CEQA

The City contends that the DEIR is inadequate under CEQA for the following main reasons:

1. The DEIR fails to identify City as a Responsible Agency under CEQA;
2. The DEIR fails to describe all required City actions necessary to implement the proposed Project, including a General Plan Amendment for a significant modification to the City's Urban Growth Boundary ("UGB") and the City's Urban Services Area ("USA");
3. The project description in the DEIR inaccurately calculates the density of the four City parcels and the DEIR fails to analyze and disclose that any such density transfer would usurp the City's legislative authority over land use and violates the California Constitution and State and local laws;
4. The DEIR fails to adequately describe how the second unit affordability restrictions will be enforced;
5. The DEIR uses an inaccurate baseline for the cumulative impact analysis, as it neglects to evaluate growth identified in the City's General Plan;
6. The DEIR fails to fully identify and analyze the impacts to scenic vistas from Silver Creek Valley Road, an identified Rural Scenic Corridor in the City's General Plan;
7. The DEIR fails to adequately evaluate impacts to biological resources, particularly from the proposed emergency vehicle access ("EVA") access road across the four City parcels, which crosses sensitive serpentine habitat that supports the Bay Checkerspot Butterfly;

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8. The DEIR fails to fully evaluate geologic hazards that could be exacerbated by the proposed Project;
9. The DEIR fails to identify potential significant impacts from septic systems serving the proposed Project on groundwater resources;
10. The DEIR fails to evaluate the proposed Project's impact on the City's emergency services in the event of an emergency that requires faster response times than those provided by County facilities many miles away. Furthermore, the analysis neglects to discuss the increase in response times if the primary access is blocked and emergency services must use the proposed three-mile long EVA access road;
11. The DEIR fails to include the geotechnical reports prepared for the proposed Project;
12. The evaluation of alternatives in the DEIR fails to fully analyze implementation of Alternatives B and C and more importantly fails to disclose how Alternative B and C would still violate the City's General Plan and the May 22, 2001 Amended and Restated Agreement by and Among the Redevelopment Agency of the City, the County, and the City ("2001 Agreement"); and
13. The DEIR fails to adequately analyze and disclose the 2001 Agreement.

CEQA sets a high bar for evaluating impacts and the Draft EIR falls short of that threshold. The "fundamental purpose of an EIR 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.'" (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, citing Pub. Resources Code § 21061.) In order to serve this purpose, the EIR must "present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Ibid.* at pp. 449-450.)

In general, many of the mitigation measures in the DEIR are stated without any explanation about their effectiveness, except a conclusion that they are effective. For example, enforcement of secondary housing unit restrictions are vague and unclear (see DEIR page 2-9). CEQA requires more. Because the public must be able to understand, evaluate, and respond to conclusions in an EIR, the document must contain facts and analysis disclosing the analytical route the agency traveled from evidence to action, not just the agency's bare conclusions and opinions. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118.) Meaningful assessment of a proposed mitigation measure requires that the potential impact be clearly identified and quantified, if possible. The DEIR must then describe the mitigation measures and explain why they will work to the degree that the EIR concludes the measures will work. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 203.)

The DEIR must identify the City as a Responsible Agency

CEQA requires that the Responsible Agency consider the Lead Agency's EIR prior to acting upon or approving the project. Each Responsible Agency shall certify that its decision-making body reviewed and considered the information contained in the EIR (CEQA Guidelines §15050(b)).

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The DEIR fails to clearly identify and explain the roles and responsibilities of various other public agencies, including the City, who will be required to issue or approve various discretionary agreements, permits or licenses as part of the project. The City seeks certainty about which agency is intended to have jurisdiction for various aspects of the project, i.e. roles, responsibilities, and resource commitments. For example, the DEIR briefly mention that permits will be needed from the City for the extension of utilities and the access road to Silver Creek Valley Road. However, the DEIR does not address the City's role in implementing the project, including General Plan Amendments for a significant modification to the UGB and actions needed by the City to ensure the City parcels are dedicated for open space.

Pursuant to CEQA Guidelines Section 15040 et al, the City has discretionary review authority over certain actions needed to implement the proposed project, and therefore is required to be listed as a Responsible Agency in the DEIR pursuant to the California Public Resources Code Section 21069. City discretionary actions necessary to implement the proposed Project include but are not limited to: a voter-approved General Plan Amendment to extend the Urban Growth Boundary ("UGB") and Urban Services Area ("USA") to include the Project site; a General Plan Amendment to change the Land Use/Transportation Diagram Designation of the City parcels to Open Space, Parklands, and Habitat; City actions to formalize the proposed dedication of the City parcels to open space; rezoning of the City parcels; encroachment permits, the provision of police and fire services and other related City approvals. Under CEQA, the City is required to consider the Final EIR prior to taking action on these discretionary approvals.

The Project violates the City's General Plan and 2001 Agreement

In June 2016 the City received a referral from the County regarding the proposed Zoning Ordinance Text Amendment by the Project applicant and responded in a letter dated June 20, 2016. This letter, enclosed as Attachment 1 to this comment letter and incorporated fully herein by reference, states the City's objections to the proposed Project because (amongst other reasons) the proposed Project is (i) fundamentally inconsistent with the City's General Plan; (ii) approval of the proposed Project would violate the May 22, 2001 Agreement. In summary, the proposed Project is inconsistent with the City's General Plan because it would allow urban development outside of Urban Growth Boundary ("UGB") and Urban Services Area ("USA"). As described in Major Strategy #10 of the City's General Plan, the purpose of a UGB is to set limits on urban development to preserve open space and natural resources, promote fiscally sustainable development, and focus new development in areas where it can be safely accommodated and urban services can be provided in an efficient manner. The proposed Project would damage the rural character of the area, place new residents within an area of sensitive habitat and significant geologic hazards, and would place a strain on existing and future City resources.

The extension of urban services to serve the Project, including the proposed access on Silver Creek Valley Road and the extension of utilities to the site, violates the City's General Plan to limit urban services to locations within the USA and UGB, including Major Strategy #10 – Life Amidst Abundant Natural Resources, Policies LU-19.1 through LU-19.8, Policy LU-19.10, Policies FS-3.7 through FS-3.9, and Policy FS-3.11. These policies are listed in Attachment 1. Furthermore, the proposed density transfer from the City parcels to the County parcels is unprecedented, and

violates the City's General Plan by supporting development at urban densities outside of the USA and UGB. Finally, the proposed transfer also infringes upon and violates the City's legislative authority under the California Constitution and State law to regulate land use to protect the public health, safety and welfare of its residents.

The California Supreme Court has held that the General Plan is the "constitution for all future development." (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-71; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815 [General Plan provides "a charter for future development" and sets forth "a city or county's fundamental policy decisions about such development."].) Development projects can only be approved when they are consistent with the General Plan ("vertical consistency"). (See *Friends of Lagoon Valley*, 154 Cal.App.4th at 815; *Citizens of Goleta Valley*, 52 Cal.3d at 570). The General Plan also must be internally consistent. (Gov. Code § 65300.5.) If not, the General Plan is legally inadequate and the required finding of consistency for land use approvals cannot be made. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 286 [overruled on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 n.11].)

SPECIFIC DOCUMENT COMMENTS

The City has the following specific comments on the DEIR. The comments are organized to coincide with the applicable document sections as referenced in the DEIR.

Section 2.1 Project Summary

County and City actions related to the project (pgs. 2-1 – 2-2): The project description in the DEIR is inadequate because it does not include all the actions needed from both the County and the City to implement the proposed Project. Pursuant to California Public Resources Code Section 21080.3 and 21080.4, an EIR shall include all approvals required to implement the project, including those required by agencies other than the Lead Agency. These additional actions include but are not limited to:

- 1) A City General Plan Amendment for a significant modification to the UGB. This Amendment will require the approval of City voters in a City election pursuant to Measure K (City Council Resolution 69600, Appendix 1, Section 4).
- 2) Actions needed by the City to support the dedication of the City parcels to open space. Such actions could include:
 - a. A City General Plan Amendment to change the General Plan Land Use/Transportation Diagram Designation from Open Hillside to Open Space, Parklands, and Habitat for the four City parcels.
 - b. A rezoning to change the zoning of the four City parcels from R-1-1 Single-Family Residence to the OS Open Space District.
 - c. City actions needed to support the dedication of the open space easement on the City parcels.
- 3) Local Agency Formation Commission (LAFCO) actions related to the extension of

the UGB and USA.

Density Transfer from City to County Parcels (pg. 2-1): The use of the County's formula to determine the density of parcels within the City is inappropriate and violates the City's General Plan. The DEIR states that the proposed Project includes a Zoning Ordinance Text Amendment to the County's Zoning Ordinance to transfer density equivalent to 40 units from the four City parcels to the two County parcels. Table 2-1 states that the Project applicant used the County's variable slope-density formula to arrive at a density of 40 units for the four City parcels. The proposed Project description should be revised to remove any reference to density transfers from City parcels to County parcels since it is contrary to the City's and County's General Plan, violates the City's legislative authority under the California Constitution and State law, and violates the 2001 Agreement. Section VII.I.1 of the 2001 Agreement states that the County agrees:

“Inside City's sphere of influence but outside the San José urban service boundary, County shall only approve development that is consistent with the adopted Santa Clara County general plan and implementing policies, ordinances and zoning existing on the date of this Agreement, in particular, the Land Use Map showing Resources Conservation Areas and sections which provide that urban development will occur only with urban service areas and under City jurisdiction.”

The proposed Project would result in development outside of the City's UGB and USA and more importantly, be contrary to voter approval of the UGB and USA.

Leaving aside the issue of development outside of the City's UGB and USA, as for the actual density of the four City parcels, the density is based on the Open Hillside Slope Density Formula as described on pages 5-18 to 5-19 of the City's General Plan. The project description is incorrect since the Open Hillside General Plan Land Use/Transportation Diagram Designation is determined by the average slope of the parcel and ranges from 160 acres per dwelling to a maximum of 20 acres per dwelling unit. Given the steep slopes on the City parcels, the four parcels would not support 40 units when calculating density using the City's Open Hillside Slope Density Formula. Therefore, the assumption of a density yield of 40 units on the City parcels is incorrect.

Section 2.2 Project Location and Setting

Existing Project Site Character (pgs. 2-5 – 2-7): The description of the County Parcels is inadequate under CEQA since it fails to include a calculation of the average slope on each parcel.

San José Municipal Water parcel (pg. 2-7 and Figure 2-2): The description of the proposed Project is inaccurate under CEQA because it omits the San José Municipal Water Edenvale Reservoir parcel (APN 678-15-013), which is a City parcel located within Parcel A of the Project site. Figures in the EIR should be updated to show this parcel, and the size of Parcel A should be adjusted to exclude the City parcel.

Failure to accurately described and depict the proposed Project location and setting is a fatal failure under CEQA. The reader is unable to fully understand the current environmental setting of the

proposed Project and what environmental impact will be created due to the proposed Project on the surrounding areas.

Section 2.4.2 – Site and Development Program

Enforcement of secondary unit affordability (Pg. 2-9): The DEIR fails to address how restrictions on the proposed Project's secondary units will be enforced. To achieve a density bonus under State Law for an additional nine houses, the Project applicant proposes four affordable secondary units. However, the DEIR fails to provide assurances that these units would remain affordable once sold to individual owners. Per the DEIR, "the proposed project's 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 Homeowner's Association or another entity approved by the County." Such a restriction does not appear to be enforceable, as the individual owners will be able to rent or use the secondary unit without additional oversight from the County. The DEIR must be revised to clearly explain how the County and the Homeowner's Association would enforce these restrictions. Otherwise the basis for the proposed density bonus is unsupported.

Open space dedication (Pgs. 2-9 – 2-11): The DEIR fails to adequately describe how the City parcels will be preserved as open space. On page 2-7 of the DEIR, the description of the City parcels states that the applicant would "create an open space easement dedication on the City parcels," but does not elaborate on the mechanisms required to achieve this dedication. Does the applicant propose to dedicate the parcels to a third-party entity, such as the Santa Clara Valley Habitat Agency or the Santa Clara Valley Open Space Authority? What measures does the applicant propose if one of these entities does not accept the dedication? The open space dedication is a key component of the project and is intended to offset visual and biological impacts of the proposed Project, and failure to assure the open space would be protected (or accepted by the City or any other agency or entity) would undermine any overriding considerations to certify the EIR and approve the project.

Urban Growth Boundary, Urban Service Area, and City's Sphere of Influence: The figures in the Project description fail to show the location of the UGB, USA, and the City's Sphere of Influence in relation to the Project site. Figure 2-2 needs to be updated to show and label the limits of the USA and the UGB and label the four City parcels C-F. Also, please show the City's Sphere of Influence (SOI) in relation to the proposed Project (this may require a new figure).

Again, failure to accurately described and depict the proposed Project location and setting is a fatal failure under CEQA. The reader is unable to fully understand the current environmental setting of the proposed Project and what environmental impact will be created due to the proposed Project on the surrounding areas including impacts to areas outside of the UGB and USA.

Section 2.4.4 Circulation

The DEIR omits crucial details that are part of the proposed improvements to Silver Creek Valley Road at the new access road (see DEIR 2-15). These details include: 1) The number, size, and

species of trees in the median and sides of Silver Creek Valley Road that would need to be removed to implement the access, and 2) whether any private gates and/or guardhouses are proposed at the entrance to the site. Any removal of street trees along and in the median of Silver Creek Valley Road will require Tree Removal Permits from the City's Department of Transportation. Again, the DEIR needs to include these important missing information and analysis and be recirculated for public review and comment.

Section 2.5 Discretionary and Ministerial Actions and Approvals

As described above, the DEIR fails to include actions and approvals needed by the City. The proposed Project requires approval, amongst other approvals, of any City General Plan Amendments, rezoning of the site, and actions related to the dedication of the City parcels as open space. In addition, the project will require encroachment and easement permits for utility and infrastructure extensions. The DEIR fails to include the minimum approvals required by the City, as a Responsible Agency under CEQA, to implement the proposed Project. Therefore, the DEIR is fatally flawed under CEQA.

Section 2.6 Cumulative Projects

CEQA requires the EIR to discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable (CEQA Guidelines §15130). The cumulative analysis can include a summary of projects contained in an adopted local, regional or statewide plan or related planning document (§15130(B)).

The cumulative impacts analysis fails to use the correct baseline and fails to include all reasonably foreseeable developments within the area as required pursuant to CEQA Guidelines Section 15130. The discussion of cumulative impacts relies on the 2014-2022 County Housing Element for growth projections in unincorporated Santa Clara County and growth forecasts in *Plan Bay Area* prepared by the Association of Bay Area Governments and the Metropolitan Transportation Commission, but neglects the City's General Plan. However, the project site borders the City, and is located adjacent to planned growth areas identified in the General Plan in Old Edenvale and New Edenvale. Therefore, the cumulative analysis must be revised to include the buildout of the City's General Plan, which includes planned growth in Old and New Edenvale and Urban Villages in southern San José closest to the Project site. Absent the inclusion of the City's General Plan in the cumulative analysis, the analysis fails to properly evaluate the cumulative impacts of the project with other projects near the project site within the City as required under CEQA.

Chapter 3.1 Aesthetics

City-designated scenic corridors (pgs. 3.1-2 – 3.1-3): The DEIR's discussion of views from adjacent roadways must be revised to mention that Silver Creek Valley Road, San Felipe Road, and Metcalf Road are all designated as Rural Scenic Corridors in the City's General Plan.

Add an additional Key Observation Point along Silver Creek Valley Road (pg. 3.1-11): Silver Creek Valley Road between San Felipe Road and Hellyer Avenue is designated as a Rural Scenic

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Corridor in the City's General Plan (see above). Therefore, to properly evaluate the project's impacts to scenic corridors, the DEIR must include an additional visual simulation from a seventh Key Observation Point on southbound/westbound Silver Creek Valley Road, approximately 800 feet south of Hawkstone Way. This location has a sweeping view of the project site, and the visual simulation that could be severely impacted by the Project.

Visual simulations (Figures 3.1-3 – 3.1-8): The visual simulations of the project from all Key Observation Points fail to accurately show the Project's impact to scenic resources. These simulations must include the proposed roadway system and grading/retaining walls needed to support the roadways and home sites. The current simulations downplay the visual impacts of the project because they only include simulations of the proposed residences, not the proposed roadway improvements and associated grading.

Chapter 3.4 Biological Resources

City General Plan Policies (pg. 3.4-17): In addition to the County's General Plan Policies, the DEIR must list City General Plan Policies for the preservation of biological resources as they pertain to the proposed improvements on the City parcels. These include widening and improving the EVA road across the City parcels to Metcalf Road and the extension of utilities from Tenant Avenue.

Impacts to and Preservation of Vegetation Communities and Natural Resources (Table 3.4-5): To properly evaluate impacts to the City parcels, Table 3.4-5 must be revised to include a breakdown of habitat (both impacted and not impacted) on the four City parcels.

Mitigation Measure BR-1a (pgs. 3.4-20 – 3.4.21): This mitigation measure is inadequate and must include language about who reviews and approves the content of the worker training program. Would this review be conducted by County staff? The training program should be reviewed by a qualified biologist to ensure the program is adequate to ensure the impact will be less than significant.

Mitigation Measures BR-1b through BR-1f (pgs. 3.4-24 – 3.4-34): Mitigation Measures BR-1b through BR-1f must identify the timing of compliance (i.e., prior to grading permit?) and the entity at the County responsible for enforcing compliance (for work on County parcels).

Impact BR-5 Conflicts with local policies for protecting biological resources (pg. 3.4-38): The DEIR fails to adequately describe biological resources impacts resulting from the construction of the EVA access road across the City parcels. The discussion of potential conflicts with local policies and ordinances for protecting biological resources must include a discussion of the potential impacts to grassland and serpentine habitat resulting from the improvements to the EVA road across the City parcels. City General Plan Policies ER-1.1 through ER-1.7 should be discussed in relation to construction and use of the EVA road.

Chapter 3.6 Geology and Soils

Project Site Ground Movement Potential Map (Figure 3.6-2): The labels on the map in Figure 3.6-2 is unclear. Please include a PDF with a higher resolution for this figure in the Final EIR so the symbols are legible. Also, the map only includes Parcels A, B, and C. Please include a map showing Parcels D, E, and F with the location of the proposed EVA shown.

Seismic-related ground failure (pg. 3.6-20): The DEIR must evaluate the potential exposure of the site to ridgetop fissuring, spreading, and shattering given the location of the development on a ridge. Ridgetop fissuring, spreading, and shattering occurred along ridges in the Santa Cruz Mountains during the 1989 Loma Prieta Earthquake.

Evaluation of geologic hazards on the City parcels (pg. 3.6-22 – 3.6.23): The DEIR fails to include an evaluation of geologic hazards on the City parcels, particularly those that could be exacerbated by the proposed EVA improvements. Any landslides, ridgetop fissuring, or other geologic hazard on this road, such as those occurring after a major earthquake, could severely impede evacuation of the site and emergency vehicle access to the site.

Support for septic systems (pg. 3.6-24): The DEIR falsely identifies a less than significant impact to groundwater from the septic systems serving the Project. The DEIR determined that operational impacts related to on-site wastewater treatment systems would be less than significant through compliance with the Santa Clara County Onsite Wastewater Treatment Ordinance. As stated in the DEIR, percolation tests on five proposed lots “were extremely variable within each lot” and the percolation report recommends further investigation to determine that groundwater is not present at depths that could potentially be contaminated by effluent from the proposed septic systems. The DEIR further states that proposed residences on sites that do not meet percolation test requirements to protect from groundwater contamination would not be approved in the subdivision map for the project. This represents a deferral of mitigation.

Without further percolation testing to determine if a residence could be constructed without contamination to groundwater, the determination of a less than significant impact to groundwater is premature. Therefore, this impact should be identified as significant with appropriate mitigation identified to ensure buildout of the project would not result in a significant impact to groundwater resources.

No project specific geotechnical studies: The DEIR neglects to include the project-specific geotechnical studies that support the analysis and conclusions in the DEIR. The geotechnical reports supporting the analysis in the DEIR must be included in the appendices, including the Treadwell & Rollo reports between 2008 and 2014 and the C2 Earth Inc. Reconnaissance Geologic Study from 2014. Failure to provide these reports limits the City’s ability to fully evaluate the project’s geologic hazards impacts, particularly hazards related to the expanded EVA access across the City parcels.

Chapter 3.7 Greenhouse Gas Emissions

On Page 3.7-16 the following sentence is false and must be revised: “The proposed project would be consistent with the overarching strategies for land use (i.e., mixed-use, infill, and transit oriented development) stated in the AB 32 Scoping Plan update, MTC RTP/SCS, Santa Clara County General Plan, and the City of San José General Plan.” As stated above, the project does not comply with the City’s General Plan and is inconsistent with the County’s General Plan. Furthermore, the Project cannot be considered infill development as the project will be located outside of the UGB and USA. Therefore, the Project is not consistent with overarching land use strategies for the purpose of reducing greenhouse gas emissions.

Chapter 3.8 Hazards and Hazardous Materials

Susceptibility of project to wildland fires – Operations (pg. 3.8-13): The DEIR fails to properly evaluate and mitigate potential wildland fire impacts resulting from Project operations. At a minimum, the DEIR must include additional discussion of measures to prevent wildland fires from starting on the project site once the project is constructed. Examples include any measures in the design guidelines related to fire-resistant construction materials, Wildland-Urban Interface measures, good grazing practices to reduce brush (outside of sensitive areas), and the Fuel Modification Plan required by the project’s Resource Management Plan.

Chapter 3.10 Land Use

Appendix I – Land Use Policy Consistency Analysis: The Policy Consistency Analysis in Appendix I is incomplete and must include City General Plan Policies in addition to County policies, particularly General Plan Policies outlined in Attachment 1 to the City’s June 20, 2016 letter (attached). As stated in Appendix I and in the discussion above, the proposed Project is wholly inconsistent with both the County’s and the City’s General Plan.

The rule of general plan consistency is that the project must at least be compatible with the objectives and policies of the general plan, and does not frustrate, the general plan's goals and policies.” (Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 717–718, 29 Cal.Rptr.2d 182 (Sequoyah Hills); Friends of Lagoon Valley, supra, 154 Cal.App.4th at p. 817, 65 Cal.Rptr.3d 251.) (Napa Citizens, supra, 91 Cal.App.4th at p. 378, 110 Cal.Rptr.2d 579.)

In *Leshar Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal. 3d, 531, 540-41, a zoning ordinance that is inconsistent with the general plan is invalid when passed and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.

The *Leshar Communications* case illustrates the clear hierarchy between a city’s General Plan and Zoning Regulations and the ultimate supremacy of the General Plan as the guiding document.

While most land use approvals are not initiative-based and do not run into the same complications as that which occurred in the Leshner case, the case underscores the importance of General Plan consistency requirements and highlights the peril of failing to understand or respect those requirements.

Chapter 3.14 Public Services

Fire protection services – operation (pg. 3.14-8): The analysis of fire protection is inadequate because it assumes that the City will not respond to an emergency on the Project site. The discussion of fire protection services must discuss the project's potential use of San José Fire Department services required by any mutual aid agreements, especially in case of a significant emergency. As discussed in the DEIR, the project site is located over 13 miles from the nearest County fire services. This equates to a response time of approximately 18 – 21 minutes assuming access to the site via the proposed entrance on Silver Creek Valley Road. Conversely, there are at least six San José Fire Department (SJFD) stations closer to the project site, including SJFD Station #35 (about 2.3 miles from the site), Station #27 (about 4 miles from the site), and Station #11 (about 5 miles from the site). Although the DEIR assumes that the City will not provide fire protection services, in the event of a major emergency (such as a wildland fire), it is unreasonable to expect that the City will not respond. Furthermore, the DEIR neglects to include a discussion of the increase in response times if the primary access from Silver Creek Valley Road is blocked and first responders must use the three-mile long EVA from Metcalf Road, a detour of over eight miles.

Chapter 3.16 Transportation and Traffic

Traffic safety hazards (pg. 3.16-18): The City will not issue an encroachment permit for the proposed access road connection to Silver Creek Valley Road as such a connection violates the City's General Plan and the 2001 Agreement. Furthermore, the mitigation proposed under Mitigation TT-4 violates the City's standards. In the event the Project is approved, the access road would be limited to right-turn only ingress and egress.

Chapter 4.3 Alternatives

Section 15126.6 of the CEQA Guidelines requires the EIR to describe a range of reasonable alternatives to the project, or location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives, and must also include a No Project alternative. See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376. The DEIR analyzes three alternatives, including the No Project Alternative.

Alternative B – Reduced Project Visibility Alternative (pgs. 4-13 – 4-22): Alternative B would reduce the project size from 79 to 58 residential parcels, which would reduce the significant and unavoidable aesthetics impacts identified in the DEIR. However, this alternative fails to disclose that it will still not comply with the City's General Plan for the same reasons as the proposed

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project. Like the Project, the alternative would require a General Plan Amendment to expand the UGB and USA (subject to voter approval at a City election) and a General Plan Amendment and possible rezoning to implement the transfer of density from the City parcels to the County parcels.

Alternative C – Reduced Development Density Alternative (pgs. 4-22 – 4-33): Alternative C would reduce the project size from 79 to 30 residential parcels and does not propose to transfer density from the City parcels. This alternative would avoid the significant land use impacts related to the County's General Plan and policies. However, the evaluation of this alternative fails to disclose that it would still result in significant impact to the City's land use policies, as it still conflicts with the City's General Plan because it would require an extension of the UGB and USA (again, subject to voter approval at a City election).

Chapter 5.3 Growth-Inducing Impacts

CEQA Guidelines Section 15126 and 15126.2(d) require an EIR to discuss the ways in which the project could foster economic or population growth, or the construction of additional housing either directly or indirectly in the surrounding environment. The City agrees with the analysis on pages 5-3 – 5-4 with regard to the indirect growth inducing impacts related to the precedent of transferring density from City parcels to County parcels.

Conclusion

In closing, the DEIR is inadequate for the reasons outlined above, which constitute significant new information pursuant to CEQA Guidelines Section 15088.5. The absence of this information deprives the public and decision makers (including the County Board of Supervisors and the City Council) meaningful opportunity to review and comment on DEIR. The DEIR must be revised and re-circulated with the requested information. For questions regarding this letter, please contact David Keyon, Supervising Environmental Planner, at david.keyon@sanjoseca.gov or (408) 535-7898.

Sincerely,



Reena Brilliot, Acting Division Manager for
Harry Freitas, Director
Planning, Building and Code Enforcement

C: Mayor and City Council
City Manager's Office
City Attorney
Department of Public Works

June 20, 2016

Mr. Rob Eastwood, AICP
Planning Manager
Department of Planning and Development
County of Santa Clara
70 West Hedding Street
San José, CA 95110

Subject: Young Ranch Subdivision Zoning Ordinance Amendment (County File No. 10256-14CSP-14Z) Redevelopment Agreement Referral Response

Dear Mr. Eastwood,

Thank you for your June 1, 2016 referral to the City of San Jose of the January 7, 2015, application for the Zoning Ordinance Text Amendment by YCS Investments for the 2,150 acre Young Ranch property located within the City of San José's sphere of influence. The May 22, 2001, Amended and Restated Agreement by and Among the Redevelopment Agency of the City of San José, the County of Santa Clara, and the City of San José (2001 Agreement) in Sections I.1, J.1, and K require the referral of the proposed zoning text amendment to the City of San José for written approval as a condition precedent for the County to approve the Zoning Text Amendment. The purpose of this response is to notify the County that the City is opposed to the Zoning Text Amendment for the reasons set forth herein. The proposed Zoning Ordinance Amendment has been evaluated, and it has been determined that the proposed ordinance is fundamentally inconsistent with the City's General Plan, *Envision San José 2040*, and the 2001 Agreement. The following analysis details these inconsistencies.

Background

In the 1990s, the City strengthened its commitment to environmental leadership and growth management by incorporating an Urban Growth Boundary (UGB) into its General Plan. Adoption of the UGB identified the limits of the City's potential expansion and today permanently limits urbanization in San José to those areas already developed and/or already planned for urban development. To implement the UGB, San José worked with Santa Clara County to improve upon long established cooperative policies and practices to ensure that urban uses only occur inside the UGB.

In 2000, a ballot measure establishing the UGB was approved by over 70 percent of the City's voters demonstrating broad community support for the preservation of the surrounding hillsides as open space areas.

In 2011, the City of San José adopted the *Envision San José 2040 General Plan*. This Plan established the Open Hillside designation and specific policies that apply to lands outside of the UGB. These policies reinforce the goal of directing new urban development to areas within the City's UGB while preserving areas outside of the UGB for primarily open space, habitat, parkland, or agricultural activities.

SAN JOSÉ GENERAL PLAN INCONSISTENCY:

The proposed County Zoning Ordinance Text Amendment is inconsistent with the following San José General Plan Major Strategies and policies. A comprehensive list of all policies included in this analysis are included in Appendix I.

General Plan Major Strategy and Urban Growth Boundary

The "Life Amidst Abundant Natural Resources" Major Strategy is one of 12 Major Strategies of *Envision 2040* that implement the City's vision statement. 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.

General Plan Policies

Envision 2040's fiscal sustainability policies state that existing and future development should only be located within the USA boundary. Furthermore, the USA should not be expanded unless necessary to provide services to existing development in need of urban services and when such expansion is consistent with LAFCO rules. Annexation should also not be considered outside of the USA unless the proposed development is within the UGB and meets the regulations set forth in Policy FS-3.11. As stated previously, the proposed Zoning Ordinance Amendment is located outside of the USA and UGB boundaries, and expanding the USA and/or UGB boundaries to accommodate the proposed development would not be consistent with San José's General Plan's fiscal policies.

Additionally, the *General Plan's* land use policies state that all urban and suburban development should occur within the City's UGB and USA boundaries and that the UGB establishes the maximum extent of urban development. All areas outside of these boundaries are to remain primarily rural in character with rural, agricultural, open space, habitat, or other very low-intensity uses. While a portion of the subject site is proposed to be preserved for open space, the remaining areas contain denser development than what is currently permitted by the City's General Plan. As stated in Policy LU-19.10, residential development would not be able to exceed one dwelling unit per 20 acres; the proposed development has a minimum of one dwelling unit per 2.5 acres, which exceeds the allowed residential density and is, therefore, inconsistent with the policy. Furthermore, the proposed Zoning Code Amendment not only would allow development that is inconsistent with the rural character but would set a precedent for similar development in the County outside of the UGB, inconsistent with the City's General Plan and the ballot measure passed by the voters (Measure K).

Open Hillside General Plan Land Use Designation

The current General Plan Land Use/Transportation Diagram designation for the subject site is Open Hillside, which allows a density up to 1 DU/20 AC and a floor area ratio (FAR) up to 0.02. The subject site was designated Open Hillside to be consistent with the direction of the General Plan that areas located outside of the UGB should be designated Open Hillside or Open Space, Parklands, and Habitat. The intent of the Open Hillside land use is to preserve open space and natural habitat by approving minimal development in areas located outside of the UGB. This designation also correlates with the unique environmental, fiscal, hazard avoidance, and aesthetic concerns for development within San José's hillside areas. Based on preliminary review, the proposed development is located within both geologic hazard and archaeologic sensitive areas, which are areas the Open Hillside land use states to avoid. Thus, the proposed Zoning Ordinance Amendment is inconsistent with the Open Hillside General Plan land use designation.

General Plan Amendment Process

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. The criteria for consideration of UGB modifications are specified in Measure K approved by the San José voters on November 7, 2000, as implemented in Council Resolution No. 69600 and Title 18 of the San José Municipal Code (SJMC). Significant modifications to the UGB will only be considered in the context of a major, comprehensive update of the General Plan (SJMVC Section 18.30.100). Furthermore, the City Council shall only refer a significant modification to a comprehensive update of the General Plan if the comprehensive update is being scheduled for reasons independent of the application, or the applicant has demonstrated that without the modification, an owner would be denied economically viable use of his or her land (SJMC Section 18.30.270). The criteria required for significant modifications to the UGB cannot be amended or repealed without the approval of San José voters at a City election (Resolution No. 69600, Appendix 1, Section 4). The *Envision San José 2040 General Plan* was approved in November 2011 and includes the policies required by Measure K regarding modifications of the UGB. The Department of Planning, Building, and Code Enforcement concludes that the proposal to amend the County's zoning ordinance text is inconsistent with long-standing General Plan policies of the City of San José as well as the mandate of the San José voters in Measure K.

COUNTY GENERAL PLAN AND THE 2001 AGREEMENT:

The 2001 Agreement is replete with findings related to both County of Santa Clara and City of San José land use policies prohibiting the premature conversion of open space, smart planning that provides that development will occur within urban growth areas and urban services areas, and cooperative planning efforts between two agencies (see, for example, Sections H and I). Section I.1 of the 2001 Agreement limits County approval of development to proposals which are consistent with the County General Plan and implementing policies, ordinances, and zoning as they existed on the date of the 2001 Agreement (to wit: May 22, 2001). The 2001 County General Plan states that urban development will only occur within the Urban Service Area and on properties under the jurisdiction of the City of San Jose.

Mr. Rob Eastwood
June 20, 2016
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Once again, thank you for the opportunity to comment on the YCS application for the County Zoning Ordinance Text Amendment. Please contact Assistant Director Rosalynn Hughey either by e-mail, rosalynn.hughey@sanjoseca.gov, or by phone, (408) 535-7911, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Freitas', with a long horizontal flourish extending to the right.

Harry Freitas, Director
Planning, Building and Code Enforcement

Enclosure: Appendix I

Appendix I

The proposed Zoning Ordinance Amendment is inconsistent with the following *Envision San José 2040* Major Strategies, goals, and policies.

1. Major Strategy #10 – Life Amidst Abundant Natural Resources

Promote access to the natural environment and a favorable climate as important strengths for San José by building a world-class trail network, reinforcing the Greenline/Urban Growth Boundary as the limit of the City's urbanized area and to preserve the surrounding hillsides largely as open space, and by adding parks and other recreational amenities to serve existing and new populations.

The Greenline/Urban Growth Boundary defines the ultimate perimeter of urbanization in San José. Besides setting limits to urban development as a growth management and fiscal sustainability strategy, the Greenline/Urban Growth Boundary is intended to develop a clearer identity for San José by defining where urban development ends and by establishing policies to preserve valuable open space resources. Natural resources surrounding the lands within the Greenline/Urban Growth Boundary are the inspiration for this concept.

The Greenline/Urban Growth Boundary demonstrates the strong, long-standing commitment of both the City of San José and the County of Santa Clara that urban development should occur only within the Urban Service Areas of cities where it can safely and reasonably be accommodated and where urban services can efficiently be provided. Lands outside of the Greenline/Urban Growth Boundary are identified as those that are intended to remain permanently rural in character and that should remain under the jurisdiction of the County. Both the City and the County are committed to the success of this arrangement and will continue to develop and implement consistent land use plans and development policies for lands of mutual concern both within and outside of the Greenline/Urban Growth Boundary. This commitment is reflected in the Greenline/Urban Growth Boundary goals and policies of both General Plans.

Analysis: The Life Amidst Abundant Natural Resources Major Strategy states that the City should limit urbanized areas to properties located within the UGB, specifically within the USA where services can be provided. The subject site is located outside of both the USA and UGB boundaries and, given that the proposed Zoning Code Amendment would allow urbanization outside of the UGB and USA, the Amendment is, therefore, inconsistent with this Major Strategy.

2. Fiscal Sustainability Policies

Goal FS-3 – Fiscally Sustainable Land Use Framework

Make land use decisions that improve the City's fiscal condition. Manage San José's future growth in an orderly, planned manner that is consistent with our ability to provide efficient

and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

Policy FS-3.7 *Maintain an Urban Service Area (USA) in the General Plan where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring such services should be located.*

Policy FS-3.8 *Maintain the City's current Urban Service Area boundaries. Expansion of the Urban Service Area should only be considered when necessary to provide services to existing development in need of urban services and when such expansions are consistent with LAFCO rules. Coordinate with the County to prevent future Urban Service needs beyond the current USA boundaries.*

Policy FS-3.9 *Per City, County and LAFCO policy, locate existing and future urban development within city boundaries. Implement this policy through San José's existing agreement with Santa Clara County which requires that unincorporated properties within the Urban Service Area either annex to the City, if possible, or execute a deferred annexation agreement prior to approval of development.*

Policy FS-3.11 *Consider annexation of territory outside the Urban Service Area only if it is within the Urban Growth Boundary, its intended use will require minimal or no use of Municipal services and either:*

- *The intended use contributes to providing services to development in the Urban Service Area, such as a planned thoroughfare across nonurban territory or a solid waste disposal, processing, or composting facility which should be located in a remote area; or*
- *The annexation is necessary or desirable for the implementation of General Plan non-urban land use goals and policies, such as to accept dedication of an open space or scenic easement in connection with a hillside open space preservation program.*

Analysis: The General Plan's fiscal sustainability policies state that existing and future urban development should be located within the USA boundary. Furthermore, the USA should not be expanded unless necessary to provide services to existing development, and annexation should not be considered outside of the USA unless the proposed development is within the UG and meets the regulations set forth in Policy FS-3.11. The proposed Zoning Ordinance Text Amendment would facilitate urban development outside of both the USA and UGB boundaries, inconsistent with the fiscal sustainability policies of the General Plan. Furthermore expanding the USA and/or UGB boundaries to accommodate for the proposed development would also not be consistent with the San José General Plan.

3. Land Use Policies – Non-Urban Areas

The Greenline/Urban Growth Boundary (UGB) establishes the maximum extent of urban development. All urban and suburban development should occur within this boundary. Areas outside of this boundary are intended to remain permanently rural in character and to contribute to the establishment of a permanent green belt along the City's eastern and southern edges. To ensure the long-term stability and integrity of this strategy, significant modifications to the UGB and its supporting policies are strongly discouraged and should only occur as part of a Major General Plan Update.

San José's Greenline/Urban Growth Boundary (UGB) serves multiple purposes. The UGB is intended to preserve as open space substantial areas of the surrounding hillsides, baylands, and other lands, both to conserve the valuable natural resources contained on these lands and to protect views from the valley floor. In furtherance of the City's fiscal goals, its UGB is intended to direct urban development within infill locations where the City can most efficiently provide urban services. Consistent with the Envision General Plan's growth strategy, the UGB will also help steer new development and public and private investment into more environmentally sustainable infill growth areas of San José. The UGB will also protect public health and safety by preventing urban development in areas subject to natural hazards such as wild fires and land slides. UGB Goals and Policies work in concert with many other goals and policies in this Plan, such as those in Hillside & Rural Preservation and Fiscal sections.

The Greenline/Urban Growth Boundary is indicated on the Land Use / Transportation Diagram and is typically conterminous with the Urban Service Area boundary and the 15% slope line except in the area of the Urban Reserves. The UGB is intended to exclude new development above the 15% slope line, defined as the point where the hillside topography exceeds a 15% incline based upon 1 foot slope contour data. In some instances the UGB has been established above the 15% slope line due to the presence of existing development implemented prior to the adoption of current General Plan policy. The 15% Slope Line is included for reference purposes on the Land Use / Transportation Diagram.

Goal LU-19 – Urban Growth Boundary (Open Hillside / Agriculture Lands)

Respect the Greenline/Urban Growth Boundary to preserve the beauty and natural resources of the rural and hillside areas, to maintain the fiscal health of the City, to direct private and public investment within identified growth areas, and to preclude development in areas subject to natural hazards.

Policy LU-19.1 *Maintain the Greenline/Urban Growth Boundary to delineate the extent of existing and future urban activity and to reinforce fundamental policies concerning the appropriate location of urban development.*

Policy LU-19.4 *Reserve areas outside the Greenline/Urban Growth Boundary (UGB) for rural, agricultural, open space, habitat, or other very low-intensity uses. Prohibit new urban development outside of the Greenline/Urban Growth Boundary (UGB). Appropriate land use designations for areas outside of the UGB include Agriculture; Open Hillside; Open Space, Parklands and Habitat; Urban Reserve; and the Open Hillside Golf Course Site Overlay. Other designations may not be applied to lands outside of the UGB.*

Policy LU-19.5 *Maintain consistency between City and County land use and development policies for the lands outside of the Urban Growth Boundary. Limit them to uses that maintain the rural, agricultural, habitat, or other low-intensity character of these areas and continue the referral process for development proposals or policy proposals affecting these lands.*

Policy LU-19.6 Use the Urban Service Area (USA) boundary as a tool to preserve the non-urban character of development on lands outside of the Urban Growth Boundary. To this end, limit all new development on lands outside of the USA as follows.

1. Do not provide urban services to new development outside of the USA.
2. Require that new development projects cause no significant increase in public services or infrastructure and are non-urban in terms of
 - a. Waste water generation rates.
 - b. Traffic generation rates.
 - c. Extent of grading, vegetation removal, drainage modifications or other alteration of the natural environment.
 - d. Noise or other nuisance potential.
 - e. Growth inducing potential.
 - f. Water consumption, excluding the environmentally beneficial use of recycled water.
3. Distinguish between urban and non-urban uses in terms of water usage by limiting water consumption for new development to use of non-urban sources, including on-site well water, and rainfall catchment. Use of recycled water may be allowed. Irrigation of Open Hillside areas with these water sources may be allowed provided that their use would not result in a substantial direct or indirect environmental impact upon sensitive habitat areas, special status species, geologic hazard avoidance or the visual environment.

Policy LU-19.10 Preserve the non-urban character of lands outside of the Urban Growth Boundary through implementation of the following land use development policies:

1. Prohibit subdivisions except at rural or agricultural densities (minimum one hundred sixty acre parcels with exceptions potentially allowing smaller parcels, but in no case less than twenty acre parcels as described in the Chapter 5 description for the Open Hillside designation), and consistent with other policies in this plan.
2. Prohibit residential development that exceeds one dwelling unit per 20 acres, except when development of a single dwelling unit on an existing legal lot of record would result in development at a higher density.
3. Allow low-intensity non-residential development for commercial and institutional uses provided that such development meets the following:
 - a. The use is on a large site commensurate with the level of development and in no case less than 250 acres in area.
 - b. At least 90% of the total site area will be preserved as open space to provide for protection of the watershed, natural habitat areas and the open aesthetic character of the hillsides. For this policy, open space is defined as area not developed with buildings, parking, roadways or other impervious surfaces.
4. Locate and, if possible, cluster new development within the minimum area necessary to accommodate it, in order to avoid or reduce the need for improvements and minimize any potential environmental impacts.

5. *For non-agricultural land uses, disturb no more than 50% of the total site area through grading, changes to vegetation or other development activity.*
6. *Limit the aggregate Floor Area Ratio for all structures on a project site to no more than 2% of the site area.*

Urban Growth Boundary

The Urban Growth Boundary (UGB), also referred to as the "Greenline", defines the ultimate perimeter of urbanization in San José. Outside of this boundary, development remains rural and open in character. The UGB also develops a clearer identity for the City by defining where it begins and ends and by preserving valuable open space and habitat resources. The intent of the UGB is to define the limit of the encroachment of development and semi-urban land uses into the hillsides that border the valley floor. San José's UGB generally follows the 15% slope line, unless geologic issues or existing land uses suggest that it should be located downhill from the 15% slope line. Areas outside the UGB should be designated Open Hillside or Open Space, Parklands, and Habitat, and they should remain outside the Urban Service Area boundary.

Analysis: The proposed Zoning Code Amendment is inconsistent with the Envision San Jose 2040 General Plan land use policies related to the non-urban areas and the Urban Growth Boundary. The General Plan's land use policies state that existing and future development should only be located within the City's UGB and USA boundaries and that all areas outside of these boundaries are to remain primarily rural in character. The subject priority is above the 15% slope line and is, therefore, outside of the UGB, in addition to the USA, and the proposed development on this property is not rural in character. While a significant portion of the subject site is proposed to be preserved for open space, the remaining areas contain denser development than what is currently permitted by the City's General Plan. As stated in Policy LU-19.10, residential development would not be able to exceed one dwelling unit per 20 acres; the proposed development has a minimum of 1 dwelling unit per 2.5 acres which exceeds the allowed residential density. The above land use policies also state that urban services should not be provided to areas outside of the USA, so the proposed development would not be permitted to have access to any services provided by the City of San José.

4. Open Hillside General Plan Land Use

Density: up to 1 DU/20 AC (1 to 2.5 stories); FAR up to 0.02

This designation is applied to areas which are located outside of the Urban Growth Boundary (UGB) with the intent of preserving a permanent greenbelt of open space and natural habitat along the City's eastern and southern edges. Within this designation, the supported uses vary slightly for lands owned publicly or privately. Publicly-owned lands within the Open Hillside designation include habitat conservation areas, open space preserves, and large-scale parklands. Privately-owned lands within the Open Hillside designation may allow a limited amount of development, including single-family dwellings and, on large sites, private recreation, and low-intensity institutional or commercial uses with the majority of the site preserved as open space, very-low intensity agricultural uses such as grazing or tree farming, or privately owned open space/habitat preserves. Publicly owned lands may also support

low-intensity institutional uses. Development under this land use designation will be consistent with the Non-Urban Area Land Use development policies of the Envision General Plan and requires discretionary development review permits.

This designation and the pertaining Land Use policies, correlate with the unique environmental, fiscal, hazard avoidance and aesthetic concerns for development within San Jose's hillside areas. Accordingly, the Open Hillside designation limits uses within this area to those which can be conducted with very little physical impact on the land, which do not require urban facilities or services, and which will have minimal visibility from the Valley floor. Specifically, new development is limited to projects that will not result in substantial direct or indirect environmental impacts upon sensitive habitat areas, special status species, geologic hazard avoidance or the visual environment.

The permissible implementation of these uses, consistent with other Envision General Plan policies, avoids areas of valuable habitat, areas of geologic sensitivity (landsliding, soil creep, earthquake faults), and areas important for watershed and percolation. Allowed development within the Open Hillside, including new structures, roadways, landscaping or agricultural activity, minimizes grading and ensures substantial open space and wildlife corridor protections. Consistent with Santa Clara County General Plan policies, as part of the development of Open Hillside lands, up to 90% of a site may be required to be preserved permanently as open space or conservation easement precluding future development. These goals are further addressed in the corresponding land use policies for Open Hillside development.

Analysis: The current General Plan Land Use/Transportation Diagram designation for the subject site is Open Hillside. The intent of the Open Hillside land use is to preserve open space and natural habitat by approving minimal development in areas located outside of the UGB. The Open Hillside land use designation also correlates with the unique environmental, fiscal, hazard avoidance, and aesthetic concerns for development within San José's hillside areas. Based on preliminary review, the proposed development is located within both geologic hazard and archaeologic sensitive areas, which are areas the Open Hillside land use states to avoid. Because the proposed Zoning Ordinance Text Amendment would allow development at densities above what is allowed by this designation and in an environmentally sensitive location, the proposal is inconsistent with the Open Hillside General Plan land use designation.