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June 28, 2007

Via Federal Express

Darryl Boyd
City of San Jose
Department of Planning, Building, and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

**Re: Draft Environmental Impact Report for the Coyote Valley
Specific Plan (SCN# 2005062017)**

Dear Mr. Boyd:

On behalf of the Greenbelt Alliance, we have reviewed the Draft Environmental Impact Report (“DEIR”) for the proposed Coyote Valley Specific Plan (“CVSP” or “Project”). We submit this letter to state our position that the DEIR does not comply with the California Environmental Quality Act (“CEQA”), for the reasons set forth below. Unless the DEIR is extensively revised and recirculated, any approvals made on the basis of its environmental analysis will be unlawful.

The DEIR suffers from two essential defects—its thoroughgoing failure to accurately describe the Project and the equivocation in its approach to environmental review. Although it is never explicitly stated, the DEIR attempts to describe the proposed CVSP and evaluate its environmental impacts on both a programmatic and project-specific level. It falls far short of both of these goals. Huge parts of the CVSP—the public transit system, for example—are not described at all. Those aspects that the DEIR

does attempt to describe are depicted with so little detail that a reader is left with no idea of what Coyote Valley will look like at build-out or how it will work. As fully discussed below, the Project is so thinly described that it appears to be essentially unplanned, and certainly is not ready to receive approvals from the City.

The total failure of the project description makes the rest of the DEIR inadequate as well. Because the concrete details of the construction and operation of the CVSP appear to be unplanned and therefore unknown, its environmental impacts cannot be accurately analyzed, nor can effective mitigation be identified. The fog of uncertainty surrounding the Project and its impacts leads inevitably to vague or deferred analysis and mitigation. The reader is given the impression that impacts will be determined as they happen and mitigation will be worked out some time in the future.

This strategy, while made inevitable by the inadequate project description, is wholly unlawful under CEQA. An EIR is “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes *before* they have reached ecological points of no return.” *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1027 (emphasis added). The DEIR’s approach strips the document of its ability to provide such forewarning. As explained in detail below, this EIR will not be adequate unless and until the Project is fully described and the discussion of its various impacts completely revised. This blinkered approach to environmental review must be abandoned and replaced with a thorough analysis of the full scope of project impacts.

Revisions of the required magnitude will in turn require recirculation of the DEIR. *See* CEQA Guidelines § 15088.5(a)(4). At the same time, if the project description in the DEIR truly reflects the current state of the City’s planning for the CVSP, then this specific plan is not ready for approval. The first step in revising the DEIR must be serious planning by the City of San Jose (“City”) to a level at which the Project can be effectively evaluated.

BACKGROUND AND PROJECT CONTEXT

The proposed Project, the Coyote Valley Specific Plan, sets the stage for buildout of more than 7,000 acres of primarily undeveloped land in the southern part of San Jose. The CVSP would ultimately support a community of up to 80,000 residents, create a massive new job center (up to 50,000 new jobs), and add over 26,000 housing

units. Collectively, this development would convert thousands of acres of open space and agricultural lands to intensive urban development over the next 25 to 50 years. The Coyote Valley is considered by many to be the last remaining pristine open space within San Jose.

The City touts the CVSP as a project that is based on smart growth principles; a project that will build community without encouraging urban sprawl. DEIR at 1xviii. In this respect, the CVSP asserts that the “Environmental Footprint” was the starting point for the CVSP’s planning and remains the yardstick for promoting “Environmental Stewardship” as a Guiding Principle. Draft CVSP at 33. To this end, the DEIR states: “[B]ecause of the potential sensitivity of several environmental resources in Coyote Valley, and the City’s desire to create a model community based on innovative planning and design, the CVSP is based on a new approach, which involves a shift from a land planning driven process to one that evolves from the existing natural environmental or Environmental Footprint.” DEIR at 14. The DEIR goes on to state that “the urban design approach for Coyote Valley focuses on the guiding principles of a sustainable, pedestrian, and transit-oriented community, containing a mix of uses that utilize land efficiently.” *Id.* This and similar language is repeated throughout the DEIR as a justification for the Project. *See, e.g., id.* at 8, 96, 162, 419. However, a more careful look at the DEIR demonstrates that this characterization is entirely disingenuous, as evidenced by the following:

- The DEIR deems the CVSP similar to the Greenbelt Alliance’s “Getting It Right” plan, claiming that it is based on smart growth principles, resulting in the creation of a very urban, mixed-use community without encouraging urban sprawl. DEIR at 1xviii, 96. Such is not the case. As currently designed, jobs and housing are decentralized in a sprawling pattern; residential densities are more indicative of suburban-type subdivisions; and high-speed arterials and ample parking are designed to facilitate auto-based transportation. Contrary to the “Getting It Right” plan, the CVSP would facilitate car-oriented sprawl.
- Every day, the CVSP would add between 210,000 and 266,000 cars to the area, resulting in an additional 1,687,000 daily vehicle miles traveled. DEIR at 147, 417. The Project’s roadways and 41,000 parking spaces, intended to accommodate the automobile, would sabotage the potential for transit to succeed in Coyote Valley. Indeed, as the DEIR confirms, transit would play only a modest role in the CVSP. Upon buildout, the CVSP would generate 302,780 new person trips yet

only *four* percent of these trips are expected to be on transit. DEIR at 147, 163 (emphasis added).

- The CVSP asserts that a core principle guiding building the new Coyote Valley community is to respect and protect all existing precious resources that may be impacted by urban development. Draft CVSP at 31. Whereas the CVSP indeed would afford a tremendous opportunity to preserve much of the Coyote Valley's precious agricultural and open space lands, the DEIR fails to identify and study any serious program or mechanism for doing so. Amazingly, the DEIR concedes that the City currently has no intention of requiring conservation easements over the lands in the Greenbelt; instead, a statement of overriding considerations will be required. DEIR at 118.
- Although the City intended to ensure that development would not take place in the absence of services or infrastructure (DEIR at 2), the DEIR provides no evidence that critical public services such as wastewater, solid waste, and even water supply would be available to serve the CVSP. Indeed, the DEIR lacks any specific evaluation of the phasing, timing, or financing of these and other critical infrastructure and public services.
- Although the DEIR asserts that 20% of the housing units included in the CVSP would be deed-restricted below market rate units (DEIR at 9, 69), it includes no information as to how this affordable housing goal would be met, where the affordable housing would be located, or which income levels would be targeted.

In sum, the Specific Plan established for the Coyote Valley appears to be a superbly inappropriate planning tool to accomplish sustainable development in the Valley. It is most perplexing that despite a planning process spanning decades, the end result is a project that accomplishes so little. Indeed, the Greenbelt Alliance's initial concern about the planning for the Coyote Valley is now confirmed: the analysis in the DEIR clarifies that the CVSP will not be sustainable, will not result in increased transit use, will not ensure the protection of agricultural and open space lands, and will not guarantee the provision of affordable housing.

ANALYSIS

I. THE DEIR IS INADEQUATE UNDER CEQA.

The DEIR for the CVSP is woefully inadequate under CEQA. An EIR must provide a degree of analysis and detail about environmental impacts that will enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990). To this end, the lead agency must make a good faith effort at full disclosure of environmental impacts. In order to accomplish this requirement, it is essential that the project is adequately described and that existing setting information is complete. *See County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 199 (1977). Both the public and decision-makers need to fully understand the implications of the choices that are presented related to the project, mitigation measures, and alternatives. *Laurel Heights Improvement Ass'n v. Regents of University of California*, 6 Cal.4th 1112, 1123 (1988). In this case, the CVSP DEIR fails to provide sufficient information to enable informed decision-making by the City.

A. A Program EIR Is Inappropriate and Unlawful in this Case.

The text of the CVSP DEIR implies that the environmental document is both a programmatic EIR, describing in broad terms the plans for and impacts of development of the entire Coyote Valley, and a project-level EIR, analyzing in detail impacts resulting from tentative maps and project construction. *See e.g.*, DEIR at 68, 169 (asserting that a “project-level” analysis was undertaken). Importantly, the DEIR states:

This EIR provides environmental review for the adoption of the CVSP and its initial implementation through the pre/rezoning and annexation processes as described in Section 1.5.1, above. A determination will be made on a case-by-case basis if further environmental review for the CVSP components listed below will be required before they can be approved or constructed, and it is unknown at this time when these components may be required to accommodate the proposed urban development. Subsequent project-specific environmental review will be required *as appropriate and necessary* prior to approval or construction of these components. Any project not included on the list will be considered on a case-by case basis.

DEIR at 11 (emphasis added). The DEIR then goes on to list numerous approvals ranging from general plan amendments, and subdivision/tentative maps to the issuance of development permits and actual construction activity. *Id.*

Despite the vague assurance that project-specific environmental review *may* be undertaken for specific projects, the City has apparently designed the CVSP in such a way as could potentially allow residential development of the Coyote Valley without any further environmental review. Specifically, as the City is undoubtedly aware, Government Code Section 65457 exempts from CEQA review “[a]ny residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan” for which an EIR has been certified. Based on this provision, if the City certifies the EIR and approves the CVSP, future residential development in Coyote Valley may escape *any further environmental review* so long as the proposed development is consistent with the Specific Plan. Public Resources Code Section 21080.7(a) contains a similar, although somewhat more limited, exemption.¹

In light of these exemptions, the DEIR’s assurance that future components of the CVSP may require project-specific environmental review is misleading and disingenuous. If CVSP components such as tentative maps and project construction may proceed with no further environmental review, the DEIR must so state. In that event, to be legally adequate, the DEIR must provide far more detailed environmental analysis appropriate to a project-level EIR. And here, the DEIR utterly fails to provide this necessary detail.

Indeed, use of a program EIR is plainly unlawful and inappropriate in this case precisely because the residential components of the Project are unlikely to receive meaningful future environmental review based on the statutory exemptions cited above. CEQA sanctions the use of program EIRs only where additional environmental analysis under CEQA will occur as additional projects are proposed under the program. In *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, for example, the court’s decision to invalidate a program EIR turned largely on the fact that the document was “not a true first-tier EIR,” and so there was “no

¹ Among other things, Section 21080.7(a) requires a finding that the previously approved EIR “is sufficiently detailed so that the significant effects on the environment of the project and measures necessary to mitigate or avoid those effects can be determined.”

guarantee” of subsequent environmental review at a future stage. *Id.* at 536. So too, here, inasmuch as there is no guarantee of environmental review of future residential development plans, the CVSP DEIR must be revised to contain the same level of detail as a project-level EIR.

Moreover, even if the CVSP DEIR were intended as a program EIR, this would not justify the lack of detailed analysis. Numerous CEQA provisions clarify that “tiering [e.g., preparing a program EIR followed by a project-level EIR] does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” Guidelines §15152(b); *see also id.* §15152(c). Rather, “[t]he degree of specificity required in an EIR must correspond with the degree of specificity of the proposed project. An EIR on a construction project will necessarily be more detailed in the specific effects of the project” *Id.* §15146. This rule persists regardless of “any semantic label accorded to the EIR.” *Friends of Mammoth*, 82 Cal.App.4th at 534.

Given that the City intends to allow project level approvals—not simply *study* the planning for Coyote Valley—in reliance on this document, the DEIR is obligated to analyze all foreseeable impacts of development projects anticipated under the CVSP. Accordingly, the EIR must be revised to contain the same level of detail as a project-level EIR to allow analysis of impacts from the development of the Coyote Valley.

B. The DEIR’s Description of the Project Is Inadequate.

In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 729-30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 (citation omitted). Thus, an

inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. Here, the DEIR for the CVSP does not come close to meeting these clearly established legal standards because it fails to provide a stable and finite project description with respect to key components of the proposed Project that have the potential to result in significant environmental impacts not analyzed in the DEIR.

In practical terms, the CVSP is a plan to erect a city within a city, with as many as 80,000 residents, over 26,000 housing units, and about 50,000 jobs. DEIR at 14, 15. Any reasonably complete description of the Project would give the public and decision-makers a sense of what this new community would look like, how it would work, and how it would fit into life in the greater San Jose area and the rest of Santa Clara County. The purported project description does none of this. It is effectively no description at all; it is merely a suggestion of the City's general conceptual scheme for the Coyote Valley. There is certainly no comprehensive plan for how this community would be developed. This failure echoes throughout the entire document: because the Project is incompletely described, none of its impacts can be fully analyzed. Over and over again, as discussed at length throughout this letter, the DEIR defers analysis until after project approval and offers vague and unenforceable mitigation measures. It simply is not possible to analyze and therefore mitigate the impacts of a project whose parameters are as vague as the CVSP's.

1. The Project's Land Use Planning Lacks Critical Details.

The CVSP DEIR provides only the most preliminary of plans for development of Coyote Valley and therefore lacks sufficient information to allow informed decisions about how the CVSP will affect the region. There may be further discretionary approvals down the road, but this EIR and the approvals it informs are the only opportunity for decision-makers and the public to understand and weigh in on the big-picture questions that will determine what kind of a community is about to be created in their midst, or whether this community should be created at all. Yet the DEIR is so vague and general as to render informed participation meaningless. Astonishingly, we can find no evidence in the DEIR, or elsewhere, that any type of meaningful land use planning has been undertaken for this massive development project.

The closest that the DEIR comes to providing a sense of the CVSP is Figure 2.01 (Draft Land Use Plan), Figure 2.02 (Illustrative Plan), and Figure 2.03

(Planning Areas Diagram).² These maps offer no more than a general level of detail, depicting generally where the residential, commercial, and industrial/workplace development would be located. Merely showing the location of these uses is not sufficient. At a minimum, the document must provide information about what these uses will “look like” and how they will work. Where, for example, are the CVSP’s development standards and guidelines? What plan can the public and decision-makers consult in order to verify that the neighborhoods are well-planned and that land uses are compatible? How will the commercial uses be integrated with the single-family and multi-family dwelling units at the neighborhood level? How accessible (i.e., how long would it take to walk) are the CVSP residential neighborhoods to shopping and employment opportunities? How would the design of the street system accommodate the pedestrian and connectivity? How would the residential, employment, and commercial uses be integrated with the transit system?

Nor does the DEIR identify imminent development activity. Are specific projects in the pipeline? If so, how many and what type? Is there more demand for residential projects or non-residential? Which projects are likely to be built within the first five years? Which of the public projects would be constructed first?

2. The Project’s Transit Components Are Unplanned and Unfunded.

The flaws in the DEIR’s project description extend far beyond its failure to contain detailed land use planning information. The DEIR also fails to describe major elements of the CVSP. For instance, the DEIR states that the CVSP includes a transportation system comprised of a public transit system, bike/trails system, and roadway network. DEIR at 25. As for the public transit system, the DEIR further states that the CVSP’s transit system consists of three components: CalTrain, the Santa Clara Valley Transportation Authority (“VTA”) bus system, and an an internal fixed guideway Bus Rapid Transit (“BRT”) system. *Id.* While the DEIR describes the CVSP roadway system in intricate detail (i.e., diagrammatic cross sections complete with roadway widths), the document lacks *any* description of the Project’s purported public transit system. This lack of detail is particularly ominous given that the City has chosen to

² A footnote to Figure 2.0-1 states that a planning area detail appendix was reissued in June 2006 and that this document contains additional detail for land use refinements. This appendix does not appear to be included with the DEIR.

present this Project as “very urban” and “transit-oriented.” *Id.* at 8, 96. In this regard, the CSVP does not even meet its own objectives.

3. The Project’s Public Services and Infrastructure Are Undefined.

The DEIR totally lacks plans for how the development will function. According to CEQA, an EIR’s project description must contain “[a] general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” CEQA Guidelines § 15124(c). Here, the DEIR does nothing more than state the obvious when it asserts that implementation of the CVSP would require extension of electrical, sewer, potable and advanced treated recycled water, and natural gas. DEIR at 43. In fact, with the exception of the roadways and flood control/storm drainage facilities, the necessary public services and utilities are discussed in such a superficial manner that the description of the solid waste facility, for example, amounts to no more than a self-evident rumination that this facility would be developed. *Id.* at 44. The DEIR never explains how the massive amount of solid waste generated by the Project would be accommodated, other than the assertion that “the CVSP may require the creation of a separate collection district.” *Id.* at 44. Remarkably, the DEIR never begins to resolve where this waste would actually be disposed.

Further, while the DEIR acknowledges that the CVSP would contribute to the need for and expansion of the area’s wastewater treatment plant, the document admits that the plan to study such an expansion has not yet been prepared. *Id.* at 505, 507. Nor does the DEIR ever explain how energy would be supplied to the CVSP. This information is of critical concern inasmuch as the California Energy Commission has determined that California will have an adequate supply of electricity only through 2009 and that Northern California will have an adequate supply of natural gas only through 2007. *Id.* at 392. These public services are not trivial, speculative, or optional—they are *part of the Project*, and therefore must be included in the project description. *See San Joaquin Raptor*, 27 Cal. App 4th at 714-16 (holding EIR inadequate where project description failed to include sewer expansion which was “required element of the development project”).

Nor does the DEIR contain necessary information relating to the phasing, timing, or financing of these infrastructure and services. In a project of this size and duration, public and private improvements must be developed in a logical and viable

sequence; infrastructure needs to be in place prior to demand for new development. Unfortunately, the DEIR contains no documentation, let alone evidence, that the residential, commercial, and industrial development would be efficiently linked to necessary infrastructure. The failure to provide detailed plans for this key infrastructure is particularly disturbing inasmuch as one of the City's "key considerations for development in Coyote Valley was consistency with the City's growth management policies and the potential city-wide effects of premature development in an area without services or infrastructure." DEIR at 2.

Until these aspects of the CVSP are fully described, this document cannot legally support even the first specific project. Disturbingly, development nevertheless appears imminent in the Coyote Valley. If this is not the time for such basic level of planning, when is?

Likewise, the failure to "specify . . . in detail" the infrastructure and other required components renders the Specific Plan itself legally inadequate. Gov't Code § 65451(a).

4. The DEIR Improperly Segments Environmental Review of the CVSP.

In addition to the deficiencies described above pertaining to CVSP's solid waste facilities and service, the DEIR suffers from another serious flaw—it inappropriately segments components of the Project for purposes of environmental review. An accurate description of the project is one that considers the whole project, instead of narrowly focusing on a particular segment. CEQA "mandates 'that environmental considerations do not become submerged by chopping a large project into many little ones—each with a . . . potential impact on the environment—which cumulatively may have disastrous consequences.'" *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *see also McQueen v. Board of Directors*, 202 Cal.App.3d 1136, 1146 (1988) (open space district "impermissibly divided the project into segments which evade CEQA review"); *Plan for Arcadia, Inc. v. Arcadia City Council*, 42 Cal.App.3d 712, 726 (1974) (shopping center and parking lot projects are related and should be regarded as a single project for CEQA purposes).

Like the related projects in *City of Santee*, *McQueen*, and *Plan for Arcadia*, the DEIR acknowledges that the CVSP would require a joint use maintenance and vehicle storage facility as part of its collection district to provide integrated solid waste services.

DEIR at 44. The document goes on to state that this facility would include a corporation yard, a materials recovery facility and a composting facility, and possibly a solid waste transfer/processing station. *Id.* at 386. Rather than define these CVSP project components and analyze their environmental impacts, the DEIR simply asserts that these facilities would require further review. *Id.* The DEIR's approach of limiting its evaluation of impacts to the land use aspects of the CVSP alone, which is clearly analogous to the improper segmentation found by the court in *City of Santee* and related cases, is therefore impermissible under CEQA. The revised DEIR must include an analysis of the *entire* CVSP project and, by the DEIR's admission, the CVSP includes the solid waste facilities.

5. The Design of the CVSP Remains Unplanned.

The visual quality of a community is a basic building block for healthy, vibrant, and beautiful neighborhoods. Design standards and design guidelines must be in place to lend character and aesthetic quality to the community. Among other things, design guidelines can encourage architectural continuity, provide guidance for site layout to maintain the attractiveness of roadways and industrial and commercial areas, and offer suggestions for landscaping to create a pleasant streetscape.

Here, almost 4,000 acres of the Coyote Valley are on the verge of being developed; beautiful open space lands with broad vistas would be replaced with buildings. Yet, the DEIR provides absolutely no sense of what this development would look like. The document is silent as to residential, commercial and industrial architectural themes, and contains no information as to the types of building materials to be used, roof styles, building massing, projections, or color schemes. Nor does the DEIR identify, or in any way describe, the intended streetscape or landscape themes and designs. Because the DEIR does not discuss any of these architectural, streetscape, and landscaping details, the public and decision-makers are left in the dark as to what Coyote Valley would actually look like in 10, 30, or 50 years.

6. The CVSP Lacks a Coherent Mechanism for Ensuring the Protection of Agricultural and Open Space Lands.

The CVSP purports to include a "greenbelt strategy," which would establish a framework to create and sustain a rural environment that supports, among other things, land conservation and agriculture. DEIR at 9, 44, 432. The DEIR also identifies, as a

project objective, that the Specific Plan should seek mechanisms to facilitate the permanent acquisition of fee title or conservation easements in South Coyote. *Id.* Indeed, the CVSP presents a tremendous opportunity to preserve open space and agricultural land in Santa Clara County that could offset the loss of such lands that would be caused by the development of CVSP. But the DEIR never even identifies, let alone commits to adopting, a specific mechanism that the City would rely on to ensure preservation of the Coyote Valley Greenbelt.

7. The CVSP and the DEIR Should Go Back to the Drawing Board.

The foregoing are just a few of the myriad issues that define sound land use planning, especially *environmentally sensitive* land use planning. Given the massive scale of the CVSP, we understand the difficulty in undertaking detailed planning. Yet, it is precisely because of the size of this Project and its far reaching environmental consequences that the City is obligated to address these fundamental issues now. The DEIR's failure to address these issues is particularly disconcerting because San Jose prides itself as having developed an overall *vision* for Coyote Valley—a model community assertedly based on innovative planning and design. DEIR at 14.

The City is clearly capable of providing details about the CVSP, as indicated by the DEIR's detailed descriptions and schematics of the CVSP's roads and flood control system. DEIR at 106. The level of planning and design undertaken for roadways and flood control must be extended to the remaining CVSP components. Unless and until the City prepares a more detailed land use plan for the CVSP, and one which grapples with these basic planning and design considerations, the DEIR will remain incapable of addressing and analyzing the Project's important quality of life and environmental implications for the region.

We appreciate that, under certain circumstances, an EIR for a planning level document may include less detail than required for a project-specific EIR. Nevertheless, program level EIR's are not excused from CEQA's mandate to provide an accurate, stable, and finite project description. *County of Inyo*, 71 Cal.App.3d at 192. Moreover, as noted above, the DEIR for this project is not a true program EIR and thus must include sufficient detail to allow accurate analysis of the impacts of full development under the CVSP.

In short, it is simply inconceivable that accountable decision-makers could make a decision to approve this Project with essentially no information about these fundamental project components. Yet that is effectively what this DEIR asks the City to do. Equally important, the DEIR's abject failure to describe these critical components for the CVSP sends an ominous message about planning for the rest of this massive Project. Under state law, the DEIR must be revised to include a detailed description of the CVSP. These descriptions must then provide the basis for new, extensive analyses of the Project's environmental impacts.

In sum, this Project needs to go back to the drawing board. Once the necessary planning is complete for the large-scale and controversial project, the City will be in a position to actually evaluate the Project's environmental effects. Only then can it make the intelligent, informed decisions that CEQA requires.

C. The DEIR's Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.

The discussion of a proposed project's environmental impacts is at the core of an EIR. See CEQA Guidelines § 15126.2(a) (“[a]n EIR *shall* identify and focus on the significant environmental effects of the proposed project”) (emphasis added). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the City and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to “inform the public and responsible officials of the environmental consequences of their decisions before they are made.” *Laurel Heights Improvement Assn.*, 6 Cal.4th at 1123. To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990). Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal.

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines § 15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Pub. Res. Code § 21002.

In every section of the CVSP's impact analysis, it is apparent that the authors are faced with an impossible task: they must evaluate the environmental consequences of implementing a "plan" so vague and incomplete that it barely constitutes a plan at all. As described above, the DEIR includes virtually no concrete description of key elements of the CVSP. This void becomes even more clear in the impacts chapters, where time and again the DEIR defers analysis and mitigation because there is presently no way to determine how this vague "Project" will affect the environment.

As discussed above, the CVSP's nebulous approach to environmental review fails to adequately accomplish the purpose of either a programmatic or a project-level EIR. The problems with this approach become immediately apparent when reviewing the DEIR's environmental impact analysis. Thus, although it is clear that the CVSP has the potential to be one of the most environmentally degrading actions ever suggested by San Jose, neither the public nor decision-makers have any way of knowing the magnitude of this harm. The DEIR simply fails to provide decision-makers and the public with detailed, accurate information about the Project's significant environmental impacts and to analyze mitigation measures that would reduce or avoid such impacts.

- 1. The DEIR Fails to Adequately Analyze the Project's Impact on Agricultural Lands and Open Space.**
 - a. The DEIR Fails to Analyze the Severity and Extent of the Project's Impacts to Coyote Valley's Rich Agricultural Lands.**

The DEIR's utter failure to adequately analyze the Project's impact on agricultural lands is one of the document's most notable and alarming deficiencies. Indeed, the purported analysis of impacts to agricultural lands is no more than one paragraph; and this paragraph simply asserts that the Project would result in the loss of 2,400 acres of prime farmland, farmland of local and state importance, and unique farmland. DEIR at 111. Although the DEIR does acknowledge this impact to be significant, it provides no analysis of what it actually means to take some of the richest farmland in California, and possibly the country, out of production. Merely stating that an impact is "significant" does not satisfy CEQA; the EIR must contain facts *and* analysis in support of its conclusions, and must describe how significant the impact will be.

Equally disconcerting, the DEIR understates the acreage of impacted agricultural lands because it relies exclusively on CEQA's definition of prime agricultural

lands. DEIR at 102. Relying on this definition, however, omits up to 1,400 acres of agricultural land from the analysis. As discussed below, in the context of the open space impact analysis, the DEIR states that the CVSP would result in the development of approximately 3,800 acres of primarily undeveloped flat agricultural land. *Id.* at 110. Likewise, the Santa Clara County Local Agency Formation Commission's ("LAFCO") Draft Agricultural Mitigation Policies rely on the Cortese Knox Herzberg Act's definition of prime agricultural lands in evaluating a project's impacts on agricultural lands. Had the DEIR adequately analyzed the CVSP's consistency with LAFCO's policies—and at least considered the Cortese Knox Herzberg Act's definition of prime agricultural lands—it likely would have determined that the Project would impact far more than 2,400 acres of prime agricultural land. Finally, as discussed below, the DEIR acknowledges that existing agricultural operations within the Coyote Valley may have to be discontinued once future residents move into the CVSP Development Area. DEIR at 107, 108. The DEIR never attempts, however, to calculate the amount of agricultural land that would be taken out of production as a result of these land use conflicts.

Similarly, the DEIR's bland and truncated "analysis" of impacts to agricultural lands provides no good faith attempt to capture the extraordinary importance of these lands or what their loss would mean to California agriculture and indeed the entire United States. According to "Setting The Standard in Coyote Valley," Coyote Valley was once part of the Valley of Heart's Delight, combining fertile soil, a moderate climate and sufficient water flows to earn the reputation as an "agricultural eden." *See* "Setting The Standard in Coyote Valley," attached hereto as Exhibit A. This Report explains what the CVSP DIR does not—that the loss of agricultural land due to the Project is a severe impact with far-reaching consequences:

The loss of productive farmland to urban and suburban encroachment is a pressing environmental and food security concern in California and through out the United States. According to the American Farmland Trust, every day we lose more than 3,000 acres of productive farmland to urban sprawl. More than 75 percent of our fruits and vegetables are produced near urban areas, directly in the path of development. Each year, we lose an area of productive farmland the size of Delaware. Loss of this essential form of natural capital deprives future generatons of the ability to grow food and fiber and reap the multiple benefits of open space. In California, agricultural land loss on a county by

county basis is tracked by the Division of Land Resource Protection. Between 1984 and 2004, Santa Clara County lost 33,288 acres of agricultural land to development, or 1,664 acres per year. (CDC 2005a).

See Exhibit A at ____.

b. The DEIR Fails to Adequately Analyze the Project's Impact on Coyote Valley's Open Space Land.

The document fares no better in its “analysis” of open space impacts. In a stunning display of understatement, the DEIR simply asserts that the Project would replace 3,800 acres of undeveloped agricultural land with buildings, streets, parking areas, and other infrastructure. DEIR at 110. This bland and utterly characterless description of open space impacts does not remotely capture the extraordinary importance of these lands. Permanent protection of important open space areas has become an urgent need in the Bay Area, and indeed throughout the state. California statutory and case law have long recognized open space as a valuable environmental resource. Accordingly, the California Legislature has declared that “open-space land is a limited and valuable resource which must be conserved wherever possible.” Gov’t Code § 65562(a). Nearly thirty years ago, the California Supreme Court recognized that “[t]he elimination of open space in California is a melancholy aspect of the unprecedented population increase which has characterized our state” *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal.3d 633, 638 (1971), *cert. denied*, 404 U.S. 878 (1971).

Growing evidence suggests that open space conservation is not an expense, but a worthwhile investment that produces enormous economic benefits. Open space is a major attraction for employees, residents and visitors because it increases the attractiveness of an area as a place to live, work, and recreate. As the Trust for Public Land explains:

Too often we hear that communities cannot afford to “grow smart” by conserving open space. But accumulating evidence indicates that open space conservation is not an expense but an investment that produces important economic benefits. Some of this evidence comes from academic studies and

economic analysis. Other evidence is from firsthand experience of community leaders and government officials who have found that open space protection does not “cost” but “pays.”

“The Economic Benefits of Parks and Open Space: How Land Conservation Helps Communities Grow Smart and Protect the Bottom Line” (1999), attached hereto as Exhibit B. The EIR for the CVSP needs to provide meaningful analysis of this important issue.

c. The DEIR Fails to Identify Feasible Mitigation Measures to Reduce the Project's Significant Impacts on Agricultural and Open Space Lands.

As serious as the DEIR’s deficiencies are relating to the loss of agricultural and open space lands, they pale in comparison to the document’s failure to identify adequate mitigation for this loss. One of the fundamental objectives of CEQA is to facilitate the identification of “feasible alternatives or feasible mitigation measures which will avoid or substantially lessen” significant environmental effects. Pub. Res. Code § 21002. To effectuate this purpose, CEQA mandates that “public agencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . .” *Id.* Consequently, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines § 15126.4. As the Supreme Court has held, “The core of an EIR is the mitigation and alternatives sections.” *Citizens of Goleta Valley*, 52 Cal.3d at 564.

Given the extraordinary importance of Coyote Valley’s agricultural and open space lands, the DEIR should have provided extensive mitigation for the loss of these lands. Indeed, one would expect extensive mitigation in light of the fact that the City presents the CVSP as having a clear “greenbelt strategy.” DEIR at 44. In terms of the Project’s impacts on open space, however, the DEIR fails to consider *any* mitigation measures. The DEIR’s failure to identify even one mitigation measure epitomizes the document’s failure to meet CEQA’s core requirements.

The DEIR’s approach to mitigation for the Project’s loss of agricultural lands is even more disingenuous. Amazingly, after providing a vague discussion of programs that could create new or protect existing farmlands, the DEIR explicitly states

that the *City is not requiring such mitigation for the project*. DEIR at 114-118. So rather than seriously study the feasibility of mitigation opportunities—as clearly required by CEQA—the DEIR appears to throw its hands up in defeat. The DEIR’s failure to consider mitigation for the loss of agricultural lands, both on a project-specific and cumulative level, is particularly egregious given the wide variety and number of successful programs that exist to address this issue. Mitigation is defined by the CEQA Guidelines to include:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- Compensating for the impact by replacing or providing substitute resources or environments.

CEQA Guidelines § 15370.

Here, the CVSP’s impact on agricultural and open space lands can be compensated for by the implementation of programs that provide for such lands in other locations or that reduce the impact over time by preservation of such lands. As the Bay Area Conservancy Program notes specifically with respect to Santa Clara County, “restoration and protection can be accomplished through the proper design of new developments and through mitigation requirements.” *See* “Regional Needs Briefing Book” at 27, attached hereto as Exhibit C. The American Farmland Trust has identified a number of such mitigation measures for farmland conversion, including:

- Requiring that remaining farmland, or an equal or greater amount of farmland, be placed under Williamson Act contract;
- Requiring a conservation easement to be placed on remaining or alternate farmland;
- Requiring that new agricultural land be brought into production; and

- Requiring a per-acre mitigation fee on development projects to be used for the acquisition of development rights on farmland in another location.

See American Farmland Trust, “Saving the Farm: A Handbook for Conserving Agricultural Land” (Jan. 1990) at 5-4, attached hereto as Exhibit D. In addition to protecting farmland, conservation easements are also effective mechanisms for preserving habitat, water quality, viewsheds, and community open space buffers.

In addition to these general forms of mitigation, there are numerous examples of communities that have required land dedications and/or fees for purchase of land to compensate for the loss of open space and agricultural lands as mitigation for significant impacts. Many communities with similar open space provisions in their general plans also require new projects that contribute to the loss of open space and agricultural lands, as well as to the growing need for open space, to mitigate for those impacts.

Among the feasible mitigation measures the CVSP DEIR fails to include that are capable of reducing or eliminating project-related and cumulative impacts are the following:

- Clustering of the development to protect on-site agricultural lands and provide permanent protection of those lands through an appropriate instrument (*e.g.*, dedication of lands to a Land Trust and/or multiple party holders of easements or other acceptable means of ensuring permanence).
- Payment of a mitigation fee to an appropriate conservation organization for purchase of mitigation lands.
- Purchase in fee title or conservation easement of comparable open space and agricultural land in the area (*e.g.*, South Coyote Valley agricultural area, Coyote Ridge, and the cascading ranges to the west of Coyote Valley) and permanent protection of that land through a dedication to an appropriate open space conservation entity.

As the programs described above clearly show, feasible measures exist to reduce impacts relating to the loss of open space and agricultural lands. Indeed, even San

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Jose planning staff recognizes the feasibility of such measures, as indicated by the attached e-mail. *See* e-mail correspondence from Darryl Boyd to Brian Schmidt, May 14, 2007 (confirming that City staff's position is that farmland preservation is feasible mitigation for the loss of farmland), attached hereto as Exhibit E. In light of this fundamental CEQA violation, the DEIR must be revised to adequately analyze and mitigate the CVSP's impacts on agricultural and open space lands.

2. The DEIR Fails to Adequately Analyze and Mitigate the Project's Land Use Impacts.

The DEIR's analysis of land use impacts is hamstrung in part by the DEIR's consistent failure to define critical components of the Project. Nowhere is this more evident than in the document's failure to adequately analyze impacts relating to the compatibility of future land uses with existing and on-going agricultural operations. The DEIR acknowledges that existing agricultural operations within the Coyote Valley may have to be discontinued once future residents move into the CVSP Development Area. DEIR at 107, 108. This startling contention—that the development of the CVSP could adversely impact the economic viability of the valley's *remaining* agricultural lands, and indeed the County's agricultural industry as a whole—is given only passing discussion.

The document never bothers to describe the specific agricultural operations that might be threatened, let alone the nature of these operations. Nor does the document identify which or how many of the CVSP's projects would be incompatible with these agricultural lands. In addition, it makes no attempt to specifically identify or describe what is grown on these agricultural lands. For example, are there specific agricultural uses that would be less threatened by potential land use conflicts than others (i.e., organic farming may result in fewer land use conflicts in comparison to farming practices that use pesticides)? Are the threatened agricultural lands under Williamson Act contracts? Specifically, how much additional acreage of agricultural lands stands to be lost as a result of incompatible land uses? What size buffer zones would have to be in place to minimize or eliminate these potential conflicts? Now is the time to answer these questions so that the CVSP land use lines can be redrawn to protect existing agricultural operations. Yet, the DEIR is simply silent on all these critical issues.

The DEIR's persistent error of deferring planning and mitigation also infects the mitigation measures purporting to minimize impacts relating to land use compatibility with agricultural operations. Rather than set forth specific mitigation, the DEIR relies in part on the yet-to-be prepared Design Guidelines to "reduce the likelihood

that significant impacts would occur.” DEIR at 107. Yet the development of these Design Guidelines is deferred until after project approval. To the extent these Guidelines would help to minimize this impact, they should be a key component of the Project, not left up to developers to implement ad hoc after the fact. Moreover, even if the Design Guidelines had real content, they might only begin to lessen the land use compatibility impact of the CVSP.

The DEIR does mention that Santa Clara County has an Agricultural Rights, Disclosure, and Dispute Resolution Ordinance. DEIR at 108. However, rather than explain how this ordinance might minimize impacts relating to incompatibilities with agricultural operations, the DEIR states that the City is not subject to this ordinance. *Id.* Thus, rather than committing to adopt a similar ordinance, the DEIR simply asserts that San Jose would *consider the adoption* of a similar complementary ordinance. *Id.* CEQA requires more than an agency’s illusory promise to mitigate significant impacts.

The ultimate fact remains that the urban development associated with the CVSP would permanently threaten agricultural practices in Coyote Valley in ways that remain unknown because the DEIR does not provide anything close to a complete analysis of these impacts. Similarly, the DEIR’s findings that the CVSP would not result in significant land use incompatibility impacts is conclusory and unsupported by substantial evidence. Unless and until the CVSP is appropriately planned and designed, as discussed above, the County cannot effectively analyze the land use implications of development within the Coyote Valley. Thorough planning is a prerequisite for a comprehensive analysis of land use impacts and for the proposal of mitigation and/or alternatives that will minimize those impacts. The appropriate forum for such analysis is a revised and recirculated DEIR.

3. The DEIR Fails to Adequately Analyze and Mitigate the Project’s Transportation Impacts.

a. The DEIR Lacks an Accurate Description of the Project’s Qualitative Effects on Traffic.

The traffic impacts of the proposed CVSP demonstrate once again the profound changes that a project on the vast scale envisioned here will bring to this area. On a typical day, buildout of the Coyote Valley would generate approximately 302,780 daily new person trips, the vast majority of which will be made by automobile. DEIR at

147. The CVSP's intense influx of traffic is just one of the ways in which this proposed Project would forever alter the character of the Coyote Valley.

Rather than present a forthright picture of the full range and severity of the consequences of the CVSP, the DEIR's traffic analysis hides behind an opaque wall of numbers and charts. The concrete, quantitative analysis of traffic impacts is essential, but it is a means to an end. The purpose of the analysis is to allow an understanding of what will happen to the area if the Project is built. In some cases, like this one, numbers will not tell the whole story. Here, the significance of the CVSP's traffic impacts cannot be accurately conveyed without a textual description of how the Coyote Valley transportation system will work and what residents or visitors to the valley will actually experience once the CVSP is built out. As a result, neither the public nor decisionmakers have a realistic understanding of the actual traffic impacts of the CVSP.

The DEIR would have us believe that the CVSP is based on innovative planning—relying on the principles of smart growth and the concept of planning based on the environment. DEIR at 14. To this end, the DEIR asserts that the CVSP is based on “a new approach, which involves a shift from a land planning driven process to one that evolves planning from the existing natural environment or ‘Environmental Footprint.’” *Id.* The DEIR goes on to state that “the urban design approach for Coyote Valley focuses on the guiding principles of a sustainable, pedestrian and transit-oriented community” and that “the CVSP has been designed to encourage alternative means of transportation including walking, biking, and transit use.” *Id.* at 14, 162.

One need not delve far into the DEIR's traffic analysis to discover that the end product would not be sustainable, transit-oriented, or environmentally friendly development. Indeed, the CVSP would result in an additional 1,687,000 daily vehicle miles traveled in the region and between 210,000 and 266,000 extra cars on the roads every day. DEIR at 147, 417. This number of vehicles is roughly equivalent to that which travel on the Oakland-San Francisco Bay Bridge each day. *See* “Facts at a Glance,” Caltrans, (identifying the Oakland-San Francisco Bay Bridge daily traffic as 270,000 vehicles), attached hereto as Exhibit F. And as discussed further below, rather than extensive travel on transit, as the DEIR would have us believe, the DEIR itself estimates that only *four percent* of the CVSP-related trips would be made on transit. DEIR at 147.

In short, the DEIR must explain to the public and decision-makers what it means to have a quarter-million extra cars on the roads every day. Such a shift in the

region's character is the true significant traffic impact of the proposed Project; the numbers are only an indication of that change. By trying to spin the CVSP as a transit-based plan, the DEIR fails to accurately depict the severity and extent of traffic impacts. In addition, as explained below, as excessive as these traffic numbers are, the DEIR actually paints an unrealistically optimistic picture of the CVSP's effect on the region's traffic congestion.

b. The DEIR Understates the CVSP's Traffic Impacts Because it Assumes the Implementation of Unfunded Transportation Infrastructure.

The CVSP purports to include, and the DEIR relies on, a series of major transportation infrastructure projects to be implemented during the next 25 to 50 years (i.e., the timeline for buildout of the CVSP). The DEIR therefore concludes that any impacts resulting from the phasing of traffic improvements to development phases would be "temporary and ultimately mitigated." DEIR at 166. However, the traffic analysis suffers from a fatal flaw: it assumes the implementation of major transportation projects in its baseline for determining project impacts when there is *no evidence* that these projects would actually be implemented. Thus if any of these roadway improvements are not constructed or implemented, traffic impacts would be more severe than described.

The DEIR nevertheless assumes these transportation infrastructure improvements in its analysis of CVSP traffic impacts, claiming that such projects are required to accommodate proposed CVSP land use development. DEIR at 146. Yet, these are not minor undertakings; they include massive projects such as new interchanges with U.S. 101 and the construction of major regional arterials. DEIR at 148-150. The DEIR never, however, specifically identifies how these projects would be funded or how the City would ensure that infrastructure improvements necessary to support land use development would occur concurrently, or in advance of, the demand anticipated from new development.

Such details are essential for a project-level EIR such as this. Unfortunately, the environmental document raises more questions than it answers, as illustrated by the following statements:

This major infrastructure would be financed through a variety of mechanisms over the life of the project implementation

process. For example, Development Impact Fees *could* be assessed at the time of project approval. Additionally, the City of San Jose *could* seek funding from regional sources to help finance major improvements to the regional transportation system, including upgrading and/or expanding transit systems. Build-out of the project would be dependent on concurrent implementation of the major transportation infrastructure elements.

DEIR at 148 (emphasis added). The DEIR never actually identifies, let alone describes, the City's Development Impact Fee program. Would this fee program be the only funding mechanism (other than the vague hope for "regional funding sources") for the necessary infrastructure improvements? Put simply, will the financing for these massive projects be sufficient or not?

Nor does the DEIR identify the schedule, or even a tentative schedule, for design and construction of this infrastructure. For example, the DEIR asserts that the City would begin to approve the residential component of the Project only after 5,000 new jobs have been added. DEIR at 7. At the same time, the DEIR admits that the CVSP cannot proceed without the roadway projects. *Id.* at 146. The DEIR never identifies exactly which transportation projects have to be in place prior to the industrial development (i.e., the 5,000 jobs). Once the 5,000 jobs have been created, which transportation projects would have to be in place before the City moves forward with the residential component? More importantly, at what point, if ever, will the City decide it cannot approve further development because significant infrastructure projects have not yet been constructed? The DEIR simply ignores these fundamental issues. These are critical components of the CVSP, not trivial details that can be defined after project approval. Until the DEIR resolves this critical flaw, it cannot legally support project-level approvals.

The problems with the DEIR's failure to ensure the implementation of necessary infrastructure represent more than just poor planning. In a few instances, the DEIR admits that some of the transportation projects would be implemented as mitigation measures for the CVSP's significant traffic impacts. To this end, the document explains that "the proposed project" shall make a fair share contribution toward the necessary transportation improvement. *See e.g.*, Impact Trans-4, Trans-5, and Trans-15; DEIR at

176-178. Given that the “project” here is the specific plan itself, how exactly will the specific plan pay its fair share contribution?

According to state law, fee-based mitigation programs for public service impacts based on fair share infrastructure contributions by individual projects may potentially be adequate mitigation measures under CEQA. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, (2001) 87 Cal. App. 4th 99, 140. To be adequate, however, these mitigation fees must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing. *Id.* at 140-41; *see also Anderson First Coalition v. City of Anderson*, (2005) 130 Cal. App. 4th 1173, 1188-89 (explaining that fee-based traffic mitigation measures have to be specific and part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of the traffic impacts at issue). Here, in direct contrast to CEQA’s clear requirements, the DEIR’s proposed mitigation simply assumes that the payment will occur, that it will cause the transportation projects to actually be constructed, and that it will adequately mitigate the impacts, without providing a reasonably enforceable plan to achieve those results. Again, since these assumptions are not based on actual agency commitments, neither the public nor decision-makers have any way of knowing the actual traffic consequences of approving the CVSP.

If, as the DEIR contends, the CVSP will include identification of financing measures for the needed capital improvements to support planned levels of development (DEIR at 8), this Project does not come close to achieving its intended objective. The DEIR should be revised to provide analysis sufficient to explain how the public and private infrastructure would be provided in a logical and viable sequence, so that each increment of development is supported by adequate public infrastructure and improvements.

c. The DEIR Understates the CVSP’s Traffic Impacts Because it Assumes Unrealistically High Transit Use.

As discussed above, while the DEIR’s traffic analysis assumes that four percent of the CVSP’s person trips would be made on transit (DEIR at 147), the document provides no evidentiary support for this optimistic assumption. Once again, the DEIR assumes the implementation of three major public transit improvements—the CalTrain station in the Coyote Valley, a shuttle to the Santa Clara Valley Transportation

Authority (“VTA”) Light Rail Transit (“LRT”) station at Santa Teresa, and an internal fixed guideway bus rapid transit (“BRT”) system. DEIR at 25, 28, 183. Here too, the DEIR never discloses exactly how these major transit infrastructure projects would be funded. The cost to actually construct this infrastructure, while undisclosed in the DEIR, would clearly be substantial. Moreover, infrastructure is only one of the costs associated with transit service. With the exception of a passing reference to the need for an increase in frequency and expansion of the VTA bus service (DEIR at 164), the DEIR ignores the specific increases in transit service necessary to serve CVSP transit needs. In addition, as discussed below, the DEIR is also silent as to how the CVSP would impact the transit service providers. Thus, in essence, contrary to the CVSP’s purported objective, the Project includes no real plan to provide transit service.

Even if the transit service were in place, the DEIR fails to provide any basis for its four percent ridership assumptions. It is especially difficult for transit to compete with the automobile if auto-based travel is faster and more convenient. Here, the CVSP would be developed with low-density, decentralized land uses, high-speed arterials, and over 41,000 parking spaces, all of which have a tremendously deadening effect on public transit. Thus, far from providing sustainable, transit-oriented development, the CVSP would do nothing more than facilitate San Jose’s trajectory of car-oriented sprawl.

Unless and until the DEIR can substantiate its assumption that four percent of CVSP trips would be made by transit, the document should assume these 13,000 trips would be made by automobile. This is a serious flaw in the analysis, which the DEIR must be revised to address.

d. The DEIR Understates the CVSP’s Traffic Impacts Because It Fails to Analyze Impacts to Regional Intersections.

The DEIR further understates the CVSP’s effect on traffic because it artificially limits the geographical size of the study area used to analyze intersection impacts. Specifically, the DEIR asserts that “project traffic will dissipate and disperse significantly once outside of the Coyote Valley, therefore intersections operating at LOS C or better outside of the CVSP Area were not analyzed.” DEIR at 125. The DEIR thus ignores hundreds, perhaps thousands, of intersections simply because the intersections are located outside of the Coyote Valley. By unreasonably restricting the size of the study

area, the DEIR gives the impression that the quarter-million daily cars traveling to and from the Project site would not impact intersections outside the Coyote Valley. Such an assumption is absurd. Traffic congestion in urban areas is a regional phenomenon. Cars would not suddenly stop once they are outside of the CVSP's boundaries but would continue—to Santa Clara County, San Francisco, Alameda County, and beyond.

The California Supreme Court has emphasized that “an EIR may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required.” *Citizens of Goleta Valley*, 52 Cal.3d at 575. An EIR must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. *See Kings County Farm Bureau*, 221 Cal.App.3d at 721-23. This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts. Pub. Res. Code §§ 21061, 21068. An EIR cannot analyze all such environmental impacts if its study area does not include the geographical area over which these impacts will occur.

If the CVSP is approved, extensive new traffic would inundate the South Bay. Yet this DEIR leaves the public and decision-makers in the dark as to the Project's actual traffic impacts because it arbitrarily ignores myriad intersections. The revised DEIR must identify each intersection that would be significantly impacted by the CVSP's influx of traffic, analyze the impacts, and identify feasible mitigation.

e. The DEIR Fails to Address Impacts to Transit Providers.

Regardless of the accuracy of this DEIR's projected transit mode share, the document provides no analysis, let alone evidence, that transit service providers would be able to accommodate the increase in transit ridership. The DEIR indicates that the demand for transit service will increase by up to 500 to 600 riders (apparently peak hour riders), upon buildout of the CVSP. DEIR at 164. If accurate, this increase in ridership would have potentially significant impacts on CalTrans and on VTA. Despite this fact, the DEIR fails to include any description of current loading capacities of the transit currently serving the site or the ability of Caltrans and VTA to serve its existing customers.

Moreover, the DEIR does not contain a specific threshold of significance for impacts to transit service. The DEIR, therefore, has no basis to conclude that impacts

to transit service providers would be less than significant. To conclude, as the DEIR does, that an impact is less than significant, substantial evidence must demonstrate that mitigation measures will reduce an impact to a less-than-significant level. Substantial evidence consists of “facts, a reasonable presumption predicated on fact, or expert opinion supported by fact,” not “argument, speculation, unsubstantiated opinion or narrative.” Pub. Res. Code § 21080(e)(1)-(2). Because the DEIR’s conclusion of insignificance is premised on unsupported assumptions, it falls far short of this threshold.

The revised DEIR must provide the following: (1) supporting evidence for transit ridership assumptions based on the types of uses proposed, taking into consideration the existing ridership loads and future transit services; (2) an indication of the number of transit riders that will be added to each line during the peak periods; (3) a description of the loadings on the various bus and other transit mode routes that will be affected by the project; (4) information about how much demand the CVSP will generate for routes that are already at capacity or projected to be at capacity in 25-50 years; and (5) a description of how transit agencies would be able to accommodate this demand.

f. The DEIR Fails to Consider and Adopt Feasible Mitigation Measures For the Project’s Significant Impact on Freeways.

Although the DEIR finds that traffic from the CVSP would cause 10 freeway segments to operate at an unacceptable LOS F (DEIR at 162), the document fails to provide any substantive mitigation for these gridlock conditions. Rather than identify any specific mitigation, the DEIR simply suggests that undisclosed transit improvements would reduce auto usage and that this reduction in auto usage would be most noticeable on freeways. *Id.* at 178, 179. The DEIR never actually identifies the specific transit improvements or explains how they would reduce auto usage. Moreover, instead of providing mitigation for the CVSP’s severe impacts on area freeways, the DEIR simply labels these impacts significant and unavoidable. DEIR at 183. The DEIR’s approach to “mitigating” the Project’s impacts thus epitomizes its failure to meet CEQA’s core requirements. California courts have made clear that an EIR is inadequate if it fails to suggest feasible mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

The EIR's conclusion that mitigation to freeway impacts is somehow unavailable—that the City's hands are tied with respect to causing gridlock on area freeways—is particularly disturbing in light of the fact that the CVSP is intended to promote sustainable and transit-oriented development. Certainly, the DEIR could, and must, consider the following feasible mitigation measures intended to reduce auto-dependency:

- Study the feasibility of implementing a transportation demand management ordinance that would include such measures as a parking supply cap, parking pricing, jobs-based ridesharing programs; shuttle services, and telecommuting;
- Limit the amount of development proposed by the CVSP;
- Eliminate the artificial boundary between north and central Coyote Valley, thereby allowing for the integration of jobs, commercial and housing development;
- Increase development intensities and densities, thereby facilitating the potential for alternative modes of transportation;
- Reduce planned roadway capacity, specifically reducing the number of high-speed arterials constructed within the CVSP area; and
- Study and fund specific transit projects that would serve local as well as regional transportation needs.

In conclusion, the DEIR's failure to adequately identify and analyze feasible mitigation for the Project's impacts on freeways renders the DEIR legally inadequate. The revised DEIR must seriously address opportunities such as those identified above to reduce dependence on automobiles and to increase transit service.

4. The DEIR Fails to Adequately Analyze and Mitigate the Project's Water Supply Impacts.

Under CEQA, an EIR must inform decisionmakers and the public of the intended sources of water for a proposed project, as well as of the environmental impact if water is supplied from a particular source or sources. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 429 (2007) ("*Vineyard*"). It also must inform decisionmakers of the means by which any adverse impact resulting from the use of the identified water sources will be addressed. *Id.* Decisionmakers must be "presented with sufficient facts 'to evaluate the pros and cons of

supplying the amount of water that the [project] will need.” *Id.* at 431 (quoting *Santiago County Water Dist. v. County of Orange*, 118 Cal. App. 3d 818, 829 (1981)). The “future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis.” *Id.* The DEIR’s analysis of water supply for the Project fails to meet this standard.

a. The DEIR Does Not Adequately Describe Baseline Water Conditions in Coyote Valley.

“Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.” *Save Our Peninsula Committee v. County of Monterey*, 87 Cal. App.4th 99, 119-20 (2001) (quoting *County of Amador v. El Dorado County Water Agency*, 76 Cal. App. 4th 931, 952 (1999)). Here, the DEIR’s Water Supply Impacts section (Section 4.16) misstates the baseline water supply in the Coyote Valley Groundwater Sub-basin. Section 4.16.2.1 of the DEIR states that “approximately 8,000 acre-feet per year (afy) *is currently being* extracted from Coyote Valley Groundwater Sub-basin for agricultural and urban uses . . . with no adverse effects in a multi-year drought.” DEIR at 421 (emphasis added). However, the full Water Supply Evaluation (“WSE”) in Appendix M of the DEIR states that “the [Santa Clara Valley Water] District [“SCVWD”] has concluded that *up to* 8,000 [afy] *may be* withdrawn from the [Coyote Valley Groundwater Sub-basin] on a sustainable basis during multiple year drought conditions.” WSE at 2 (emphasis added).

These figures are misleading. The SCVWD’s Water Supply Analysis (“SCVWD WSA,” located in Appendix E to the full WSE) outlines historical groundwater pumping in the Sub-basin. SCVWD WSA at 10, Figure 7. According to the SCVWD WSA, between 1987 and 2002, an average of only 6,799 afy were pumped from the Sub-basin. Only in one year, 1997, were 8,000 or more afy pumped. Moreover, Table D-1 in the City’s Groundwater Basin Information (“Groundwater Basin Info.,” located in Appendix D to the WSE) contains slightly different figures for historical groundwater pumping in Coyote Valley, in spite of the fact that both the City and the SCVWD claim that the source of the data is the SCVWD. *See* Groundwater Basin Info. at D-7, Table D-1. This conflicting information further confuses the issue of baseline water supply.

Even more troubling, Figure 8 in the SCVWD WSA, which outlines historical water supply for the Coyote Valley Sub-basin, indicates that in the driest year on record, *only 2,239* acre feet were available. Though the SCVWD recognizes that “[w]hat demand could be met under this supply scenario depends on the groundwater storage at the beginning of the drought and how much of that groundwater storage can be withdrawn without adverse impacts,” neither the SCVWD WSA nor the body of the DEIR provides an adequate analysis of such a dry year scenario. Moreover, neither the DEIR nor any appendix sufficiently discusses the available supply (as measured in Figure 8 of the SCVWD WSA) as compared with the amount of water pumped (as measured in Figure 7 of the SCVWD WSA and Table D-1 of the Groundwater Basin Info.) or the relationship between those two figures relate to one another, leading to further confusion about baseline supply.

b. The DEIR Does Not Provide Adequate Information About the Environmental Impact of the Construction of Recharge Basins and the Increased Groundwater Extraction in Coyote Valley.

The DEIR states that 50-100 acres of groundwater recharge basins are needed in Coyote Valley to supply the 6,000 afy of recharge to the Sub-basin needed for the Project at full build out. However, there is insufficient detail about the environmental impact of constructing such basins. Though the DEIR briefly outlines the biological, cultural resources, land use, traffic, and hazardous materials impacts of the construction and use of recharge basins, these analyses are cursory and inconclusive at best.

Moreover, the DEIR does not identify any possible sites for the basins and therefore does not include analyses of their impact on animal species, existing trees, or cultural resources; nor does it include analyses of land use compatibility or hazardous materials conditions. At the same time, the DEIR claims that construction of groundwater recharge basins will increase the supply of potable groundwater in the Coyote Valley Sub-basin to 13,000 afy, meaning that the basins will be responsible for supplying over 80% of the predicted potable water supply deficit for the Project (5,000 afy of 6,200 afy, *see* DEIR at 383, Figure 4-11.1). DEIR at 385. The construction of recharge basins is therefore critically important to the water supply analysis for the Project. Though proper tiering may be appropriate for “long-term, multipart projects” such as this one, it is “not a device for deferring the identification of significant impacts that the adopting of a specific plan can be expected to cause.” *Vineyard*, 40 Cal. 4th at 429 (quoting *Stanislaus Natural*

Heritage Project v. County of Stanislaus, 48 Cal. App. 4th 182, 199 (1996)). Without the construction of the recharge basins, the Project's potable water supply needs simply will not be met. The City must therefore conduct a thorough analysis of the environmental impacts of the proposed recharge basins before it certifies *this* EIR or adopts the specific plan.

Additionally, the SCVWD WSA states that “[m]aintaining groundwater supplies [in the Coyote Valley Sub-basin] while avoiding nuisance high groundwater conditions is a challenge made even more difficult by the important fishery and habitat needs supported by Coyote Creek.” SCVWD WSA at 6. The DEIR ignores this challenge, conclusively stating that “Coyote and Fisher Creeks would not be adversely affected by the extraction of groundwater from the Coyote Valley Sub-basin because water withdrawal amounts would not change above the 8,000 afy.” DEIR at 421. The DEIR contains no substantiation for this statement. In fact, a central claim of the DEIR's identification of water supply sources in Section 4.11.2.3 is that 13,000 afy will be withdrawn from the Sub-basin to meet the potable water needs of the Project. DEIR at 385. The claim about the lack of significant environmental impact (which is based on extraction of 8,000 afy) and the claim about the adequacy of the water supply (which is based on increased extraction to 13,000 afy) are therefore directly contradictory.

c. The DEIR Does Not Adequately Discuss Groundwater Quality in the Coyote Valley Sub-basin.

A thorough discussion of the quality of the groundwater, both current and anticipated (with additional recharge and pumping), is critical to enable the public and decision-makers to make an informed decision about the feasibility of continued and increased use of potable groundwater extracted from the Coyote Valley Sub-basin. Because the water currently being extracted is used for both agricultural and urban purposes, it is not clear from the DEIR how much of that water is potable, nor how much of the additional water available with supplemental recharge would be potable.

The DEIR briefly discusses the nitrate and perchlorate content of the groundwater in Section 4.8.2.6, but it does not provide adequate detail about the quality of groundwater to be pumped in the future, claiming only that “[a]ll public water supply wells meet drinking water standards.” DEIR at 333. The DEIR provides no support for this statement, which appears to be directly contradicted by the Groundwater Basin

Information appendix, which states that over half of the 600 private wells tested in the Llagas and Coyote Valley Sub-basins in 1997 exceeded the federal safe drinking water standard for nitrate.³ Groundwater Basin Info. at D-14. Moreover, even after land is converted from agricultural to residential use, “nitrate concentrations in groundwater may continue to increase and or remain steady due to residual nitrate in the soil from prior use and the slow movement of water from the surface the water table.” *Id.*

Though there are somewhat more detailed groundwater quality data in the appendices to the DEIR, “a report ‘buried in an appendix’ is not a good substitute for ‘a good faith reasoned analysis.’” *California Oak Foundation v. City of Santa Clarita*, 133 Cal. App. 4th 1219, 1239 (2005) (quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 106 Cal. App. 4th 715, 722-23 (2003)).

d. The DEIR Does Not Adequately Address the Feasibility or Environmental Impact of the Construction of an Advanced Recycled Water Treatment Facility.

The DEIR’s discussion of the use of recycled water relies on the construction of an advanced recycled water treatment facility (“ARWTF”), the feasibility of which is still unknown. According to the DEIR, the ARWTF would supply a total of 10,300 afy of advanced treated water for groundwater recharge (6,000 afy) and non-potable uses (4,300 afy). This amount constitutes 100% of the non-potable water requirement of the Project, as well as 100% of the supplemental recharge requirements for the Coyote Valley Sub-basin. Disturbingly, the DEIR includes few details about the construction of an ARWTF. Moreover, the DEIR states that “existing ARWTF facilities are fairly rare and the anticipated environmental impacts described [] are preliminary.”

The DEIR’s analysis of the long-term environmental impacts of the ARWTF is unacceptably hypothetical, and the DEIR does not provide any meaningful detail about the possible environmental impacts. Instead, the DEIR simply suggests that the ARWTF may be sited so as to avoid the removal of trees “to the extent possible,” as well as to “avoid land use compatibility impacts,” and states that further analyses must be done in the future with respect to a number of possible impacts. DEIR at 425-27. No hazardous materials or cultural resources analyses were conducted. Likewise, the

³ Given that the public wells and the private wells draw from the same Sub-basin, the more likely scenario is that they have similar levels of contamination.

analysis of the impact of the waste stream discharge from the ARWTF is cursory, suggesting simply that discharging the waste to the San Francisco Bay would be beneficial because it would help to remedy the long-term desalinization of the Bay, without discussing specific biological impacts. DEIR at 426. Moreover, though the DEIR acknowledges that an ARWTF would require a significant amount of electricity as well as the construction of underground diesel storage tanks, there is no discussion of the environmental impacts of these requirements, except to state that green building policies “could reduce these impacts to a less than significant level.”

This cursory analysis is inadequate, regardless of whether the DEIR is viewed as a programmatic or project-level CEQA review. “While proper tiering of environmental review allows an agency to defer analysis of certain details to later phases of long-term linked or complex projects until those phases are up for approval, CEQA’s demand for meaningful information ‘is not satisfied by simply stating information will be provided in the future.’” *Vineyard*, 40 Cal. 4th at 431 (quoting *Santa Clarita*, 106 Cal. App. 4th at 723). “[F]uture water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis.” *Id.*

e. The DEIR Does Not Adequately Address Alternative Water Supply Sources.

In *Vineyard*, the Supreme Court stated that if there is still “uncertainty regarding actual availability of the anticipated future water sources, CEQA requires some discussion of possible replacement sources or alternatives to the use of the anticipated water, and of the environmental consequences of those contingencies.” 40 Cal. 4th at 432. Though the court in *Vineyard* recognized that certainty of water supply is not required by CEQA, it ruled that an EIR must discuss uncertainty if it exists.

The only mention of uncertainty in the present DEIR is the introductory sentence to Section 4.16.3, which states simply: “In the event that the preferred water supply sources do not fulfill the projected demands, the SCVWD and the City have identified alternative sources that could be utilized countywide and for the Project.” DEIR at 428. There is no explicit discussion of uncertainty elsewhere, in spite of the fact that the feasibility of constructing an ARWTF is unknown and the fact that the full WSE classifies the availability of an additional 5,000 afy of groundwater from the Coyote Valley Sub-basin as “less certain.” WSE at 42.

The full WSE also states that additional technical studies, storage and delivery infrastructure, treatment, energy supplies, treatment waste disposal, DHS approval, SCVWD approval, and the construction of recharge basins are required in order to make the additional 5,000 afy of groundwater supply a reality. *Id.* Given that the 5,000 afy that are “less certain” make up over a third of the Project’s estimated potable water supply needs, the degree of uncertainty is a critical factor that the DEIR overlooks. The *only* alternative water supply even mentioned in the DEIR is the possible construction of a new reservoir. Specifically, DEIR section 4.16.3 (“Alternative Water Supply Sources”) mentions a reservoir as a possible alternative water supply source, but does not go into any detail about the construction of such a reservoir or its environmental impact. DEIR at 428-29. Under *Vineyard*, the DEIR’s cursory discussion of this single alternative source is woefully inadequate, as is the DEIR’s failure to fully disclose the uncertainty of future water supplies to serve the Project.

f. DEIR Section 4.16.2.4 Is Misleading and Misstates the Project’s Water Needs.

Section 4.16.2.4 of the DEIR states that “approximately 1,200 acre-feet per year (afy) of potable water (in addition to the 8,000 afy already being withdrawn from the Coyote Valley Sub-basin) is required to meet the water supply needs of the proposed Project.” DEIR at 428. This statement is misleading in two ways. First, as discussed above, 8,000 afy is not currently being withdrawn from the Coyote Valley Sub-basin. Second, the Project’s total demand for potable water, as outlined in Section 4.11.2.3, is 14,200 afy. This total far exceeds the 9,200 afy (8,000 plus 1,200) implied by Section 4.16.2.4. Moreover, stating that only 1,200 afy is required to meet water supply needs ignores the *assumption* that an additional 5,000 afy will be available from the Coyote Valley Sub-basin if the recharge basins are constructed. The DEIR must use consistent figures throughout in order to avoid confusing the public and decisionmaking bodies about the Project’s water demands.

g. The DEIR Does Not Provide Adequate Detail About the Source or Accuracy of the Projected Water Demands at Build Out.

The DEIR uses 18,500 afy as the estimated total water demand at Project build out; this figure excludes the 4,000 afy of recycled water currently supplied to Metcalf Energy Center (“MEC”). DEIR at 383. Presumably, based on the information contained in the WSE, this figure is taken from the SCVWD 2005 Urban Water

Management Plan (“UWMP”), which included forecasted Project demand. *See* WSE at 1. However, the WSE also indicates that current estimated Coyote Valley build-out demand is 18,700 afy, and that demand estimated by the retailers that submitted water supply assessments ranges from 13,700 to 20,400 afy. *Id.* Moreover, some of those estimates include the 4,000 afy currently being supplied to MEC while others don’t, further confusing the issue. The body of the DEIR itself must provide a more detailed outline of the projected water demands as well as the basis for its use of 18,500 afy as the projected demand at build out. *California Oak Foundation*, 133 Cal. App. 4th at 1239 (“Information ‘scattered here and there in EIR appendices’ or a report ‘buried in an appendix’ is not a good substitute for ‘a good faith reasoned analysis.’”)

h. The DEIR Confuses the SCVWD’s Analysis of the Adequacy of Water Supplies Through 2020 and 2030.

In Section 4.11.2.3, the DEIR states that the “Santa Clara Valley Water District’s [UWMP] includes the build-out demand of the Project and concludes that with water conservation savings and additional infrastructure, projected County-wide demand (including Coyote Valley) can be satisfied through 2030.” DEIR at 383. However, the WSE frames the UWMP’s conclusions differently, stating that “with water conservation savings, current district supplies are adequate to meet current and near future demand (to 2020) in normal and dry year scenarios, while new investment in water supplies is needed to meet additional future demand past the year 2020.” WSE at 28. The details of the infrastructure needed to meet demand beyond 2020, while very broadly outlined, are not analyzed in the DEIR or its appendices. *See* WSE at 29-30 (“The next [Integrated Water Resource Plan Study] is scheduled to be completed in 2008, and will define the strategy to secure supplies to 2020 and beyond.”). The DEIR states that “[f]urther investigation of the associated costs and economic feasibility for . . . each of the proposed alternatives is underway . . .” DEIR at 386. The text of the DEIR is therefore misleading in assuring the public and decision-makers that the SCVWD has found that water supplies are adequate through 2030. Though the DEIR recognizes that the adequacy of long-term supplies depends on conservation and additional infrastructure, there is little detail about the infrastructure that must be put into place or about the environmental impact of such infrastructure.

i. The Organization of the Water Supply Analysis in the DEIR is Confusing and Disjointed.

“The data in an EIR must . . . be presented in a manner calculated to adequately inform the public and decision-makers, who may not be previously familiar with the details of the project.” *Vineyard*, 40 Cal. 4th at 442. Here, the information about the adequacy of the water supply for the Project as well as about the environmental impacts of utilizing the proposed water sources are scattered in several places throughout the DEIR. For instance, the information about water quality is in Section 4.8, while the information about water supply appears fifty pages later in Section 4.11. While it may be appropriate to separate the impact analysis from the setting, this organization is unnecessarily disjointed. As a result, it is difficult for the public and decision-makers to understand all aspects of the proposed water supply and its impacts without reading and re-reading scattered sections of the DEIR in order to find the necessary information.

j. The DEIR Does Not Address Water Rights in the Coyote Valley Sub-Basin.

Section 4.11.2.3 states that “[w]ater is currently obtained for use in the valley from privately owned wells,” though the DEIR implies that the public has rights and access to this water. DEIR at 383. However, there is not an adequate discussion of where new wells will be located (or if new wells will be drilled at all) or of water rights more generally in the Sub-basin. In order for the public and decision-makers to have an adequate foundation on which to evaluate the reliability of groundwater supplies, the DEIR must describe water rights in the Sub-basin. For instance, if the wells will deliver groundwater for use on parcels other than those from which the water is drawn, those uses must be characterized as appropriative rather than overlying. *See City of San Bernardino v. City of Riverside*, 186 Cal. 7 (1921); *see also City of Pasadena v. City of Alhambra*, 33 Cal. 2d 908, 927 (1949). Under California’s common law system of groundwater rights, appropriative rights must give way when necessary to serve overlying users, e.g., agricultural users who pump groundwater for irrigation on the same parcel from which the water is pumped. *See City of Pasadena*, 33 Cal. 2d at 926. Accordingly, the DEIR must provide adequate information about overlying versus appropriative rights and use of the groundwater in the Coyote Valley Sub-basin, as well as about the location of any new wells and any environmental impacts of their drilling.

k. The DEIR Does Not Provide Adequate Information About the Variability of Water Supply in Wet and Dry Years or in a Multi-Year Drought.

In *Vineyard*, the court noted that an analytically thorough EIR should address the issue of water supply in wet and dry years, and the specific combination of proposed water sources to be used during wet and dry years, respectively. *Vineyard*, 40 Cal. 4th at 440. The DEIR does not adequately address this issue. It does not distinguish between wet and dry years, stating without explanation that up to 13,000 afy will be available (with additional recharge) from the Coyote Valley Sub-basin “with no adverse effects in a multi-year drought” and that the supply of recycled water will be “largely uninterrupted.” DEIR at 385. Though the appendices contain some additional detail about water supply and demand variability in dry versus wet years as well as during multi-year droughts, “a report ‘buried in an appendix’ is not a good substitute for ‘a good faith reasoned analysis.’” *California Oak Foundation*, 133 Cal. App. 4th at 1239.

5. The DEIR Fails to Adequately Analyze and Mitigate the Project’s Impacts on Utilities and Public Services.

The DEIR’s analysis of the CVSP’s impacts on utilities and service systems is woefully inadequate. In direct conflict with the CVSP’s project objective to ensure adequate services and infrastructure (DEIR at 2), the document fails to provide this necessary assurance. As discussed below—using solid waste and wastewater services as examples—the document fails to provide any evidence that critical public utilities and services would be in place to serve the CVSP.

a. The DEIR Fails to Identify the Necessary Solid Waste Facilities or Analyze and Mitigate Impacts Relating to the Provision of Solid Waste Services.

As discussed in the project description section of this letter, the DEIR errs in its failure to identify and describe specific components of the CVSP’s solid waste system, including the joint-use maintenance, vehicle storage facility, corporation yard, materials recovery facility, and the composting facility. The DEIR is equally deficient in its failure to specifically identify how the City intends to serve the solid waste needs of the CVSP. Indeed, rather than seriously study the City’s ability to accommodate the 2.7 million pounds per week of solid waste that would be generated by the CVSP, the DEIR leaves the entire issue unresolved. See DEIR at 387, Table 4.11-2 (emphasis added).

Absent any evidence or substantive analysis, the DEIR simply concludes that impacts relating to solid waste collection and disposal would be less than significant. DEIR at 387.

What information is provided in the DEIR regarding disposal capacity offers absolutely no assurance that area landfills would be able to accommodate the massive amount of waste generated by the CVSP. Yet, the DEIR implies that solid waste disposal would be a non-issue because the “CVSP would represent a small fraction of the city’s total generated waste.” *Id.* at 387. The CVSP’s percentage of San Jose’s total waste is irrelevant and does nothing to explain whether adequate landfill capacity would exist to accommodate the waste generated by the CVSP. Moreover, the information that is provided regarding the ability of landfill capacity to meet future waste demand is incomplete and contradictory. For example, as regards the Newby Island Landfill, the DEIR states that the City’s existing contract with Newby Island lasts until 2020 and that any expansion is speculative. DEIR at 379. Later, the document states that any garbage collected within Coyote Valley will be disposed of at Newby Island. *Id.* at 387. The DEIR never actually identifies the capacity of Newby Island or explains whether Newby Island would be able to adequately accommodate the CVSP’s solid waste needs.

Nor does the DEIR provide useful information regarding the ability of the Kirby Canyon Landfill to meet the Project’s solid waste needs, as the following statement confirms: “It is unknown how long there will be capacity at Kirby Canyon Landfill or other adjacent landfills, but all capacity within the City is expected to be exhausted by 2030 regardless of the development of CVSP.” *Id.* Following this decidedly vague and ambiguous statement, the DEIR boldly asserts that “the proposed CVSP project would not result in a significant impact as a result of exceeding the capacity of a landfill.” *Id.* It is impossible to reconcile the statements listed above with the DEIR’s conclusion that impacts relating to solid waste would be less than significant.

The DEIR’s analysis of cumulative solid waste impacts correctly concludes that these impacts would be significant. DEIR at 510. But here too, the DEIR fails to adequately analyze this impact. It makes no attempt, for example, to identify total solid waste demand in the region, or to analyze that demand against the capacity of area landfills. The cumulative analysis simply repeats the fact that all capacity within the City is expected to be exhausted by 2030 (DEIR at 509), but again lacks any of the detail as to the severity or extent of the impact.

The DEIR's approach to mitigating these cumulative impacts is also woefully inadequate. The document mentions potential mitigation options, including research and analysis to increase waste diversion and to monitor the continued availability of recycling, resource recovery, and composting capacity, or to open a new landfill. DEIR at 510. Yet, we can find no evidence that these "mitigation measures" would actually be required and incorporated into the Project.

In conclusion, the region's ability to accommodate the CVSP's massive amount of solid waste is not a trivial detail that can be determined after project approval. The DEIR must identify the total amount of the City's solid waste, including that generated by the CVSP, identify landfill or compost capacity, and determine whether the Project's waste can be accommodated upon buildout of the CVSP. Of course, this analysis must take into account the other jurisdictions that rely on the region's landfills and compost facilities.

b. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Cumulative or Project-Level Impacts Relating to Sanitary Sewer/Wastewater Treatment.

Although the DEIR correctly concludes that cumulative impacts relating to sanitary sewer/wastewater treatment would constitute a significant impact, it substantially understates the severity and extent of this impact. The analysis suffers from two fundamental flaws: (1) it does not identify or analyze the wastewater that would be generated by other jurisdictions; and (2) it does not actually analyze the environmental impacts that would result from the exceeding the capacity of the wastewater treatment system. Moreover, as explained below, because the CVSP is not expected to be built out for 25 to 50 years, the deficiencies in the DEIR's cumulative analysis of wastewater impacts implicates the document's project-specific analysis.

The San Jose/Santa Clara Water Pollution Control Plant ("WPCP") provides wastewater treatment for the cities of San Jose, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. DEIR at 504. The DEIR states that while the WPCP has an existing capacity to treat 167 million gallons of wastewater per day ("mgd"), the National Pollution Discharge Elimination System ("NPDES") permitting program limits the amount of treated wastewater that can be discharged to the San Francisco Bay to 120 mgd. DEIR at 376. The DEIR further notes that the capacity allocated to San Jose of the 167 mgd figure is 107 mgd. *Id.* In 2006, San Jose pumped 84 mgd. *Id.* at 505. Cumulative development *within the City* would result in an increase

in wastewater discharge for a total of 117 mgd which would exceed the City's allotted capacity by about 10 mgd. *Id.* (emphasis added).

Of course, what the DEIR's analysis omits entirely is that, upon buildout of the CVSP—expected to occur sometime between 2032 and 2057—the wastewater volume of the cities of Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno will have substantially increased. Yet the CVSP DEIR makes no attempt to estimate the increased wastewater discharge from these other jurisdictions and thus fails to disclose the severity of this capacity deficit. Moreover, it follows that if there is insufficient capacity to serve cumulative development, there would not be sufficient capacity to serve the CVSP itself, given the CVSP's buildout timeframe. The DEIR incorrectly concludes this project-specific impact is less than significant. DEIR at 383.

Although the DEIR acknowledges that the 33 mgd increase in wastewater attributable to San Jose's cumulative development would cause the discharge from the WPCP to the San Francisco Bay to exceed the 120 mgd trigger, it fails to analyze the environmental consequences from this discharge, claiming instead that the City's Municipal Code would not allow this to occur. DEIR at 505, 506. Merely requiring compliance with agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse impact. In *Kings County Farm Bureau*, 221 Cal.App.3d at 716, for example, the court found the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plant did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project. Here, the DEIR concedes that exceeding San Jose's wastewater flow allotment could possibly impact endangered species in the San Francisco Bay, but the document stops short of actually analyzing the environmental effects of this discharge. The revised DEIR must provide an analysis of this and any other environmental impacts that could result from such an exceedance. This revised analysis must also evaluate the cumulative and project-specific impacts resulting from the CVSP, San Jose's other development, and the projected wastewater demand from the cities of Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno.

The DEIR also fails in its approach to mitigate for cumulative and project-specific wastewater impacts. Rather than specifically identify feasible mitigation measures, the document simply promises the eventual preparation of a Plant Master Plan which will "include a rigorous analysis of conditions beyond the scope of this EIR as to whether expanding treatment capacity is necessary." *Id.* at 506, 507. It is wholly

inappropriate, however, to deem this measure “mitigation” and allow it to be delayed until after project approval. *See Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1396 (rejecting mitigation measures allowing project applicant to comply with report and measures regarding the Stephens’ kangaroo rat developed *after* project approval). Moreover, the fact that the DEIR acknowledges the need to evaluate the necessity of expanding the wastewater treatment plant demonstrates the inadequacy of the County's environmental review.

Finally, while the DEIR vaguely alludes to potential environmental impacts that could result from increasing the treatment capacity of the Plant (DEIR at 507), it again stops short of actually providing this analysis. CEQA requires an EIR to evaluate any potentially significant environmental impacts that would be caused by mitigation measures. CEQA Guidelines § 5126.4 (a)(1)(D). Here, the expansion of the existing wastewater treatment plant, or the construction of satellite facilities, would have potential impacts including but not limited to the loss of agricultural and open space lands, loss of wildlife habitat, water supply and water quality impacts, air quality, odor, and noise impacts. The revised DEIR must identify, and analyze and identify feasible mitigation for these impacts. A thorough investigation on the cumulative and project-specific wastewater impacts must be prepared now in order to evaluate and mitigate these impacts before the Project is approved.

8. The DEIR Fails to Adequately Analyze and Mitigate the Significant Energy Footprint of the CVSP.

The DEIR acknowledges that the CVSP would result in the use of a substantial amount of electricity, natural gas, and gasoline and correctly concludes that these impacts would be considered significant. DEIR at 394, 395. Indeed, the DEIR has no choice but to conclude energy impacts would be significant inasmuch as the California Energy Commission (“CEC”) has determined that California will have an adequate supply of electricity only through 2009 and that Northern California will have an adequate supply of natural gas only through 2007. *Id.* at 392. Particularly given these looming shortages, the DEIR should have comprehensively and specifically evaluated the effect that the CVSP would have on the ability of energy providers to supply electricity and natural gas. Yet, in a flagrant disregard for CEQA, the sum total of the DEIR’s purported impact analysis is a simple recitation of how the CVSP would likely *reduce* energy consumption. *Id.* at 394, 395 (explaining that a mix of land uses and the provision of housing may lead to reductions in energy consumption). At a minimum, the DEIR is obligated to provide a detailed investigation of the severity and extent of impacts to

energy providers. Without this analysis, it is simply not possible to determine whether sufficient resources would be available to serve the CVSP.

Nor does the DEIR provide any evidentiary support for its conclusion that the energy mitigation measures would reduce the CVSP's energy impacts to a less than significant level. In addition to the fact that the measures are vague and relatively undefined, the DEIR makes no attempt to identify the expected energy savings from these measures. Once again, the DEIR provides no basis to judge the effectiveness of its mitigation. Rather it is a mere expression of hope that the City will be able to devise a way around California's energy crisis. The DEIR preparers' ambivalence toward implementing energy measures is further confirmed by the following statement in the document's cumulative energy analysis: "[t]he degree to which such measures will be incorporated into the CVSP or other cumulative projects is not presently known." *Id.* at 512.

Clearly, the DEIR must be revised to comprehensively analyze and mitigate the CVSP's effect on California's short and long-range energy needs. We direct the DEIR preparers to begin their investigation by carefully reviewing CEQA Appendix F (Energy Conservation) which is intended to ensure that a project's energy implications are fully considered in project decisions. This investigation must include the Project's compliance with California's Energy Efficiency Standards for Residential and Nonresidential Buildings.

9. The DEIR Fails to Adequately Analyze the Project's Effect on Global Climate Change.

While the DEIR provides a cursory analysis of the CVSP's contribution toward global climate change, the document once again fails to acknowledge the severity and extent of this impact. Indeed, the DEIR fails to identify a threshold of significance and therefore fails to identify the Project's impact upon climate change as significant. Absent such a determination, the DEIR inappropriately and irresponsibly fails to identify mitigation measures (i.e., specific emission reduction strategies) capable of offsetting the Project's greenhouse gas footprint. The DEIR does apparently acknowledge some obligation to implement such strategies when it suggests that Green Building policies could be implemented and reminds us that the CVSP "has been specifically designed to promote non-auto modes of transportation." DEIR at 395, 419. Yet, these passing glances to emission strategies do nothing more than demonstrate that the DEIR preparers

view these strategies as nothing more than a bureaucratic hurdle that must be jumped over prior to project approval.

The CVSP would be a significant source of greenhouse gas emissions. Indeed, by itself, the Project's approximately 1,687,000 vehicle miles traveled *per day* would result in 314,500 metric tons per year of carbon dioxide vehicle emissions. DEIR at 417. The CVSP's annual electricity usage would generate 183,000 metric tons per year of carbon dioxide emissions. *Id.* Given these extraordinary increases in greenhouse gas emissions, the DEIR is obligated to seriously investigate emission reduction strategies.

We recommend that this investigation begin with a review of the "White Paper on Global Climate Change," a report prepared by the Association of Environmental Professionals ("AEP"). In its White Paper, AEP provides a recommended framework and methodology for evaluating climate change impacts under CEQA. To this end, AEP states that the preferred approach to reducing a project's impact on global climate change is to incorporate design features into the project that comply with California's strategies to reduce greenhouse gas emissions. The White Paper identifies a list of features that could apply to residential, commercial and industrial projects. According to AEP, it is only with the incorporation of these mitigation measures that a project's cumulative incremental contribution to green house gases could even arguably be anticipated to be less than significant. The CVSP DEIR's purported strategies to reduce greenhouse gas emissions do not come close to the design features set forth in AEP's report. The DEIR, and indeed the Coyote Valley Specific Plan itself, should be redesigned to include these important measures. We also suggest that the City investigate and consider the adoption of a greenhouse gas reduction plan modeled after such a plan prepared by Marin County.

10. The DEIR Fails to Adequately Analyze the Project's Population, Jobs and Housing Impacts.

The DEIR's analysis of population, jobs, and housing provides so little information that it is not possible to determine the adequacy of the impact analysis. Notably, the DEIR ignores several factors that will increase the CVSP's labor demand that the Project would necessitate. One of the most obvious failures in the DEIR's analysis is the absence of construction workers in the employment estimates. Over the next 25 – 50 years, the CVSP would essentially be a continuous construction site, yet the DEIR completely ignores the significant labor demand this construction will surely generate. Furthermore, the DEIR's employment estimates appear to ignore additional employment generated by the ancillary activities within the CVSP—most notably the

increased demand for road maintenance on new and significantly upgraded highways, emergency services, and other public services. Moreover, many of these new employees are likely to come from outside the area, bringing with them families and new demand for City services. All of these phenomena will increase labor demand, and therefore housing demand, but none of them are accounted for in the DEIR. This omission violates basic CEQA requirements. *See Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal. App. 4th 342, 367-71.

Although the DEIR asserts that 20% of the housing units included in the CVSP would be deed-restricted below market rate units (DEIR at 9, 69), it includes no discussion of the current or future need for affordable housing in the CVSP or in San Jose. Specifically, the document fails to quantify employee household distribution by geographic location and, by extension, determine the local affordable housing need through project buildout. Amazingly, the DEIR does not provide any information as to how this affordable housing goal would be met, where the affordable housing would be located, or which income levels would be targeted. The revised DEIR must disclose the current and expected affordable housing needs, disclose the ability of San Jose to meet those needs, and identify a specific mitigation plan for achieving the 20% affordable housing goal.

11. The DEIR Fails to Analyze the Project's Growth-Inducing Effects.

CEQA requires an EIR to include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337. The statement must "[d]iscuss 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." CEQA Guidelines § 15126.2(d). It must also discuss how projects "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively." *Id.* The DEIR at issue here does not begin to meet these requirements.

One key route to induced growth is the removal of constraints that formerly limited growth. *Id.* Development of much of the CVSP is currently limited by the lack of infrastructure and public services. The Project would remove that constraint by extending services and infrastructure to the site (i.e., the Project would require an extension of the Urban Service Area to cover the Urban Reserve Area, to allow the extension of urban

services, including sewer and water). DEIR at 96, 525. The DEIR concludes, without any evidence or discussion, that “the project does not include expansion of infrastructure, including flood control and roadways, beyond that needed to serve the proposed development.” *Id.* at 524. There is no reason to believe that adjacent private landowners will not see in the new infrastructure the means to pursue their own development plans. In fact, such plans would be facilitated by the extension of the Urban Service Area. Indeed, inasmuch as there is no guarantee that lands within the Coyote Valley Greenbelt would be ultimately protected via conservation easements or any other mechanism, the property owners of the 381 parcels located in the Greenbelt will be tempted to develop their land and lobby to have services extended further south. *Id.* at 94. Unless mitigation measures commit the City to ensure that all the infrastructure and services are scaled to serve only the CVSP, it will provide a strong incentive for offsite growth. The DEIR must carefully consider this resultant potential growth and its environmental impacts, and it must propose mitigation measures to minimize those impacts. *See City of Antioch*, 187 Cal. App. 3d 1325.

Another way that projects may induce growth is by “tax[ing] existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.” CEQA Guidelines § 15126.2(d). The DEIR completely ignores the possibility that the Project will have exactly this effect on local and regional solid waste and wastewater facilities. As discussed above, the DEIR admits that there will be the need to develop new facilities and expand services to serve the CVSP. This new construction is exactly the sort of project-induced facilities growth, the environmental effects of which the DEIR must carefully consider.

Similarly, the DEIR acknowledges that the CVSP would require the construction of an extension of Bailey Avenue (commonly referred to as “Bailey-over-the-Hill roadway”) to the Almaden Valley. DEIR at 105. The DEIR further acknowledges that the area that the Bailey-over-the-Hill roadway alignment “may someday pass through is primarily designated for Agricultural and Non-urban uses.” *Id.* at 106. Inasmuch as the extension of this roadway appears, according to the DEIR, as a foregone conclusion, the DEIR is obligated to analyze its environmental effects—including its growth-inducing impacts. Indeed, this major roadway extension would open the Almaden Valley and points between the CVSP and Almaden Valley to intense development pressure. The DEIR is silent on this issue and therefore must be revised to correct this unlawful omission.

When considering the Project's potential for inducing population and economic growth, the DEIR erroneously focuses only on the increase in population and employment brought on by the CVSP itself. Like the DEIR's discussion of housing and population, it ignores the construction workforce. More importantly, it assumes that the CVSP will be the only development in the area. If it is successful, however, it is likely to stimulate further land development. Speculators may decide to buy vacant land and develop subdivisions, and retail proprietors may decide to develop shops and restaurants to cater to the new community. The DEIR fails entirely to acknowledge that the development of this new community will foster population and retail growth beyond the boundaries of the project site. "The fact that the exact extent and location of such growth cannot now be determined does not excuse the [City] from" the requirement of analyzing the effects of this growth on the environment, *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 158, especially in light of the potential for radical change to the region's rural/agricultural environment.

12. The DEIR Fails to Analyze the Cumulative Impacts of the Project.

An EIR must discuss significant "cumulative impacts." CEQA Guidelines § 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines § 15355(a). A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408. Incredibly, the DEIR contains only the most cursory treatment of cumulative impacts. In addition to the document's deficient analyses of cumulative impacts on utilities and public services discussed above, the following are examples of some of the most egregious deficiencies.

The DEIR's analysis of cumulative loss of agricultural lands is, at best, half-hearted because it inappropriately limits its analysis to projects only with San Jose's boundaries. Given California's rapidly diminishing agricultural resources, impacts

relating to its loss cannot be limited to San Jose. Urban and suburban encroachment is a pressing concern statewide; therefore, the DEIR should have evaluated the cumulative loss of agricultural lands on a regional and statewide basis and identified feasible mechanisms for mitigating this loss.

The DEIR's conclusion regarding cumulative loss of open space lands betrays a fundamental misunderstanding of CEQA. After acknowledging that the CVSP itself would significantly impact open space resources, it concludes that cumulative open space impacts would be less than significant. DEIR at 470. The DEIR comes to this illogical conclusion in part because it, again, only looks as far as San Jose's lands. Yet, the analysis is equally deficient in that it absurdly concludes that the loss of other open space lands in San Jose would not be significant because the open space sites targeted for development are not designated as permanent open space in the City's General Plan. *Id.* The General Plan's designation of these lands is irrelevant; CEQA requires an EIR to evaluate a project's effects against what is on the ground. If the cumulative projects' lands are open space and that open space would be lost as a result of their development, the impact caused by the CVSP together with these other impacts would undoubtedly be cumulatively considerable. The revised DEIR must identify this cumulative loss of open space as a significant impact and identify feasible mitigation.

The DEIR's cumulative traffic analysis suffers from many of the same flaws as the project-specific traffic analysis. In particular, it is simply impossible to determine the severity and extent of traffic impacts because the document never identifies which specific transportation projects are assumed to be in place in the future. Moreover, like the DEIR's analysis of cumulative impacts to agricultural and open space lands, the document limits its analysis to those projects that would be developed within the City of San Jose, ignoring altogether projects in other jurisdictions. *See* DEIR at 468 ("For purposes of this EIR, the cumulative analysis is based on build-out of the approved San Jose General Plan . . . in combination with all pending applications to change the City's General Plan"); Table 6.0-1. As discussed above in the context of project-specific impacts, traffic is a regional phenomenon. The DEIR's cumulative traffic analysis must be revised to address regional traffic impacts from the CVSP together with other projects that have the potential to cause traffic congestion. Such an analysis cannot stop at San Jose's boundary. In addition, the revised DEIR must identify the specific transportation projects that are assumed to be in place over the next 50 years and identify whether these assumed projects are funded or have a reasonable basis for funding.

The failure to conduct a proper cumulative impacts analysis is especially disconcerting since this is an EIR on such a massive project. The City should use this EIR as an opportunity to consider broad policy alternatives and mitigation measures at this early stage when agency has greater flexibility to deal with cumulative impacts. *See* CEQA Guidelines § 15168(b)(4).

III. THE DEIR DOES NOT ADEQUATELY DISCUSS ALTERNATIVES TO THE PROPOSED PROJECT.

An EIR must describe a range of alternatives to the proposed project, and to its location, that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a). A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code. § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal.App.3d 433, 443-45 (1988). As stated in *Laurel Heights*, "[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d 376, 404 (1988). Here, the DEIR's discussion of alternatives fails to live up to these standards.

The primary flaw in the DEIR's alternatives analysis is its failure to identify and consider a reasonable range of alternatives that reduce project impacts, as CEQA requires. *See* CEQA Guidelines § 15126.6(c); *Citizens of Goleta Valley*, 52 Cal.3d at 566. The discussion of alternatives must focus on alternatives capable of avoiding or substantially lessening the adverse environmental effects of a project, "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b). The alternatives to be discussed need not be identical to, or even substantially similar to the project as originally described by the applicant, so long as they can be accomplished within a reasonable period of time, taking into account economic, environmental, social and technological factors. *Citizens of Goleta Valley*, 52 Cal.3d at 574.

A. The Reduced Scale Alternatives Are Not the Most Reasonable Alternatives Available.

The essential problem with the on-site alternatives considered in the DEIR is their arbitrariness. Three on-site alternatives, aside from the no project alternative, are offered. Two of the alternatives reduce the scale of the CVSP, while the third purportedly redesigns the Project based on Greenbelt Alliance's "Getting It Right" plan. DEIR at 430- 458. The two reduced scale alternatives offer brief explanations of the reasoning behind their designs, but there is no indication that the DEIR preparers gave meaningful consideration to the site and its possibilities and limitations. Indeed, these alternatives result in unacceptable environmental impacts and therefore do not satisfy CEQA's mandate that an EIR discuss a reasonable range of alternatives that "offer substantial environmental advantages over the project proposal." *Citizens of Goleta Valley*, 52 Cal.3d at 566.

Thus, rather than select project alternatives with a mind toward avoiding or substantially lessening environmental impacts, the DEIR preparers selected the two reduced scale alternatives to mimic the CVSP, albeit on a reduced scale. Although these reduced scale alternatives have subtle differences, each would allow an equivalent number of jobs and housing units (i.e., each would allow 20,000 jobs and 10,000 housing units) with the intent of echoing the proportion of jobs and housing provided by the CVSP. DEIR at 438. While both alternatives would allow 20,000 jobs, apparently because of the CVRP entitlements, there are no such entitlements for 10,000 housing units. The reduced scale alternatives are, therefore, essentially one and the same in that they both would allow identical levels of development distinguished only by minor variations in the location of that development. Had the DEIR preparers taken a step back and assessed the environment constraints associated with the Coyote Valley, they would have studied variations on the housing component of these alternatives.

Furthermore, we find it particularly disingenuous that the DEIR preparers made such a rigorous attempt to achieve the project objective of echoing the jobs/housing ratio identified as a CVSP project objective inasmuch as the CVSP itself does not come close to meeting so many of its objectives (e.g., transit-based development, preservation of agricultural lands, adequate public services and utilities, and affordable housing). Therefore, since the DEIR actually only studies one reduced scale alternative, it fails to provide a reasonable range of alternatives as required by CEQA. In addition, as discussed below, the DEIR fails to adequately describe or analyze the environmental effects of these alternatives.

B. The DEIR Fails to Provide Sufficient Information About the Alternatives and Their Environmental Impacts.

The DEIR's description of the CVSP lacks important substantive detail and, as a result, neither the public nor decision-makers have an accurate sense of the Project. As discussed above, information about land use planning, public transportation, public services and infrastructure, and mechanisms necessary for the preservation of agricultural and open space lands simply has not been provided. Not surprisingly, the DEIR's description of CVSP alternatives is equally lacking in detail. Thus, it is not possible to compare each alternative's development scenarios with those of the CVSP.

Using the reduced scale Alternative II (smaller CVSP scenario) as an example, the DEIR states that a planned community similar in design to the CVSP could be implemented, in a designated location where uses are integrated to create an urban, pedestrian, and transit-oriented mixed use community. DEIR at 443. The DEIR never identifies or explains this "similar design;" it does not identify the "designated location;" and it fails to provide any explanation as to how the uses could be integrated.

The absence of these development components renders an accurate evaluation of this alternative's environmental impacts impossible. Indeed, as regards this alternative, the DEIR imply states: "[l]ess traffic would be generated both within and outside of the CVSP Development Area, resulting in fewer traffic impacts at affected intersections" and "[a]ll other environmental impacts that result from the implementation of the CVSP would be reduced or avoided by [the alternative] scenarios due to the fact that less development would occur on fewer acres." *Id.* at 446. The public deserves more than self-evident statements such as these. How would the trip generation of this alternative, for example, compare to that of the CVSP? What would be the difference in vehicle miles traveled? How many fewer intersections and freeway segments would be impacted? How would this alternative specifically compare to the CVSP in terms of wastewater, solid waste and energy demand and the ability to supply this demand? Because the DEIR is lacking in substantive detail—both in terms of the description of the alternative itself and its purported comparative evaluation of impacts—it is not possible to compare environmental benefits of any of the alternatives to the CVSP.

C. The DEIR Fails to Provide an Accurate Comparison of the “Getting It Right” Alternative to the CVSP.

The DEIR provides a distorted, and therefore inaccurate, analysis of the Greenbelt Alliance’s Getting It Right Plan alternative (“Getting It Right”). Because the document does not evaluate the CVSP against an accurate representation of Getting It Right, it fails to acknowledge the ability of Getting It Right to effectively mitigate many of the CVSP’s environmental impacts. For example, the DEIR erroneously assumes that the intensification of land use densities associated with Getting It Right would result in increased traffic congestion. DEIR at 450. In fact, just the opposite is true; as land use density declines, automobile travel tends to increase. Moreover, Getting It Right calls for dissolving the artificial division between North and Mid-Coyote Valley, implementing a robust transit system, constructing a street network entirely on a grid pattern and implementing a transportation demand management program, all of which would very much discourage auto-based travel and facilitate public transportation. Thus the DEIR’s conclusion that Getting It Right’s traffic impacts would be similar to the CVSP’s is simply wrong. Moreover, to the extent that the DEIR’s traffic assumptions inform the air quality analysis, the DEIR fails to acknowledge that the CVSP’s air quality impacts would likely be far more severe than those associated with Getting It Right.

Nor does the DEIR correctly compare Getting It Right and the CVSP’s respective effects on agricultural and open space lands. While, the DEIR does acknowledge that Getting It Right would result in less loss of Prime and Important Farmlands in comparison to the CVSP, its analysis understates the true benefit of Getting It Right because it focuses only on the actual footprint of development. Specifically, the DEIR identifies the loss of agricultural land lost under the CVSP as 2,400 acres, while the amount lost under Getting It Right would be 1,875. DEIR at 450. Yet, the DEIR ignores the fact that Getting It Right calls for the *permanent protection* of the 2,380 acres of agricultural lands throughout Coyote Valley. Inasmuch as the CVSP contains no specific mechanism for protecting these lands and indeed because the DEIR makes clear that the City has no intention of requiring such mitigation, the CVSP’s impact on agricultural lands would be far more severe. As for open space impacts, the DEIR’s analysis of Getting It Right is silent altogether. Here too, Getting it Right calls for the permanent protection of 3,300 acres of South Coyote Valley as a greenbelt, while the CVSP provides for no such protection.

In addition, Getting It Right calls for the establishment of a Community Facilities and Services District to help fund and manage infrastructure projects. As

discussed above, the DEIR provides no mechanism to ensure that necessary infrastructure and public services would be funded and implemented prior to demand for residential, commercial, and industrial development. As a result, the CVSP's impacts would be more severe than those associated with Getting It Right.

Finally, Getting It Right calls for at least 20 percent of all housing units as affordable housing for low, very-low, and extremely low-income residents. Furthermore, the Plan calls for the establishment of inclusionary zoning, a subsidy and an incentive program to facilitate and create affordable housing. As discussed above, the CVSP provides no specific program for providing affordable housing and therefore its impacts in this regard would be substantially more significant.

Because the CVSP's true consequences are so outside the stated objectives of this Project, it is all the more imperative that the DEIR be revised to provide an accurate analysis of an alternative that comes far closer to meeting the CVSP's objectives. This alternative is the Greenbelt Alliance's Getting It Right Plan.

D. The DEIR Fails to Adequately Identify and Analyze the No Project Alternative.

CEQA requires that a "no project" alternative be evaluated as part of the document's alternatives analysis. CEQA Guidelines 15126.6 (e)(1). The purpose of describing and analyzing a no project alternative is to allow decision-makers to compare the impacts of approving the project with the impacts of not approving the project. *Id.* Contrary to CEQA's requirements, the CVSP DEIR fails to identify an adequate no project alternative because its no project alternative anticipates 50,000 jobs within the North Coyote Campus Industrial Area. DEIR at 434.

While CEQA does encourage an EIR to include in its no project analysis a discussion of what is reasonably expected to occur in the foreseeable future if the project were not approved (CEQA Guidelines 15126.6 (e)(2)), such a discussion should supplement, not replace, the no project analysis that reflects existing conditions. Thus, rather than present a true no project alternative, the DEIR's no project alternative includes a substantial portion of the development contemplated in the CVSP itself and thus does not reflect existing conditions in the Coyote Valley. Because this no project alternative includes extensive development with corresponding environmental impacts, it does not serve CEQA's purpose of providing decision makers with accurate information needed to compare the impacts of approving the project with the impacts of not approving the

project. Indeed, contrary to common sense, the no project alternative would allow *30,000* more jobs than either one of the reduced scale alternatives. DEIR at 434, 437, 443 (emphasis added).

E. The DEIR's Alternatives Analysis Must Be Revised to Comprehensively Evaluate Less Damaging Options.

In sum, rather than imparting serious information about potentially viable alternatives, the DEIR's alternatives serve as "straw men" to provide justification for the Project. Such an approach violates the letter and spirit of CEQA. Therefore, the EIR's failure to consider feasible alternatives that sufficiently reduce the Project's environmental impacts renders the document inadequate under CEQA. *See, e.g., San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735-38.

Given the truly enormous environmental consequences of the CVSP, the consideration of alternatives will not be complete until decision-makers and the public are presented with a rigorous, good-faith assessment of how much development the Coyote Valley can sustain. Without this opportunity, the public is merely asked to take on "blind trust" that the proposed Project is the best alternative. Asking for this sort of faith is not only unfair to the people of the region, it is unlawful "in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." *Laurel Heights Improvement Association*, 47 Cal. 3d at 494. Again, we urge the DEIR preparers to take a step back and reconsider the Getting It Right alternative proffered by Greenbelt Alliance.

II. THE DEIR MUST BE REVISED AND RECIRCULATED.

Given the foregoing deficiencies, the DEIR must be revised and recirculated. The present DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances which require recirculation of a draft EIR or circulation of a supplemental draft EIR. Such circumstances include adding significant new information to the EIR after public notice is given of the availability of the DEIR but before circulation, and where the DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. CEQA Guidelines § 15088.5. "Significant new information" includes the identification of new significant impacts, a substantial increase in the severity of

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identified significant impacts, and the mitigation measures that could reduce impacts below a level of significance. *Id.*

Here, in order to cure the numerous defects described above, the revised DEIR must necessarily include substantial new information that triggers CEQA's recirculation request. Failure to recirculate the revised DEIR would thus violate CEQA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

ROBERT PERLMUTTER
LAUREL L. IMPETT, AICP
Urban Planner

Exhibits:

- Exhibit A: "Setting The Standard in Coyote Valley."
- Exhibit B: "The Economic Benefits of Parks and Open Space: How Land Conservation Helps Communities Grow Smart and Protect the Bottom Line" (1999).
- Exhibit C: "Regional Needs Briefing Book" at 27, Bay Area Conservancy Program.
- Exhibit D: "Saving the Farm: A Handbook for Conserving Agricultural Land," American Farmland Trust (Jan. 1990) at 5-4).
- Exhibit E: E-mail correspondence from Darryl Boyd to Brian Schmidt, May 14, 2007.
- Exhibit F: "Facts at a Glance," Caltrans.

cc: Michele Beasley, Greenbelt Alliance
Melissa Hippard, Sierra Club