

**First Amendment to the
Draft Environmental Impact Report**

Heritage Oaks Memorial Park

**City File PDC13-016
SCH #2013102023**

CITY OF SAN JOSÉ

NOVEMBER 4, 2014

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1.0 INTRODUCTION

1.1 Background

This Amendment, together with the Draft EIR (DEIR), constitutes the Final Environmental Impact Report (FEIR) for the Heritage Oaks Memorial Park. This Amendment contains an introduction, written comments received during the 45-day DEIR public review period, formal responses to comments, and revisions to the DEIR text. None of the revisions to the DEIR result in significant changes to the project description or conclusions in the DEIR that would trigger the need to recirculate the DEIR.

The project evaluated in the DEIR consists of a Planned Development (PD) Rezoning on approximately 275 acres southeast of Bailey Avenue and McKean Road near Calero County Park. The project proposes development of a memorial park (cemetery) on approximately 102 acres of the site. The remaining 173 acres would be maintained as protected natural open space (conservation areas). The cemetery would include burial grounds, an administration building, maintenance facility, private roadways, parking areas, septic system, water storage lakes, and a water storage tank. Buildout of the cemetery is expected to occur over a period of about 200 years. Access is proposed from McKean Road and would consist of a fully improved private driveway along an existing Santa Clara Valley Water District access road on District-owned property.

1.2 Public Participation

In accordance with CEQA, this document is included in the official public record for the EIR. Based on the information contained in the public record, decision makers will be provided with the documentation on the projected environmental consequences of the proposed Heritage Oaks Memorial Park.

The City notified all responsible and trustee agencies, interested groups, and individuals that a DEIR had been completed for the proposed project. The City used the following methods to solicit input during the preparation of the EIR. The following is a list of the actions taken during the preparation, distribution, and review of the DEIR.

- The Notice of Preparation (NOP) was filed with the California State Clearinghouse for a 30-day review period from October 9, 2013 to November 8, 2013. The State Clearinghouse assigned the Clearinghouse Number 2013102023 to the DEIR. The NOP was distributed by the City to responsible and trustee agencies, and interested groups, organizations and individuals.
- The City conducted a public scoping meeting on October 24, 2013 to discuss the project and solicit public input on the scope and content of the EIR.
- On August 22, 2014, the DEIR was distributed for a 45-day public review period to responsible and trustee agencies, interested groups, and individuals. The public review period for the DEIR closed on October 6, 2014.

2.0 RESPONSE TO COMMENTS

2.1 Introduction

This section provides responses to comments on the DEIR. This section contains all information available in the public record related to the DEIR as of November 4, 2014, and responds to comments in accordance with Section 15088 of the CEQA Guidelines.

2.2 List of Comment Letters

Following is a list of written comments received on the Heritage Oaks Memorial Park DEIR.

Agency/Party	Date Received
1. Ames, Larry	October 10, 2014*
2. San Jose Silicon Valley Chamber of Commerce	October 6, 2014
3. Santa Clara County Parks & Recreation Department	October 6, 2014
4. Santa Clara Valley Audubon Society	October 6, 2014
5. Santa Clara Valley Habitat Agency (Sullivan)	October 6, 2014
6. Santa Clara Valley Habitat Agency (Perrin)	October 8 2014*
7. Santa Clara Valley Open Space Authority	October 6, 2014
8. Santa Clara Valley Water District	October 6, 2014
9. Tucker, Robert	October 6, 2014
10. Vartan, Kirk	October 7, 2014*

*Received after close of the public review period.

2.3 Responses to Comments

Each written and oral comment received on the DEIR is presented in this section, as identified above. Individual comments are numbered. Correspondingly numbered responses to each comment are provided in the discussion following the comment letter.

Where comments raise environmental issues that require additions or deletions to the text, tables, or figures in the DEIR, a brief description of the change is given and the reader is directed to Section 2.0, Revisions to the DEIR.

Where the same or similar related comments have been made more than once, a response may direct the reader to another numbered comment and response.

Some comments received do not raise environmental issues or do not comment on the analysis in the DEIR and, thus, do not require a response. These comments generally express an opinion on whether or not the project should be approved. CEQA does not require a substantive response to comments on an EIR that do not specifically relate to environmental issues. Response to these comments is generally “comment noted.”

Letter 1

Whitney Berry, Planner, City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113
via email: Whitney.Berry@sanjoseca.gov, Oct. 10, 2014

re: Heritage Oaks Memorial Park, PDC13-016

Dear Ms. Berry,

Writing on my own behalf, I'd like to offer the following comments regarding plans for the Heritage Oaks Memorial Park at the corner of McKean and Bailey Roads. (My apologies if some of the concerns may have been addressed already in the documentation – I didn't find time to read the full document before the deadline for comments....)

I am very concerned about the impact this project will have on the surrounding area.

The plan calls for over a hundred acres of cemetery – landscaped, irrigated green lawns on leveled and filled hillsides, at the remote edge of San Jose and adjacent to rustic County Parks and Open Space Preserves. Besides my concerns about the impact to these publicly owned lands, I have concerns about the environment:

- How is the grass to be irrigated? The document mentions that “water [can be] obtained from the SCVWD’s Cross Valley Pipeline”. It’s nice that a water-pipe runs past the property, but that does not mean that it is appropriate for them to use it. There is now a shortage of water in the San Jose area, and the shortage is likely to get worse over the coming years and decades, climate change or not, simply because of the increased demand from the anticipated increase in population. Just because the site happens to be at the head of the pipe does not mean that they should be at the head of the line for water: the dead should not have priority over the living.
- These are plans for a quite large cemetery: it may be growth-inducing. Soon there may be a need to develop facilities for florists, caterers, stone-carvers, all wanting to be in the greenbelt. This is a very rural setting: the residents of the City and the County have been paying taxes for years to acquire these respites from the urban cacophony, and the quiet would be disturbed by the regular parade of funeral processions.
- The document states that project will require 850,000 cubic yds of cut and fill: that’s a lot of dirt! I can’t help but think that that will generate a lot of noise and dust in the vicinity, as well as exhaust from the grading equipment, further impacting the nearby rural and natural parks and open spaces.

For the record:

- I am concerned about the impacts to the adjacent Calero County Park: noise from the initial grading and construction and also from events, plus increased traffic on the adjacent roads, and the visual impacts – the bright green areas and white structures in what should be a natural golden brown hillside with a scattering of oak trees.
- I am concerned about the impacts to the adjacent Coyote Valley Open Space Preserve: again, the noise, traffic, visual impacts.
- I am concerned about impacts to the water supply for Santa Clara Valley.

1A

1B

1C

1D

1E

I attended nearly all of the public meetings for the Envision 2040 General Plan Update. I do recall there was some discussion about whether rural lands could be used for cemeteries. (I think it was rushed thru towards the end of the process, when the taskforce members were tired and ready to be finished.) As I recall, the thought was that the cemeteries would be “natural” (i.e., no grading or filling, with dry golden grass). Additionally, I think that there were limits on what fraction of the land could be developed with structures, and it seems like an end-run around the regulations to just buy extra undevelopable hillsides just to “up” the basis area used in the calculations.

1F

I quite am familiar with the setting: for decades, my wife and I have bicycled these hills, enjoying our short getaways from the stresses of urban living. It’s bad enough that the city granted permits some years ago for a golf-course out there: please do not double-down on that mistake and approve this proposal for a cemetery as well.

1G

Thank you,

Larry Ames,
Committee for Green Foothills Boardmember and former County Parks Commissioner.

cc: Mayor Reed and San Jose Councilmembers
John Davidson, San Jose Planning
Environment: Citizens for a Livable San Jose; Shani Kleinhaus, Audubon Society
Open Space Authority: Andrea Mackenzie, Dorsey Moore, Sequoia Hall, Virginia Holtz
Robb Courtney, Santa Clara County Parks
Barbara Keegan, Santa Clara Valley Water District (SCVWD)
Committee for Green Foothills: Jeff Segall (chair); Alice Kaufman (advocate)

1: RESPONSE TO AMES, LARRY

1A: Comment noted.

1B: As described in the DEIR on pages 3-5 and 3-7, irrigation water for the project will be provided by non-urban sourced water obtained from the SCVWD's Cross Valley Pipeline, well water from adjoining applicant-owned lands, and recycled water from the regional recycled water distribution system, once available. A computerized irrigation system is proposed that includes an onsite weather station that collects data that is fed into the computer to determine the precise amount of water required for each part of the site and activate the appropriate sprinkler heads.

1C: As described on page 5-2 of the DEIR, the project would not be growth inducing, since it would not remove any obstacles to growth or result in the extension of any public services and utilities into the area (the proposed utility improvements would be designed to accommodate the project exclusively). Any future nearby development would be limited to the uses allowed by the City's General Plan and zoning designations.

1D: The air quality impacts during construction are addressed in Section 4.3 of the DEIR. The Bay Area Air Quality Management District (BAAQMD) best control measures would be applied during construction to control dust and exhaust.

1E: The aesthetic/visual, noise, traffic, and water supply impacts of the project were thoroughly evaluated in the DEIR in Sections 4.1, 4.3, 4.11, and 4.14, respectively.

1F: The project conforms to the General Plan restrictions for development within the Open Hillside land use designation.

1G: Comment noted.



September 16, 2014

City of San José
Department of Planning, Building & Code Enforcement
Attn: Whitney Berry
200 E. Santa Clara Street, Third Floor
San Jose, CA 95113-1905

Executive Committee

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San Jose Silicon Valley
Chamber of Commerce

REGARDING: Heritage Oaks Memorial Park; PDC13-016

Ms. Berry:

We understand that the City is in the process of evaluating the environmental effects of the proposed Heritage Oaks Memorial Park planned in south San Jose. We understand that the proposed project is largely consistent with land use policies found within Envision 2040 and that the application presented seeks a PD Zoning approval for the development of a new, regional, non-sectarian cemetery to serve the respectful disposition of San Jose, and the broader Santa Clara County, population for generations to come.

There is tremendous need in our community for a long term, generational solution to dwindling non-sectarian in-ground burial space. Of the three cemeteries in San Jose, the last to be established was in 1889—some 125 years ago. A lot has changed since then. Today, as few as 8 acres remain for in-ground burial. Stated another way, nearly 96% of in-ground burial lands have been depleted.

The Brandenburg Family (applicant) is deeply rooted in our community, and members of their team are multi-generational San Joseans. They call their home here and established their business nearly 60 years ago. They have developed and manage many quality projects that stand the test of time, and will continue to do so. If approved, they intend to create a distinguished non-sectarian eternal home for our deceased, respectfully serving the needs of San Jose resident's ethnic, cultural and religious diversity.

While the San Jose Silicon Valley Chamber of Commerce regularly opines and advocates for sound job producing economic development, we also have a responsibility to weigh in on issues important to our community at large. Together with the city, we spend countless hours in support of new growth for the living. It's now time to provide a new peaceful place for those who pass, within a welcoming, warm, contemplative and convenient setting for those that remain. We understand, and believe, that through the many years of thoughtful planning and efforts expended, Heritage Oaks is a project that meets our community's long term need and is deserving of the city's support.

Sincerely,

Matthew R. Mahood
President & CEO
San Jose Silicon Valley Chamber of Commerce

2A

2: RESPONSE TO SAN JOSE SILICON VALLEY CHAMBER OF COMMERCE

2A: Comments noted.

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201

www.parkhere.org



October 6, 2014

Ms. Whitney Berry
City of San Jose Planning Division
200 East Santa Clara Street
San Jose, CA 95113

Subject: Comments to Draft EIR for Heritage Oaks Memorial Park
City File PDC13-016
California State Clearinghouse #2013102023

Dear Ms. Berry,

The Draft EIR for the Heritage Oaks Memorial Park has been reviewed by the County of Santa Clara Parks and Recreation Department. Our department offers the following comments:

Project Setting:

The Draft EIR does not adequately characterize the project setting as it fails to fully identify surrounding land uses. The 348 acre Coyote Valley Open Space Preserve, are operated by the Santa Clara Valley Open Space Authority, adjacent to the southern boundary of the project area was not identified. Per the Open Space Authority, trails within this Preserve will soon be open to the public. Adequate characterization of surrounding land uses, especially those adjacent to the project, is important to assess the possible impacts as a result of the project.

3A

Project Description:

The Draft EIR breaks down the project into two general areas of development (Area 1 and Area 2) and indicates that project build out will occur in multiple undefined phases over a period of 200 years. The Draft EIR does not adequately characterize how/where the project phases are likely to occur or provide project-level analysis of the impacts of early phases of development.

3B

Aesthetics:

The grading and subsequent development of a cemetery site along a ridge line will be immediately and permanently evident within the view shed of the Rural Scenic Routes identified in the City's General Plan. In addition to the locations identified in the Draft EIR, the project area is visible from Hwy 101, Coyote Ridge, and from numerous locations along public trails within Santa Teresa County Park, Calero County Park, and the Sierra Azul Open Space Preserve. Regardless if whether the effect is considered aesthetically pleasing or not, when completed, the project will permanently alter the appearance of a ridgeline separating Coyote Valley from Almaden Valley. This project does not demonstrate compliance with the goals of either the

3C



City's General Plan Policy SR-1.5 - minimize negative impacts on natural topographic features when designing projects along Rural Scenic Routes or the County's General Plan Policy R-RC 101- Roads, building sites, structures and public facilities shall not be allowed to create major or lasting visible scars on the landscape.

3C

The aesthetic impact to views of the surrounding native landscape as a result of the installation of irrigated and fertilized turf over as much as 75 acres of the permanently altered ridgeline is also not in compliance with *City's General Plan Policy SR-1.1 to ensure that development within the Rural Scenic Corridors is designed to preserve and enhance natural vistas.*

Biological Resources:

Wildlife Movement Corridors - As stated in the Draft EIR:

"The Rezone Area is included in a landscape-level linkage corridor defined as important for wildlife movement and linkage by both the SCVHP and Conservation Lands Network....such linkage connects the Santa Cruz Mountains with Coyote Ridge and the Mt. Diablo Range. The Rezone Area overlooks Coyote Valley on the western side of the valley and a portion of the Rezone Area occurs within the area defined by the Conservation Lands Network to be Essential. This linkage is also defined as linkage 10 in Chapter 5 of the Santa Clara Valley Habitat Conservation Plan (SCVHP; ICF International 2012) as connecting the Santa Cruz Mountains with the Mt. Diablo Range.

3D

As proposed, the project may disrupt wildlife connectivity between the proposed conservation area to the east of the memorial park and natural landscapes found in the regional parkland to the west of the memorial park that are being considered as part of the Reserve System. As such, the project applicant should work further with the Habitat Agency to ensure that the project will achieve the goal of the SCVHP Conservation Strategy's *Objective 2.2. Protect and enhance important habitat linkages for covered species and other native species within the Reserve System and protect connectivity to habitat outside the study area.* The applicant should also work further with the Habitat Agency to achieve the goal identified in the SCVHP's Reserve System's Design and Assembly Principles to *Preserve Connectivity: The Reserve System will link existing protected areas and proposed reserves inside and outside the study area to maximize habitat connectivity* and with the City of San Jose to ensure compliance with the City's *General Plan goal ER-7.5 to "support the on-going identification and protection of critical linkages for wildlife movement in the Mid-Coyote Valley."*

Land Use/Grading:

The Draft EIR did not adequately demonstrate the project's compliance to the *City's General Plan Policy LU-17.3 to "minimize grading on hillside and design any necessary grading or re-contouring to preserve the natural character of the hills and to minimize the removal of significant vegetation, especially native trees such as Valley Oaks."* The perceived needs of the Project to comply with an industry standard or cultural preferences does not demonstrate compliance with goals of the General Plan's policy.

3E



Public Services – Trails:

In 2008, the applicant entered into a Memorandum of Understanding (MOU) with the Santa Clara Valley Water District (SCVWD) to secure roadway access and water supply rights prior to pursuing development rights for a memorial park at the project site. Included in this MOU in Article 5 are provisions for the applicant’s cooperation in the development of a trail to connect the Coyote Valley with Calero County Park, generally following the alignment of the District’s service road for the District’s Cross Valley Pipeline. (See Attachment).

3F

Since 2008, the alignment of this proposed trail has further been identified in the Santa Clara County Parks and Recreation Department’s Calero Trails Master Plan (approved by the Santa Clara County Board of Supervisors in October 2103) and in the Coyote Valley Open Space Preserve’s Use and Management Plan (Adopted by the Open Space Authority’s Board in September 2013) to connect Coyote Valley to trails in Calero and other regional trail routes in the vicinity. The County requested in the NOP that the applicant work with all interested agencies to comply with the provisions of the MOU, cooperate in the identification of a detailed trail route, and include the trails development in the project description. This request was not fulfilled. The County of Santa Clara again requests that a trail connecting Calero County Park with the Coyote Valley Open Space Preserve generally along the route of the SCVWD’s Cross Valley Pipeline service road be identified in conjunction with the development of this project, be included in the project description, and analyzed in the Draft EIR. Final responsibilities for implementation would be clarified as an outcome.

3G

Project Alternatives

Santa Clara County Parks Department encourages the consideration of alternative locations for the proposed project in the interest of achieving the City of San Jose General Plan goals of preserving open space, protecting natural landscapes and vistas, conserving water resources and complying the conservation strategies of the Santa Clara Valley Habitat Plan.

3H

Thank you for the opportunity to respond to this Draft EIR. If you have any questions, please contact me at 408 355-2236 or by email at elish.ryan@prk.sccgov.org.

Sincerely,

Elish Ryan

Elish Ryan
Acting Senior Planner

Cc: Tim Heffington, Senior Real Estate Agent
Colleen Oda, County Planning Department
Colleen Haggerty, SCVWD Community Projects Review
Rachel Santos, Santa Clara Valley Open Space Authority

Attachment: Excerpt from MOU



ii) Next Steps

Should this pilot period demonstrate that system stability and capacity can be successfully maintained by means of scheduled raw water demands and real-time flow measurement, the operation of the Cinnabar Hills turnout via these measures will continue to the extent allowed in the existing agreement with Cinnabar. If the pilot project does not demonstrate that system stability and capacity can be successfully maintained via the stated measures, or if at any time the District concludes that these measures are insufficient to ensure system stability and capacity, the next step may be installation and operation of a District-controlled remotely operable valve and appurtenances on the Cinnabar Hills turnout or other methods of achieving system stability to be determined.

**ARTICLE 5
TRAILS**

5.1 Trails. The trails ("Trails"), which are shown on Exhibit D, are intended to provide an effective means to connect the lands of the North Coyote Valley Campus Industrial and the Coyote Valley Urban Reserve, which combined are envisioned for over 25,000 residential units and 17,000,000 square feet of R&D development, with the Calero County Park, located westerly of Coyote Valley, along McKean Road.

5.1.1 SCV Dedication. SCV intends to dedicate non-exclusive trail easements for Trails located on SCV's property.

5.1.2 District Dedication. District intends to dedicate, to the Public Trust as defined in Section 6.1, a non-exclusive trail easements for Trails located on the District's property, the District's Right-of-Way Property and the Additional District Lands, the alignment of which generally follows the District Service Road.

5.2 Dedications. SCV and District do not yet know the party or parties to whom the Trails will be dedicated. For trails outside the Memorial Park, SCV and District intend that the Trail easements would be offered to the Public Trust, as defined in Section 6.1. Trails within the Memorial Park may remain in private ownership and/or may be offered as Trail easements to the Public Trust, at SCV's discretion.

5.3 Trail Development. District agrees to consider, in good faith and in light of the benefits offered by this MOU, to participate in the funding of Trail construction using its available trail funds through the District's trails grant program.

5.4 Parking Lot. District further agrees to consider making a small portion of District Property available in the vicinity of the intersection of McKean Road and the Segment "A" Roadway Easement to develop a small parking lot for Trail access.

5.5 Cooperation. District agrees to cooperate with SCV in negotiating joint use trail agreements with any other entities that agree to accept the Trail easements. The Parties agree to

negotiate, in good faith, with the County of Santa Clara, the City of San Jose, the Santa Clara County Open Space Authority and the Land Trust For Santa Clara County to determine the most appropriate party or parties to accept and maintain the Trail easements and Trails upon their construction. The Parties acknowledge that there is no expectation that District will manage or maintain the Trails.

5.6 Trail within District Right-of-Way. SCV's Reservation permits it to construct and maintain roads, bridges, sewers and utilities within the District Right-of-Way. District shall cooperate with respect to construction of a Trail within the District Right-of-Way. District agrees to cooperate with SCV in negotiating any necessary joint use agreements with other public or non-profit entities to allow public use of any Trail constructed within the District Right-of-Way.

ARTICLE 6 OPEN SPACE AND MITIGATION LANDS

6.1 Dedication. SCV intends to develop the 167 acre Memorial Park within the larger 475 acre Property. The Protected Open Space, consisting of the remaining approximately 300 acres (less the Trail easements therein and any land required to fulfill the mitigation obligations of the Memorial Park) is proposed to be dedicated to the Santa Clara County Open Space Authority, the Public Land Trust For Santa Clara County, the City of San Jose, the County of Santa Clara or other qualified public or non-profit entity (collectively the "Public Trust").

6.2 Use of the Protected Open Space. It is intended that the Public Trust will maintain and manage the Protected Open Space as permanent private open space. SCV also intends that the Public Trust will manage and enhance the Protected Open Space for its open space, habitat, cultural resource and mitigation values. This may include the creation of a Mitigation Bank pursuant to state or federal law, or the provision, through easement or other mechanism, of mitigation lands to third parties to provide off-site mitigation for other development projects. It is anticipated that the Public Trust may sell interest in these Mitigation Lands to third parties.

6.3 Additional Reservation for the Benefit of District. SCV also intends to reserve, from the dedication of the Protected Open Space, for the benefit of District (the "Mitigation Land Reservation") the right of District to acquire mitigation lands (the "Mitigation Lands"). The Mitigation Lands would be offered to District to assist it in meeting its open space and enhancement goals. The terms of District's acquisition of fee interest or easement will be negotiated by the Parties during the Term of this MOU. SCV has proposed that the Mitigation Lands be offered to District at 50% of their fair market value and that District would be responsible for any increase in management costs associated with any enhancements or improvements to the Mitigation Lands. District would have the right of first offer prior to the sale of any Mitigation Lands to third parties. The parties agree to negotiate in good faith this proposed reservation and/or other potential reservations, dedications, or conveyances of SCV property interests that District could use for mitigation purposes.

6.4 District Right of Entry. During the term of this MOU, District and District's representatives, agents, consultants and contractors shall have the right to enter SCV property to

3: RESPONSE TO SANTA CLARA COUNTY PARKS & RECREATION DEPARTMENT

3A: The text has been amended to identify the Coyote Valley Open Space Preserve.

3B: The locations of the primary constructed components of the cemetery, including the roadway system, administrative complex, and storage pond, are presented in the DEIR in Figure 3-4. In addition Figures 3-4, 3-5, and 3-6 show conceptual grading for the cemetery. The specific details of the project would be developed at the PD permit stage. The analysis in the DEIR is based on the level of specificity provided in the PD Rezoning application package. This is consistent with CEQA Guidelines Section 15146 that states that “the degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.”

3C: The public viewpoints selected for the DEIR analysis represent the most impacted views. The view of the project from other locations, such as Highway 101, Santa Teresa County Park, and Coyote Ridge, would be similar to those evaluated in the visual simulations. The DEIR acknowledges that the project would permanently alter the existing visual character of the site due to grading, vegetation and tree removal, and the introduction of a cemetery and associated roads and structures. However, the project is not anticipated to significantly degrade existing visual character or quality based on the following: 1) results of the visual simulations that show limited visual intrusion and modification from public viewpoints, 2) design that is sensitive to the visual character of the area, consistent with the City’s General Plan policies, and 3) obstruction of much of the site by the intervening terrain and proposed landscaping. Refer to Section 4.1 of the DEIR for further discussion.

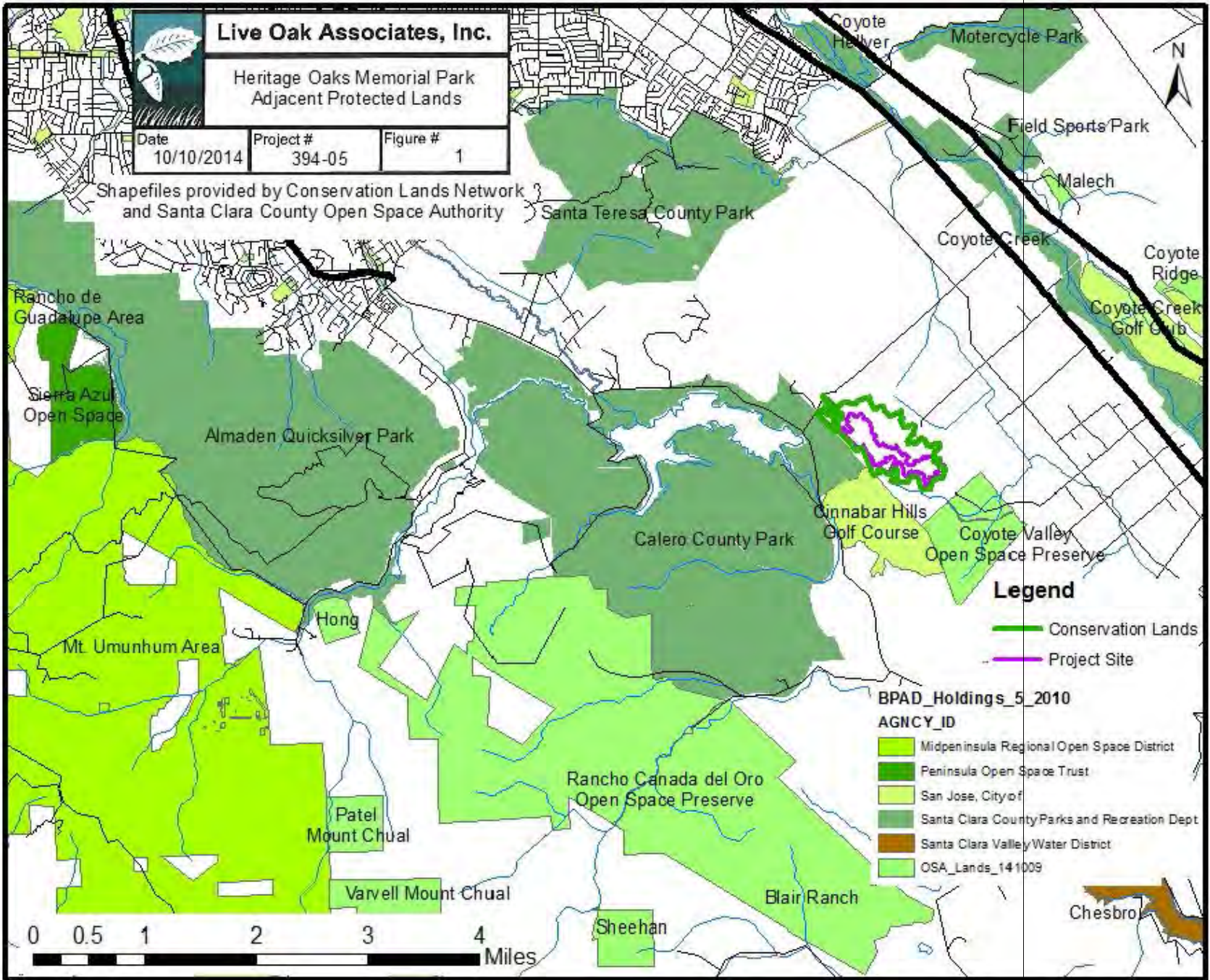
3D: The current configuration of the proposed project and conservation area supports continued wildlife use and movement through both the project site and the conservation area. The DEIR and biological evaluation (Appendix E) discuss in detail wildlife movement and the suitability of the conservation lands to continue to act as an important movement corridor in Linkage 10. In addition, given that the Conservation Lands Network identified the adjacent Cinnabar Hills Golf Course as a “Protected Lands,” the Conservation Lands Network recognizes that some types of development do not decrease the value of the land to the point that wildlife would not move across it.

The majority of medium to large mammals (e.g., cougar, bobcat, coyote, fox, badger, etc.) using large broad corridors, such as this region of Coyote Valley, are capable of moving large distances in a relatively short period of time (e.g., a few miles in a night). Other smaller animals move shorter distances (e.g., one to two miles or less) or their movements through large landscapes such as Coyote Valley are measured not so much as “dispersal” through the landscape, but as more generational movements (e.g., populations of small animals shifting or expanding over time). Various species of rodents or California tiger salamanders and other amphibian and reptile species may exhibit these types of movement. The dispersal activities of many species of wildlife (both large and small) tend to occur during low-light periods of the day. The proposed project and the adjacent protected lands (Calero County Park, Cinnabar Hills Golf Course, and Coyote

Valley Open Space Preserve) are expected to have a very low human presence at night fitting the typical movement pattern for many of these species. In addition, the project does not include fencing, therefore, unrestricted wildlife movement is expected to continue across the site during non-human activity periods at the cemetery (primarily nighttime). Daytime wildlife movement is expected to be similar to the adjacent Cinnabar Hills Golf Course, which is identified by the Conservation Lands Network as “Protected Lands.” However, no permanent fencing is proposed on the project site, although the adjacent golf course property has fencing for wild pigs. Species that may be restricted to aquatic habitats at particular times of the year, such as California tiger salamander, would have permanently protected breeding habitat within the conservation area, which could act as stepping stones to other populations.

This project is consistent with the Habitat Plan since it preserves 173 acres of land that not only supports a mosaic of habitats with high conservation value, but also facilitates wildlife movement through Linkage 10 of the Habitat Plan. As noted above, the uses of the project site itself are expected to reduce daytime movements of some wildlife species, but movement during both crepuscular and nocturnal times (preferred activity time for many species) through the site are not expected to be substantially impeded. Therefore, the high value of the conservation area, along with the openness of the project site extends the protected corridor that spans west of Sanborn County Park and continues through El Sereno Open Space Preserve, Bear Creek Open Space Preserve, Sierra Azul Open Space Preserve, Almaden Quicksilver County Park, Rancho San Vicente, Canada de Oro Open Space Preserve, Calero County Park extending through the project site and conservation area into the newly established Coyote Valley Open Space Preserve. This also provides another potential protected pathway between Calero County Park and Santa Teresa County Park. The conservation area, as noted above, currently abuts Calero County Park and is adjacent to the newly established Coyote Valley Open Space Preserve, which allows for future collaboration with these agencies regarding use of the remaining property abutting Coyote Valley Open Space Preserve. Figure 1, attached, shows the local protected lands in relation with the proposed project and conservation lands. In addition, more than 570 native trees will be planted on the project area, enhancing this portion of Linkage 10. See also Response 4H.

- 3E:** The proposed cemetery is an allowed use within the Open Hillside designation. As described in Section 4.10 of the DEIR, the project is consistent with the City’s land use policies regarding grading.
- 3F:** Please refer to response 8C.



3G: The MOU referenced in this comment was entered into by Silver Creek Valley (project applicant) and the Santa Clara Valley Water District (SCVWD) in 2005. The applicant had submitted a General Plan amendment and PD Zoning application to the City of San José in 2004 for a larger memorial park project. The MOU addressed a variety of matters including trails. The City of San José commenced a major update of its General Plan shortly thereafter, which culminated in adoption in November 2011. In 2008, the project applicant entered into a Grant of Option to Acquire an Access Easement, which superseded the 2005 MOU. Under the adopted Envision 2040 General Plan, future major development for mid Coyote Valley, under the Coyote Valley Specific Plan (CVSP), was abandoned until after 2040. In 2009, the applicant reduced the size of the memorial park and minimized its visibility from the Coyote Valley floor. The Open Space authority then acquired the 348 acre parcel previously planned for residential development under the CVSP in 2010. The abandonment of the Coyote Valley Specific Plan and modification of the project site boundary, there was no need to further consider trails through the rezone site. In 2013, the applicant renewed its PD Zoning application for the modified project as noted above.

Santa Clara County Parks and the Open Space Authority now seek to have the project incorporate a trail based on the 2005 MOU. As noted in the DEIR, the applicant does not own or have the right to construct a trail on the lands owned by the SCVWD (between Calero County Park and the new Open Space Preserve). Such a regional trail and other improvements discussed in the 2005 MOU are not part of the proposed project and do not require analysis in the DEIR. The applicant's obligation was to inform County Parks of this potential trail alignment on lands of the SCVWD, which has occurred. The applicant has indicated willingness to meet with County Parks and the Open Space Authority to help support development of a trail from Calero County Park to the Coyote Valley.

3H: A number of alternative locations were considered for the project and are described, along with the reasons for rejection, in Section 6.0 of the DEIR.



October 6th, 2014

via email

Whitney Berry, Project Manager,
Department of Planning and Code Enforcement
City of San Jose

Re: Heritage Oaks Memorial Park Project, File Number: PDC13-016

Dear Ms. Berry,

Santa Clara Valley Audubon Society (SCVAS) has reviewed the Heritage Oaks Memorial Park Project Draft Environmental Impact report (DEIR). SCVAS's mission is to preserve, enjoy, restore and foster public awareness of native birds and their ecosystems, mainly in Santa Clara County. As stewards for avian species and their environmental resources, we are always concerned with any projects that may negatively affect birds, wildlife and habitat. Here are our comments:

Project Description

The Project Description includes “burial grounds, an administration building, maintenance facility, private roadways, parking areas, septic system, water storage lakes, and a water storage tank.”

Please describe fully:

1. Any additional structures that could create a barrier or otherwise have the potential to impede animal movement (such as fencing).
2. Management of nuisance species and pests, including birds, mammals, insects and reptiles.
3. Please quantify the acreage of land on the cemetery development area that has the slope of 30% or more.
4. The EIR proposes to rezone the entire 275-acre site to Planned Development (PD). Since 102 acres are proposed for the Cemetery and 172 acres for open space, the 172 acres should be zoned Open Space and Habitat and put under a conservation easement, and not be zoned Planned Development (PD). Please explain why the zoning of open space and habitat is not proposed to be “open space and habitat”.

4A

5. Please add Swainson's hawk to the list of birds that could occur on site (see http://www.mercurynews.com/ci_24210884/long-gone-swainsons-hawk-returns-bay-area)

4A

Project Objectives

Project Objectives should not be so rigid that they eliminate the development of a "reasonable range of alternatives". When objectives are defined too narrowly, an EIR's treatment of alternatives may be inadequate, because they unreasonably limit alternatives analyses. When they are too broad, objectives cannot help focus alternatives:

- "Uses non-urban sourced water for irrigation and potable supply" – the purpose of this objective is not clear, and the objective is too broad, as it allows use of potable and/or recycled water. With climate change, water is scarce, and scarcity is expected to increase in coming years. The project's objective should be instead limit irrigation to recycled water only.
- "Minimizes grading to a maximum of 15% slope or less in accordance with cemetery industry standards" precludes alternatives that allow natural features such rock outcroppings or more importantly ancient oak trees to remain within the cemetery footprint, even if burials sites are not placed immediately near these trees or rocks." This leads to the exclusion of alternatives that could substantially reduce most of the project's significant impacts.

4B

Grading, land use, and visual resources

The project proposes the grading of up to 850,000 cubic yards to re-contour 101.8 acres of California Annual Grassland/Oak Savanna and the habitat. Based on conceptual grading plans, site development would include cuts on the order of 10 to 75 feet on the ridges and knolls and fills of 5 to 20 feet in the swales. This would result in smoothing and lowering of slopes throughout much of the site, typically reducing current slopes of 18 to over 20% to finished slopes of 10 to 15%.

Policy SR-1.3 states, "Ensure that development along designated Rural Scenic Corridors should preserve significant views of the Valley and mountains, especially in, or adjacent to, Coyote Valley, the Diablo Range, the Silver Creek hills, the Santa Teresa Ridge and the Santa Cruz Mountains"

4C

LU-17.3 states, "Minimize grading on hillsides and design any necessary grading or recontouring to preserve the natural character of the hills and to minimize the removal of significant vegetation, especially native trees such as Valley Oaks" yet the project would remove 89 healthy valley oaks, 14 blue oaks and 12 coast live oaks stout and strong.

LU 17.6 states, "Avoid any new development along ridges and other major hillside areas (typically all properties that exceed 30% slope) that surround the valley floor to minimize visibility of development on these aesthetic resources."

The EIR does not disclose how much of the grading would be on slopes 30% or steeper, although there is an indication that much of the project area is steep in that four soil-mapping units occur within the rezone site: Vallecitos rocky loam (15-30% slopes), eroded Vallecitos rocky loam (50-75 % slopes), eroded Gaviota gravelly loam, (30-75% slopes), and Gilroy clay loam (30-50% slopes).

4C

McKean Road is designated as a Scenic Route in the Santa Clara County General Plan. McKean Road and Bailey Avenue are identified as Rural Scenic Corridors on the Scenic Corridors Diagram of the Envision San Jose General Plan.

As shown in Figure 4.1-9, proposed grading would substantially lower a knoll near the center of the property, re-contour and smooth the overall project site, and remove vegetation and trees – including the ancient oaks which cannot be compensated for by planting new trees.

4D

The EIR proposes that eventually, the impacts to visual resources would not be significant because trees will be planted to obscure buildings. The primary visual impact, however, is that of lowering the hills and the loss of the magnificent ancient oaks. This impact remains a significant unavoidable impact, as travellers on this scenic road will be deprived of magnificent views of steep hills. The removal of the oak trees that define the hillsides in our region and provide a sense of place and connection to our landscapes should also be deemed significant and unavoidable.

The cemetery is not compatible with Policy LU1 “Allow development in hillside and rural residential areas consistent with or below existing or planned densities in these areas to maximize resource conservation. Support development only when it is compatible with the character and pattern of the surrounding area, even if below the maximum potential residential density as designated on the Land Use/Transportation Diagram.” Removing over a hundred ancient oaks is not compatible with Policy CD-1.24 “Within new development projects, include preservation of ordinance- sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices.” It is not compatible with Policy SR-1.2 “Preserve the natural character of Rural Scenic Corridors by incorporating mature strands of trees, rock outcroppings, streams, lakes and reservoirs and other such natural features into project designs”. LU-17.4 Hillside / Rural Preservation (8) states, “Limit new structures or use of non-native vegetation in all new development projects to prevent adverse biological impacts and adverse visual impacts as viewed from the Valley floor or from adjacent public recreational areas. Design new structures to blend harmoniously with the natural setting. Agricultural crop production may be visible.”

4E

We maintain that impacts to landuse and visual resources are significant and unavoidable, and that the information provided in the EIR does not support the findings that these impacts are not significant, or that the grading activities and removal of ancient oaks can be mitigated to less than significant level.

Pesticide use

The EIR does not describe, evaluate or mitigate impacts of management of nuisance species and pests. Please evaluate management practices for:

- Canada geese and American coots are considered nuisance species on natural or even synthetic turf. Please describe all management tools and activities for these and any other nuisance bird species, (including trapping, hazing, egg addling etc.) and specify all required permits for “take” of migratory birds species that are not covered by the HCP.
- Populations of Gulls and Crows have increased in the area in the past decade, and the increase is associated with the availability of food from human sources. Please discuss food availability and handling of trash during Project construction and operations, and provide mitigations to reduce this cumulative impact to a less than significant level.
- Gophers, ground squirrels, rats and mice: Rodents are at the base of the food web everywhere, and are preyed upon by native raptors and owls, herons, egrets, roadrunners, canid and feline species and many other mammal, reptile and bird species that are known from the vicinity of the project. Currently, there is no need to control these species, but the cemetery may require pest control.
- The use of irrigated vegetation may attract nuisance animals to the cemetery (pigs, deer) Please describe any anticipated management procedures, evaluate impacts (sepecially impacts of fencing) and propose mitigation.

We are concerned because the site is situated on a major raptor migration flyway and within home range of many nesting raptors in Coyote Valley (including White Tailed Kite, Bald Eagle, Northern Harrier, Burrowing Owl, Tricolored Black Bird, Loggerhead Shrike, Yellow-breasted Chat, and Swainson’s Hawk. See Safe Passage fro Coyote Valley, A Wildlife Linkage for the Highway 101 Corridor, 2012. J Philips, R Philips, N Srinivasan, D Aso, W Lao, P Conely. De Anza College Environmental Studies Department).

- Anticoagulant poison baits –both first- and second-generation products – are likely to poison non-target species directly or through secondary poisoning (when a poisoned rodent is consumed by a non-target species). Second generation rodenticides immediately kill both target rodents and animals that consumes impacted rodents. First generation rodenticides require several doses to kill a rodent, but may kill chicks of raptors with cumulative feeding of poisoned prey items.

Please describe pest control practices, evaluate project-specific and cumulative impacts to resident, nesting and migratory bird species in Coyote Valley, California and beyond. Please evaluate impacts to canid and feline species.

We recommend prohibition the use of rodenticides of all types. Instead, please consider construction of owl nesting boxes, and provide perches to allow natural rodent control.

Alternatives:

The “Rule of Reason” applies in the selection of alternatives (Citizens for Local Government v. City of Lodi, 2012), yet the EIR does not provide a “reasonable range of alternatives”. The EIR rejects a “Green Cemetery Alternative” wrongly assumes that a Green Alternative should “occur within the same development footprint as the project and require similar grading, paved access “.

We ask for an alternative that would retain landscape features and reduce grading and/or allow burial on a large portion of the cemetery in a California grassland setting, with no manicured landscaping or lawns. This may also allow reduction of paved roads. Some cemeteries allow loved ones to find grave locations using GPS, thereby reducing need for gravestones. This should also be explored. Another alternative would allow burial on the rough of the Cinnabar Golf. These alternatives can reduce most of the project's significant impacts and continue to offer wide variety of burial traditions.

4G

Wildlife Movement

Today, animal movement from the San Francisco Peninsula is restricted primarily by dense urban expanses and by freeway infrastructure. Only few relatively undeveloped "corridors" support wildlife movement in and out of the peninsula – movement that is necessary to maintain genetic variability and sustain populations of common as well as of listed species. Coyote Valley and the hills around it, including the Project site, has been recognized as a major wildlife connectivity corridor by Bay Area Open Space Council recent 'Bay Area Critical Linkages Project' (CLP) that aims to identify and help preserve critical linkages within the San Francisco Bay Area ecoregion and connections to adjacent ecoregions. The CLP designates the Coyote Valley a critical linkage for habitat connectivity between the Santa Cruz Mountains and the Diablo Range, and the Project site is identified as critical Linkage #10.

4H

Multiple studies, reports, and observations are available that document the presence of North American badgers, bobcats, coyotes, raccoons, black tailed deer, Tule elk, mountain lions, California ground squirrels, striped skunks, wild pigs, grey foxes and many small mammals in coyote valley and the hills of the Project site. Roadkill reports confirm the presence of these species. For example, North American badger, a California Species of special concern. Badgers persist at low density in a few locations within Santa Clara County, and Coyote Valley and nearby open space sustain source populations and juvenile dispersal area (Tanya Diamond, personal communication). The project sites fall within a designated badger habitat linkage area, which provides connectivity for badger movement (Figure 2). There has also been evidence of badger vehicle mortalities in the area (Figure 1) and this project would further restrict badger movement.

Figure 1: Badger Location Maps as of Sept. 2008. With permission from Tanya Diamond, Connectivity for Wildlife

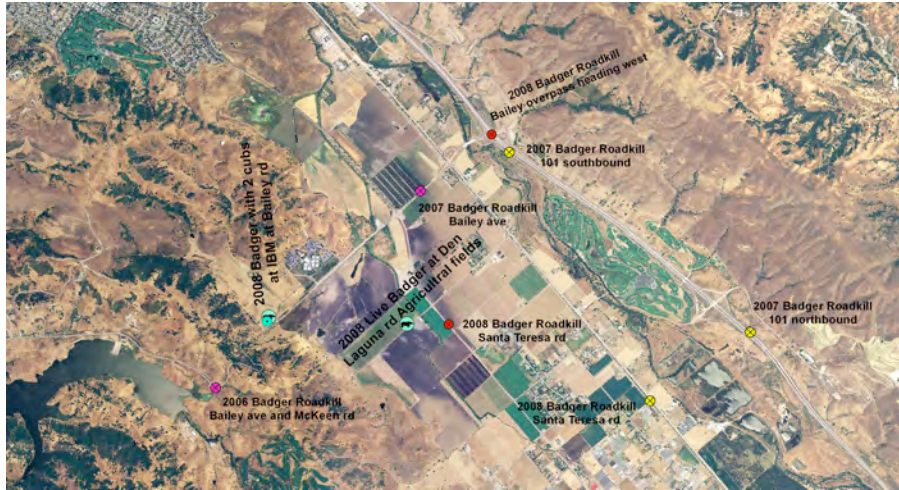
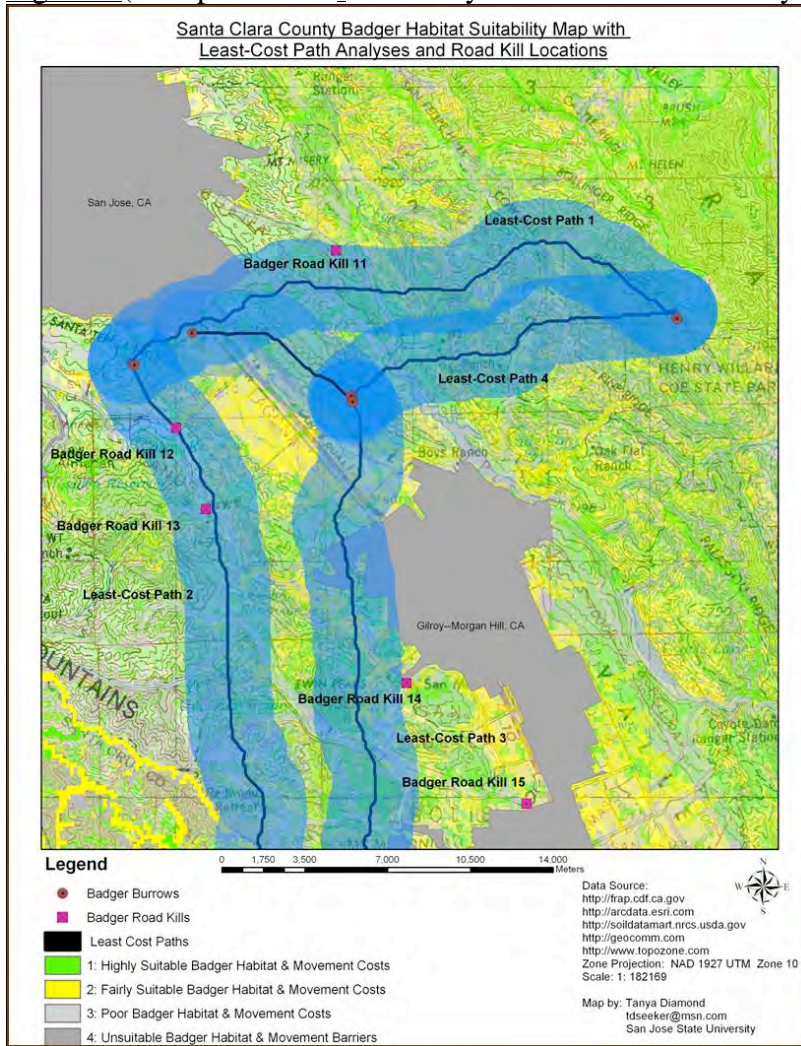


Figure 2 (with permission from Tanya Diamond Connectivity for Wildlife)



The North American badger is not protected under the Habitat Conservation Plan. We ask for specific and comprehensive pre-construction surveys for this species. Comprehensive evaluation and mitigation of impacts to this species is needed.

The EIR acknowledges that the whole area provides a mosaic of habitats, including ponds to provide water, in the conservation areas AND the project cemetery area. The entire project footprint has been identified as a critical linkage based on work by De Anza College that identified movement in all four cardinal directions of Coyote Valley. The proposed conservation area is based on the steeply sloped eastern side of the hill. We argue that the cemetery project area fragments the linkage east to west, including identified North American badger habitat and California Tiger Salamander breeding ponds. The EIR does not provide mitigation to support the continued connectivity between the east and west slopes of the hill. Maintaining a portion of essential linkage habitat is of little value if the project proposes to fragment and bisect areas of high movement.

The DEIR states “Although the Rezone Area and Conservation Area proposed for this project do not support permanent waterways such as creeks or extensive riparian habitat typically identified as wildlife corridors, the Rezone Area is included in a landscape-level linkage corridor defined as important for wildlife movement and linkage by both the SCVHP and Conservation Lands Network.” Seasonal creeks are important to species dispersal and immigration. The ponds on site can also be utilized as stepping stones for larger animals. The DEIR assumes states that the project (both project area, rezone area, and conservation area) will have no impact to connectivity, even though the project site has been identified by multiple agencies and organizations as critical and important to wildlife movement. Please provide the analysis that shows how this is possible without having any impacts or requiring any mitigation measures.

The Live Oak Biological Evaluation in the appendix states “To the extent practicable, conservation of linkages should address the needs of “passage species” (those species who typically use a corridor for the express purpose of moving from one intact area to another) and “corridor dwellers” (slow moving species such as plants and some amphibians and reptiles that require days or generations to move through the corridor)”. Please not evaluate the impacts of the proposed cemetery on wildlife connectivity for large and small animals. Please provide evaluation of the risks that increased number of perches (trees, headstones, buildings, fencing) in the irrigated landscape would increase predation by raptors and owls on small listed species, such as the California tiger salamander.

The Project Description did not include fencing. Fencing creates a barrier to wildlife movement. Please provide a discussion of fencing, and allow only wildlife permeable fencing.

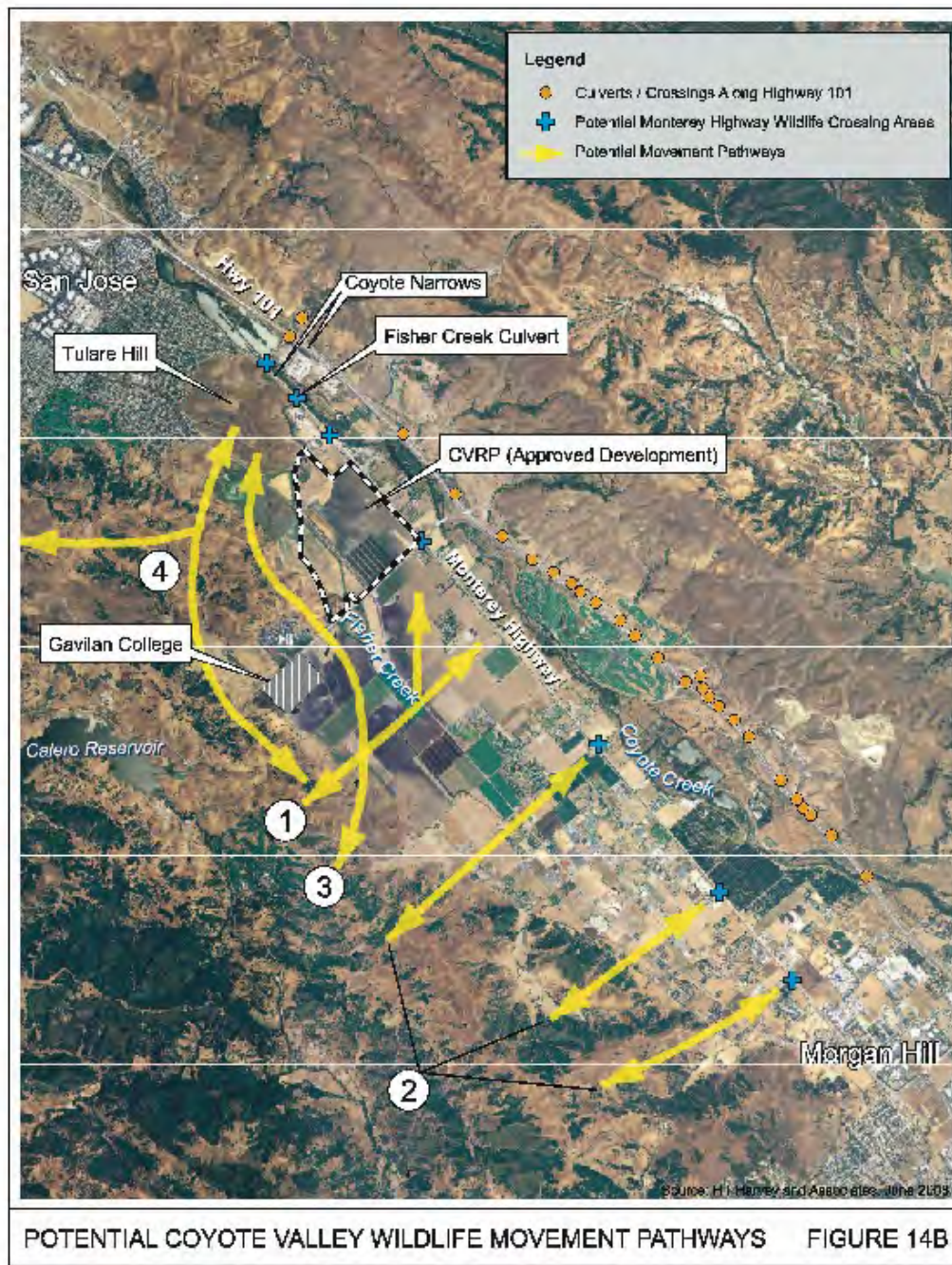
The DEIR states: “at buildout the open design of the project site as a cemetery would support continued use by regional wildlife as a movement corridor. Since the project site is expected to

4H

occur over about 200 years, much of the project site will be retained in its current condition for years prior to development as a fully built-out cemetery, during which, regional wildlife is expected to continue to use much of the project site as in years prior. In addition, the timeframe of buildout of the project site will extend past the timeframes for the SCVHP and San José's Envision 2040 General Plan. Therefore, should the Implementing Entity accept the proposed conservation area, this land would be protected in perpetuity, and contribute to protection and conservation actions supporting wildlife movement within Linkage 10.3 This project would result in a less-than-significant impact on regional wildlife movements." Please provide a detailed analysis that supports these statements. The previously approved Gavilan EIR shows wildlife movement through the proposed project area (Figure 3), not only the proposed conservation area, from South to North and into Coyote Valley. The DEIR does not identify, or provide, critical movement areas and states the impacts at build out will be less than significant. What will the impacts be prior to project completion? Given the timeline proposed in the DEIR, 50 years or more of impacts to connectivity should be considered significant.

4H

Figure 3: Movement Corridors, Gavilan EIR 2008



In 2014, Tri-colored Blackbirds (TCB), a California Species of Special Concern
 The DEIR does not acknowledge connectivity between Coyote Valley and nesting Tri-colored
 Blackbirds (TCB) at Calero Reservoir. TCB's fly low over the landscape and have been

observed foraging in Coyote Valley then returning to feed chicks at the reservoir. How will the removal of a large number of Oaks and grading effect this critical linkage for the TCB?

All project near wildlife areas have edge effects that reduce the size of the linkage. In some cases the edge can extend to 100 meters. The DEIR acknowledges the need for both large and small linkages but fails to identify if the proposed conservation area is suitable for large animals, such as mountain lions, and which direction is of primary movement.

We argue that since the entire project area is identified as a “critical linkage”, placing structures, drastically altering the landscape, removing trees, introducing biocides, increasing human presence, and adding turf and substantial irrigation should be considered a significant impact to connectivity.

Thank you for the opportunity to provide comments on this Project, please let us know if we can be of help,



Shani Kleinhaus,
Environmental Advocate

4: RESPONSE TO SANTA CLARA VALLEY AUDUBON SOCIETY

4A: Clarification of the project description items identified in this comment is provided below:

1. The project does not propose any permanent fencing or other barriers.
2. Refer to Section 4.4 of the DEIR. Although management of nuisance species and pests including birds, mammals, insects, and reptiles were not specifically addressed, the DEIR states that the project must be consistent with Condition 8 of the Habitat Plan, which limits use of pesticides. It should be noted that the adjacent Cinnabar Hills Golf Course installed owl boxes to control the rodent population and does not currently manage for pigs; however, they do have pig fencing installed. The proposed project will be consistent with Conditions of the Habitat Plan and will consider anticoagulant and rodenticide-free pest management alternatives.
3. Detailed grading plans have not yet been prepared for the project, so the following responses regarding the 30% slopes represent estimates. Detailed grading plans will be prepared at the PD permit stage, and reviewed by the City's Public Works department prior to issuance of a grading permit.
 - Area 1 has approximately 3-4 acres of 30% slopes that will be graded as part of the reshaping of the site to accommodate interments. Most of these areas are isolated "patches" randomly occurring throughout Area 1.
 - Approximately 6 acres of Area 1 that have 30% slopes are not proposed to be graded. These areas generally occur on the easterly and northerly edges of the proposed cemetery area.
 - Within Area 2 there are roughly 10 acres of 30% slopes, most of which are side slopes of a northerly trending valley that extends into the potential cemetery area. This valley has been included in the cemetery area as it represents an area to be filled with the soils from the grading and recontouring of Area 1, as well as from the Area 1 interment "spoils" over time. This fill area was selected in large part because it is contiguous to the larger Area 1, and is not viewable from either Coyote Valley or the McKeen Road viewsheds pre or post project.
4. The 173 acres of open space on the site will be preserved under a conservation easement or similar legal restriction.
5. The text is amended to include Swainson's hawk as likely present as a forager. The new record (2013) of a nesting pair of Swainson's hawks in Coyote Valley is a rare occurrence and an extension of known nest sites for the species. Swainson's hawks are expected to forage up to 10 miles from this newly formed nest (approximately 300 square miles or 192,000 acres), and may at times forage on the project site (100 acres) or Conservation Area (173 acres). Although the Coyote Valley pair occurred in an area outside of their normal range, they nested in typical nesting habitat of their home

range (near riparian settings). Neither the project site, nor the conservation area support typical nesting habitat for this species (e.g., tall trees along riparian habitats).

- 4B:** As described throughout the DEIR, the project proposes to limit water consumption to non-urban sources, consistent with City policy, including onsite well water, raw untreated water from the SCVWD's Cross Valley Pipeline, and recycled water. The preferred long-term water source for the project is recycled water, once it is extended to the project site.
- 4C:** The DEIR acknowledges on page 4.1-21 that the project would permanently alter the existing visual character of the site due to grading, vegetation and tree removal, and the introduction of a cemetery and associated roads and structures. However, the project is not anticipated to significantly degrade existing visual character or quality based on the following: 1) results of the visual simulations that show limited visual intrusion and modification from public viewpoints, 2) design that is sensitive to the visual character of the area, consistent with the City's General Plan policies, and 3) obstruction of much of the site by the intervening terrain and proposed landscaping.

With regards to grading on 30% slopes, please refer to response 4A (#3) above.

- 4D:** Please refer to response 4C above regarding visual impacts from the project along scenic routes and other public viewpoints. As described in Section 4.10 of the DEIR, the project was found to be consistent with the City's land use policies relating to grading, visual resources, biological resources, geotechnical hazards, and urban services. As described set forth in Mitigation Measure BIO-7, the project proponent shall replace any tree to be removed with new trees in accordance with the City's Tree Replacement Ratios. This amounts to an estimated 574 trees, in addition to all the trees to be retained within the 173 acre conservation area. In addition, the applicant has consulted with Cornflower Farms to harvest and grow genetically connected oak stock to use for plantings on the site, and intends to plant an additional 2,000 trees on the site above and beyond the replacement requirements.
- 4E:** Please refer to response 4D above. Additionally, as described in Section 4.10 of the DEIR, the project was found to be consistent with the City's land use policies relating to grading, visual resources, biological resources, geotechnical hazards, and urban services within the Open Hillside designation.
- 4F:** Please see response 4A (#2) above.
- 4G:** A reasonable range of feasible alternatives is presented in Section 6.0 of the DEIR. Note that the proposed cemetery is intended to accommodate a variety of burial traditions and does not preclude natural or green burial areas. Burial in the rough of the adjacent golf course is not a feasible or acceptable alternative.
- 4H:** Section 4.4 of the DEIR discusses wildlife movement and the suitability of the conservation lands to continue to act as an important movement corridor in Linkage 10. The DEIR and biological evaluation concluded that both the preservation of the 173 acres conservation area, along with the project design (lack of fences), and relatively openness

integrated into the project that permits wildlife to move through the memorial park at buildout, that the project would result in a less-than-significant impact to the regional movement of wildlife, especially as it relates to the Habitat Plan's identified Landscape Linkage 10. The DEIR concluded that the project with its proposed conservation area would comply with the Habitat Plan's goals and objectives.

The Santa Clara Valley Audubon Society (SCVAS) raises several questions related to the DEIR's analysis and the basis for reaching the conclusions of less-than-significant. SCVAS has also identified the spatial models generated by Ms. Diamond on the badger travel corridors, as an example of how they believe development of the cemetery would result in a significant impact to landscape linkages. Ms. Diamond's analysis was based on a simplistic modeling tool that attempts to find the optimal pathway between two habitat patches (referred to as least-cost-path or LCP). This approach is non-probabilistic and assumes that animals have perfect knowledge of their landscape. This unrealistic assumption is particularly problematic for dispersing individuals that rarely have any knowledge of the landscape they are traversing. Other problems associated with these analyses are that they rely on artificial placement of habitat patches (referred to as nodes) or the end points that the model attempts to define the "optimal" travel path between them. Another serious confounding problem with these types of analyses is that they are often (which is the case for the badger analysis) conducted at relatively small ecological scale, which leads to spurious results.

Dr. Hopkins, the primary contributor to the biological resources section of the DEIR is a recognized authority on predator ecology and has participated in state-wide efforts to identify the important landscape linkages remaining in the state (i.e., Missing Linkages Conference) and in regional efforts such as the San Francisco Bay Area Upland Goals Workshop and TNC Central Coast Ecoregional Workshop. Dr. Hopkins conducted one of the longest running studies in California on the ecology of the cougar in the Diablo Range (Hopkins 1990). Dr. Hopkins radio-tagged over 30 cougars during this study (1978-1990) and has contributed to the current knowledge on spatial use patterns of the cougar, particularly in the South Bay Area.

The space use needs of medium to large mammals are rarely considered at a suitable sized area (i.e., spatial scales). For instance, the suitable spatial scale for understanding how a species such as a badger uses a landscape should be considerably larger (10, 20 100 times larger) than what was considered in this case. This can present challenges for researchers in terms of obtaining empirical data from a site, but landscape ecologists have been evaluating very large regions effectively by relying on sophisticated and statistically robust spatial tools. In a very recent example in the scientific literature, researchers developed models of habitat quality and connectivity amongst core habitats for the cougar over 611,300 km² (e.g, the entire states of Arizona and New Mexico; Dickson et al. 2013).

Therefore, a badger model that would better inform conservation strategies over a large area would have been conducted at a much larger spatial scale (20 times plus larger), would have relied on more accepted habitat suitability processes to identify core habitat over this larger area, and then incorporated more holistic and robust spatial tools (e.g., the

probabilistic circuit theoretic approaches that have been used to great affect) for identifying in a probabilistic manner the multiple pathways that interconnect the various suitable core habitats (McRae et al. 2008).

The challenge with LCP modeling approach, is that it relies on unrealistic assumptions (e.g., animals have perfect knowledge of their landscape) and therefore, the overly simplistic results of a single “optimal” corridor usually leads to spurious or incomplete understanding how animals use landscapes. Those less than knowledgeable with the models shortcomings then view the outputs, as “truth.” This is why landscape ecologists have argued that more robust and usually more complex connectivity measures not only take into account the movement abilities of the species, but also the distances to all possible population sources, and that these more complex models perform better at defining the connectedness of a landscape (Moilanen and Nieminen 2002, Lindenmayer and Fischer 2006) than do simple model approaches like LCP. In this context, landscape-level approaches and predictive, probabilistic models that are rigorously derived and ecologically meaningful are needed, not reliance on flawed simplistic modeling approaches, as used with the badger.

SCVAS noted that a number of surveys have documented locations where certain species have moved through Coyote Valley. These types of observational studies, while useful and a first step in developing broad conservation strategies by themselves do little to assess importance. For example, there is a presumption, that if an animal travels along a path, the path must be important in a regional context. While this can be true, it often is not, and observation studies provide no insight as to whether a pathway is truly important in a conservation sense. The true measure of a pathway’s importance needs to consider what is being linked, what are the multiple pathways relevant for the focal species, what is the scale of the analysis and is it sufficiently larger enough (e.g., studies that choose too small an area to evaluate are likely to overstate the importance of an individual pathway), the life history strategy of the species (r vs. k selected reproductive strategy), permeability or quality of the pathway, etc.

To illustrate why scale is critical for informing conservation, consider the significant research conducted on cougars in Southern California in the Santa Ana Range in the 1980’s (Beier and Barrett 1993). This study was conducted at a relatively large scale for a field research project (approximately 2000 km²). A number of important pathways were identified using the results of radio-telemetry data. Two pathways were considered key to the persistence of cougars in the Santa Ana Range: 1) to the north to habitats in Chino Hills (about 250 km²) and 2) to the south connecting to the Palomar Range and eventually the Santa Rosa’s, San Jacinto’s, San Bernardino and San Gabriel Mountain Ranges (several thousand km²). A considerable effort was expended in improving the Coal Canyon connection to the north, with no effort (or logistical reasons) being spent during the last 30 years to retain and enhance the Palomar connection to the south. Many have considered the Coal Canyon effort a conservation victory, but when we zoom out and consider cougar persistence at more relevant spatial scale, the failure to improve the southern linkage, may well lead to a conservation failure. To that point, Dr. Hopkins and his colleagues developed a robust and probabilistic spatial model based on a spatial scale 20 times the size of Dr. Beier’s study area (2000 km² vs. 40,000 km²). The

unambiguous result of this effort confirmed the linkage to the north, but providing clear evidence that the linkage to south was far more critical in conserving cougars not only in the Santa Ana Range, but also to areas to the east and north (e.g, Santa Rosa's, San Jacinto's, San Bernardino and San Gabriel Mountain Ranges). Even the findings from a well thought out study over a large area (but not large enough), does not always lead to a fair ranking of the importance of pathways.

The clear indication is that ecological scale, context, and some metrics of importance are needed to best understand regional movement patterns of focal species, not simply suggesting there is an optimal path. With that said, it is not unreasonable to make limited inferences regarding the general location of a broad pathway for a variety of wildlife species in the vicinity of Proposed Project Site in Coyote Valley. The information cited by SCVAS simply provides some evidence that a number of wildlife species use and move through Coyote Valley including the project site and conservation area. These studies, including the limited spatial models generated by Ms. Diamond, do not provide any defensible metric of spatial importance for the various species.

The DEIR has also noted that a number of small, medium and large wildlife species forage, breed and move through the project site (102 acres) and conservation area (173 acres). It also has identified this area as an important regional movement pathway, one that is also identified in the Habitat Plan as Landscape Linkage 10. The conclusion of the DEIR remains unchanged and relevant, namely the buildout of the project, including the preservation of 173 acres conservation area, will result in a less than significant impact on the regional movement patterns of various species that occur in Coyote Valley and will not substantially degrade the Habitat Plan's Landscape Linkage 10. The commenter has provided no reasonable or defensible argument that development of the project would adversely affect efforts as defined with the Santa Clara County HCP to preserve and enhance regional connectivity.

Letter 5

From: Edmund Sullivan <Edmund.Sullivan@scv-habitatagency.org>

Sent: Monday, October 6, 2014 4:54 PM

To: Berry, Whitney

Subject: RE: Heritage Oaks DEIR Comments

Hi Whitney,

Comments concerning Heritage Oaks are below. I limited the Agency's comments to project design and the applicant's proposed land in-lieu of fees concept. Though the Habitat Agency supports land in-lieu as a viable mitigation strategy, the proposed project configuration (project footprint and conversation area) does not satisfy Habitat Plan conservation goals and objectives for Reserve System lands as summarized in Chapter 5. The proposed 173 acre conservation area is not contiguous with other conservation areas or proposed Reserve System lands. The conservation area as configured creates significant habitat fragmentation resulting in too much edge effect throughout the proposed 130 acre conservation area. A larger contiguous unfragmented conservation area allows for greater biodiversity, connectivity and ecological integrity contributing toward the implementation objectives and requirements of the Habitat Plan. The applicant is encouraged to provide to the Habitat Agency baseline data on their offered properties that document their biological value to the Plan. Documentation should explain how the site meets land acquisition requirements and biological goals and objectives. A different project configuration reducing edge effect that is adjacent to existing conservation lands and designed with conservation biology as the primary objective may be acceptable to the Habitat Agency. I would be willing to meet with project applicant to discuss how their project could be consistent with the Agency's land in-lieu of fees policy.

5A

Regards,

Edmund Sullivan

Santa Clara Valley Habitat Agency

535 Alkire Avenue, Suite 100

Morgan Hill, CA 95037-4128

(408) 779-7261 Main Tel / (408) 779-7265 Dir Tel

edmund.sullivan@scv-habitatagency.org

www.scv-habitatagency.org

5: RESPONSE TO SANTA CLARA VALLEY HABITAT AGENCY (SULLIVAN)

- 5A:** Pages 4.4-22 and 4.4-34 describe the land in lieu of fee of the Habitat Plan; in addition, Table 4.4-4 identifies the project's consistency with the Habitat Plan. The land in lieu of fee program requires that the land proposed for conservation meet the biological goals and objectives of the plan. The proposed conservation area meets these goals.

Chapter 5 of the Habitat Plan requires field verification prior to acquisition. The only item that the biological evaluation did not address on this list was the site's enhancement and restoration potential. The proposed conservation area supports several breeding ponds for California tiger salamanders; the potential to improve on upland habitat around these ponds including vegetative restoration and increasing refugia (e.g. ground squirrel burrows, piles of rocks or limbs, etc.) would increase the value of this property for CTS. In general, the non-native annual grasslands of the rezone site have potential to be restored to native grasslands, which would benefit many species. In addition, the project site itself would plant no less than 574 trees, which would benefit an area adjacent to the conservation area. See also response 4D regarding proposed oak tree plantings.

This project is consistent with the Habitat Plan as it preserves 173 acres of land that not only supports a mosaic of habitats with high conservation value, but also facilitates wildlife movement through Linkage 10 of the Habitat Plan. Please refer to Responses 3D and 4H regarding wildlife movement. Based on the information presented in the DEIR and these responses, the biological value of the conservation land and the permeability of the project site would satisfy land-in-lieu of fees acquisition requirements.

Letter 6

From: Perrin, Sarah <Sarah.Perrin@icfi.com>
Sent: Wednesday, October 8, 2014 1:36 PM
To: Berry, Whitney
Cc: Edmund Sullivan
Subject: Heritage Oaks DEIR comments

Hi Whitney,

The Habitat Agency reviewed the comments submitted by the Santa Clara Valley Audubon Society regarding burrowing owl text of the DEIR. The Habitat Agency determined that the City of San Jose was consistent with the Santa Clara Valley Habitat Plan Condition 15 text regarding burrowing owl surveys and avoidance measures. The only suggested change to the DEIR text that the Habitat Agency had for the City of San Jose was to add in text regarding evidence of burrowing owls observed on a project site instead of burrowing owls themselves being observed to trigger avoidance measures.

6A

Also, the Habitat Agency suggested that the City of San Jose update the Habitat Plan fee amounts listed in the DEIR due to an increase in fees.

6B

Thank you,

SARAH PERRIN | Conservation Planner/Biologist | 916.231.9519 | sarah.perrin@icfi.com |

ICF INTERNATIONAL | 630 K Street, Suite 400, Sacramento, CA 95814 | 916.737.3030 (f) | 408.464.4223 (m)

Please note new office address and phone number



Please consider the environment before printing this e-mail.

6: RESPONSE TO SANTA CLARA VALLEY HABITAT AGENCY (PERRIN)

6A: The text will be amended to add “evidence of burrowing owls,” in order to trigger required avoidance measures.

6B: The project proponent will be responsible for payment of all HCP fees in the dollar amounts that are in effect at the time of development.

October 6, 2014



City of San Jose Planning Division
Att: Whitney Berry
City Hall, 200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Re: Draft Environmental Impact Report for Heritage Oaks Memorial Park

Dear Ms. Berry,

The Santa Clara County Open Space Authority (Authority) appreciates the opportunity to comment on the Draft Environmental Impact Report for the Heritage Oaks Memorial Park (DEIR). The Authority is a special district created by the California Legislature in 1993, responsible for protecting greenbelts, natural resources, agricultural lands, wildlife habitat and open space within unincorporated Santa Clara County and the cities of Milpitas, Santa Clara, San Jose, Campbell and Morgan Hill.

The proposed Project is contiguous to the Authority's 348-acre Coyote Valley Open Space Preserve (Preserve). The Authority's Use and Management Plan for the Preserve, adopted by the Authority's Board of Directors on September 26, 2013, outlines visitor access and trail alignments. The Plan also outlines maintenance, natural and cultural resource management, and interpretive and partnership programs for the Preserve. The Preserve is scheduled to be opened Spring of 2015.

The Authority has the following comments regarding the DEIR:

3.1 Project Location and Area

The DEIR should acknowledge that the Project's south/east boundary borders the Santa Clara County Open Space Authority's approved Coyote Valley Open Space Preserve and to revise the location map - Figure 3-1 to show this relationship.

7A

3.4.1 Conceptual Plan

Future Trail Easement

The DEIR should acknowledge the interests of the Santa Clara County Parks Department and Santa Clara County Open Space Authority for a future trail connection along the SCVWD pipeline property, connecting Coyote Valley Open Space Preserve and Calero County Park. At the October 24th, 2013 public meeting for this Project, the proponent expressed support of a public trail connection on proponent's land between Calero County Park and Coyote Valley Open Space Preserve. The Santa Clara Valley Water District has an agreement with the proponent that allows for trails within the District's property and includes provisions for the proponent to dedicate non-exclusive trail easements within the Project site. This connector trail would advance the goals of the Envision 2040 General Plan, Santa Clara County Wide Trails Master Plan, Calero County Park Trails Master Plan as well as the Authority's Santa Clara Valley Greenprint and Coyote Valley Open Space Preserve Use and Management Plan.

7B

6980 Santa Teresa Blvd
Suite 100
San Jose, CA 95119
408.224.7476 T
408.224.7548 F
openspaceauthority.org



4.1 Aesthetics

The Coyote Valley Open Space Preserve as approved, has a 3.2 mile multi-use foothills loop trail that extends to the northern boundary of Preserve overlooking the Project area. The DEIR should evaluate the visual/aesthetic effects of the Project as it relates to the adjacent public trail system within the Coyote Valley Open Space Preserve.

7C

4.4.2.3 Local

Santa Clara Valley Habitat Conservation Plan

The DEIR states that the Santa Clara Valley Habitat Plan provides the option of protecting conservation lands in lieu of fees. Land in lieu of fees may include land coordinated with County Parks, Open Space Authority, or other organization. The proposed project includes land in lieu due to the high biological value of the habitats on-site. The configuration of the proposed improved areas and the proposed open space as a land in lieu dedication should be coordinated with the Open Space Authority and County Parks to reflect both the adjoining preservation areas and their role as potential manager of the lands in lieu. As currently configured, the proposed land to remain in open space is not well-coordinated with the adjoining protected lands.

7D

4.9.3.3 Hydrology Impacts

The DEIR indicates that Watershed B, draining to Coyote Valley in the direction of Palm Avenue may experience an increase in peak storm runoff due to a small increase in drainage area and an increase in the composite runoff coefficient due to the impervious surfaces associated with a portion of the administration building and parking facilities. Further, peak runoff calculation for sub-watershed W55 is expected to have the greatest potential runoff changes for this area. W55 is directly adjacent to the Coyote Valley Open Space Preserve and such drainage and its impacts on the Preserve and Palm Avenue have not adequately analyzed or mitigated. The Open Space Authority has initiated a wetlands restoration project in conjunction with the Santa Clara Valley Water District on its property. The Authority is concerned about the potential impact on this approved wetland restoration project.

7E

4.10-1 General Plan Land Use Map

The DEIR General Plan Land Use Map should be revised to include the Coyote Valley Open Space Preserve.

7F

4.10.3.2/4.10.3.3 Physically Divide an Established Community and Conflict with Applicable Land Use Policies

The proposed project would introduce a cemetery into an undeveloped agricultural and natural area, including buildings, roadways, recontoured hillsides, and street lighting. While the Open Hillside designation allows for cemeteries, they must conform to the City's land use policies. The City's land use policies for Open Hillside designation prioritize publicly-owned lands, habitat conservation areas, open space preserves, parkland and low-impact agricultural uses focused predominantly on the long term preservation of open space.

7G



4.12.1.4 Recreation

The DEIR should include the Open Space Authority's approved Coyote Valley Open Space Preserve in Section 4.12.1.4 and Table 4.12. Details would include that the Preserve is located immediately south of the Project site and provides 348 acres of open space and over 3 miles of multi-use recreational trail, to be opened Spring, 2015.

7H

6.7 Green Cemetery Alternative

The Authority encourages the proponent to pursue the green cemetery alternative to retain the Coyote Valley landscape outside the Urban Growth Boundary in a more natural state as supported in the City's Land Use Policies, conducive with preserving open land, conserving water resources and wildlife habitat.

7I

Thank you for the opportunity to comment on the DEIR for the Heritage Oaks Memorial Park Project. If you have any questions regarding these comments please contact me at (408) 224-7476 or by email at rsantos@openspaceauthority.org.

Sincerely,

A handwritten signature in blue ink that reads "R. Santos".

Rachel Santos
Open Space Planner

Cc: Andrea Mackenzie, General Manager, Santa Clara County Open Space Authority
Matt Freeman, Assistant General Manager, Santa Clara County Open Space Authority

7: RESPONSE TO SANTA CLARA VALLEY OPEN SPACE AUTHORITY

7A: The text and Figure 3-1 have been amended to identify the Coyote Valley Open Space Preserve.

7B: As described on page 3-4 of the DEIR, the project does not include provisions for public trails through the site. However, a future trail alignment has been recently identified by Santa Clara County Parks and the Coyote Valley Open Space Authority through lands not owned by the applicant but by the Santa Clara Valley Water District, with the intent of a future trail connecting Calero County Park to newly acquired Coyote Valley Open Space Preserve (opening Spring 2015). Any future trail on SCVWD property would be separate from the proposed project.

7C: The planned trails identified in this comment are not yet open to the public. As described in response 3C, the public viewpoints selected for the DEIR analysis represent the most impacted views. The view of the project from other locations, including those from the newly acquired Coyote Valley Open Space Preserve, would be similar to those evaluated in the visual simulations. The DEIR concluded that the visual impacts from the project would be less-than-significant.

7D: The current configuration of the proposed project and proposed conservation area does not inhibit future planning or partnerships with the Open Space Authority and County Parks to adjoining preservation areas regarding the remainder of the property that abuts Coyote Valley Open Space Preserve. Since a SCVWD easement passes through the property, the District, along with the property owner, may choose to collaborate at a future date to enhance connectivity, which may include hiking trails between Calero County Park and Coyote Valley Open Space Preserve. The conservation area currently abuts Calero County Park and is adjacent to the newly established Coyote Valley Open Space Preserve.

The current configuration of the proposed project and conservation area supports continued wildlife use and movement through both the project site and the conservation area. Refer to Section 4.4 and Appendix E (biological evaluation) of the DEIR, which discuss wildlife movement and the suitability of the conservation lands to continue to act as an important movement corridor in Linkage 10. See also Responses 3D and 4H.

7E: The DEIR acknowledges that, without mitigation, the project may increase peak runoff flows to downstream areas, including the drainage course leading to Palm Avenue. However, Mitigation Measure HYD-1 of the DEIR specifies that, in conjunction with the preparation and approval of detailed site development plans, which will be developed at the PD permit stage, the applicant will be required to comply with applicable stormwater management requirements of the City of San José demonstrating that there will be no net increase in peak storm runoff as a result of the development of the site. The DEIR recognizes that there are various ways to comply with this requirement, including capture and reuse of the any surplus runoff water for onsite irrigation purposes.

- 7F:** Figure 4.10-1, the General Plan Map, was excerpted from the 2040 Envision San José General Plan and cannot be revised. The new Coyote Valley Open Space Preserve has been added to Figure 3-1, Location Map.
- 7G:** The project proposes to maintain 173 acres of the site in permanent open space. As described on page 4.10-12, the project substantially conforms to the land use policies of the San José 2040 General Plan, with the exception of Policy LU-17.8 (related to routine irrigation).
- 7H:** The text of Section 4.12 has been amended to identify the Coyote Valley Open Space Preserve and trail system.
- 7I:** Comment noted.



File: 30163
Cross Valley Pipeline

October 6, 2014

Ms. Whitney Berry
Planning Division
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Subject: Draft Environmental Impact Report for Heritage Oaks Memorial Park

Dear Ms. Berry:

The Santa Clara Valley Water District (District) has reviewed the Draft Environmental Impact Report (EIR) for Heritage Oaks Memorial Park received on August 22, 2014.

As noted in our letter regarding the Notice of Preparation (NOP), the District is a responsible agency under CEQA for this project. The project proposes to construct the access road from McKean Road on the District's fee title property and to expand the raw surface water service to the site, both of which require discretionary approval by the District. Also, in accordance with the District's Water Resources Protection Ordinance the applicant will be required to secure a District permit prior to starting any work on District property, including modifications to the existing raw water turnout if necessary. However, the DEIR on page 3-8 does not include the District as a responsible agency or note the need for District permits.

8A

As noted in our comments on the NOP, in 2008 the applicant and District entered into an agreement outlining conditions for obtaining an access road easement from the District in exchange for mitigation lands owned by the applicant adjacent to the project site and the ability to purchase raw (non-potable) water from the District via the Cross Valley Pipeline to irrigate the site. The MOU outlines the process for purchase of raw water which begins with a request by the applicant or delivery of water. Such request will be acted upon in good faith and in a manner consistent with the intent of the MOU in consideration of the District's Water Rules and Regulations for the Service of Surface Water; impacts to the District's water supply reliability and capacity; future uses of the Cross Valley Pipeline; and District policies; etc. at the time the request is made.

8B

However, discussions in the DEIR regarding water supply and the Water Supply Analysis (Appendix K) consistently state that the District has committed to providing raw water to the site via the Cross Valley Pipeline, *i.e.* guaranteed delivery of water to the site. For example the DEIR incorrectly states on page 4.14-8, "the applicant has negotiated and secured a contractual right with the SCVWD for the delivery of raw, non-treated water" and on page 4.14-10 it states "diversion of water from the Cross Valley Pipeline is immediately available and its use for the

8C

project is secured through a contractual agreement executed between the applicant and the SCVWD." As such, the DEIR concludes that there are adequate supplies of water to service the site and this is a less-than-significant impact. The 2008 agreement and associated MOU dated 2005 between the District and applicant does not provide a guarantee that the District will deliver such water or that such water, if delivered, will be available at all times and/or in the quantities required.

8C

The Grant of Option to Acquire Access Easement, 2008, Article 2.9 states – "Water: District agrees to sell water to SCV, its successors or assigns for use for the Memorial Park on the SCV Property, in accordance with and subject to all of the terms of Article 4 of the Memorandum of Understanding between the parties, dated July 12, 2005. The good faith negotiations concerning system reliability measures, referenced in Section 4.5 of that Article, must be completed and have culminated in an executed agreement between the parties at least 1 year prior to any delivery of raw water by District under this Section 2.9" The MOU, Article 4.5 states- "Any agreement by District to the proposed added take of raw water by SCV for the Memorial Park will be subject to implementation of appropriate measures to ensure that no adverse impact to stable system performance occurs, which will be the subject of good faith negotiations between the parties..." The language in the MOU states this pilot period will be a precursor in determining whether the system stability and capacity can be successfully maintained in supplying water from the existing Cinnabar turnout. In the event that this study proves it is not maintained, the applicant can apply for a permit with the District for proposed modifications to the turnout. The District will consider this request in good faith but is not contractually bound to agree to the request if there are impacts to water supply reliability as required by District Board policies. The District's Board of Directors has approved a CEO Direction related to the "Rules and Regulations for Service of Surface Water", which are the policies governing sale of raw water and which apply to any request for water by the applicant. This direction states "any expansion of surface water use at existing District raw water turnouts will not be permitted unless determined by the District to have a positive impact on overall system operations or water supply availability."

8D

Additionally, if delivery of water to the site is approved it must be recognized that there are multiple constraints on the Cross Valley Pipeline supply and it is subject to long term shortages due to other demands, maintenance, drought, change in policies, *etc.* The impact of the loss of this supply on the project needs to be identified and discussed. This source of supply should be considered an interruptible source of supply for the project. The water supply discussions in the DEIR need to reflect the true availability of raw water delivery by the District and the stated main source of water for non-potable uses at the site has not been approved by the District and if approved, its availability at any given time is not guaranteed.

8E

The DEIR identifies water from the Cross Valley Pipeline as the main source for not only irrigation water, but for fire suppression. The project proposes use of Cross Valley Pipeline water to fill the proposed irrigation reservoir(s) that would be designed and operated for both irrigation and fire suppression needs. This water may not be available for a number of reasons as noted above and the DEIR needs to be revised to reflect the uncertainty associated with this source of supply - including how the reservoir(s) will be filled initially if the water is unavailable; how long the reservoir(s) can be operated for both irrigation and fire suppression purposes if the water is unavailable for a significant period of time (*i.e.* 6 months for longer); and the impacts of using well water for fire suppression. It should be noted the District does not consider this interruptible water supply suitable for fire suppression.

8F

The current historic drought in California and Santa Clara County has led to unprecedented curtailments of water delivery from both the Federal and State Water Projects to the District. In response to these reductions in imported water and dwindling local supplies the District for the first time ever notified all raw water customers earlier this year, in accordance with District policies and rules, that District water deliveries for all uses, including fire suppression, would cease. These deliveries have ceased in all but a few cases where extensions have been granted to allow time for customers to secure other water. It is assumed raw water deliveries will be restored once the drought has ended; however, the severity and duration of this drought coupled with projections that such droughts may become more common place has reinforced the District's commitment to the continual evaluation of the sustainability and reliability of the District's water supply system, which may include changes to District rules and regulations for raw water deliveries.

8G

The sections of the DEIR related to water supply (irrigation, fire suppression, wells, *etc.*) need to be revised to accurately reflect the uncertainty related to the use of water from the Cross Valley Pipeline and the determination of a less-than-significant impact regarding water supply needs to be re-evaluated. As noted, the District is a responsible agency under CEQA and may use the project EIR to complete findings under CEQA as required for discretionary approvals, including use of water from the Cross Valley Pipeline; however, as presented the District does not agree that the analysis of water supply impacts has been adequately assessed.

8H

In addition to the above general comments we have the following specific comments regarding the document:

1. The project description on page 2-1 should note the access road would be located within District property.
2. The "Future Trail Easement" discussion on page 3-4 states the District owns an access easement through portions of the rezone area. However, the District owns fee title property within portions of the re-zone area and the document should be revised for accuracy.
3. The MOU between the District and applicant states the applicant "intends to dedicate non-exclusive trail easements" on applicant's property; however, the DEIR in the "Future Trail Easement" discussion on page 3-4 states trails would be only on District property. The discussion should note the potential for trails to be constructed within the site.
4. The description of the access road rights on page 3-4 implies the access easement for the access road has already been obtained by the applicant. There is a Grant of Option to Acquire an Access Easement; however, there are conditions that must be met including approval of the project by the City and there is a deadline to exercise the option. The DEIR should be revised to more accurately describe the existing rights for the access road.
5. Page 3-7 and 4.4-37 note that up to 120 trees will be removed from the site, including 9 along the proposed access road. Replacement of the trees is proposed to be in accordance with the City's trees protection policies, which require replacement large container stock. The Guidelines and Standards for Land Use Near Streams should also be complied with for trees proposed to be planted adjacent to the on-site streams. Also, planting of trees on District property must be in compliance with District requirements, including setbacks to the pipeline and use of District property for mitigation is not allowed.

8I

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8K

8L

8M

- | | |
|---|----|
| 6. Figure 4.4-1 doesn't identify all District property located within the rezone area. | 8N |
| 7. It should be noted that if the existing well requires modifications, a District well permit is required. | 8O |
| 8. The footnote on page 4.9-1 is about Calero Reservoir; however, it is associated with a sentence in the text of the DEIR about Coyote Creek, not Calero Reservoir. Also, this footnote and page 4.9-3 state Calero Reservoir is an emergency water supply source; however, this reservoir is an integral part of the overall water supply sources in the County and is not used just in emergency conditions. | 8P |
| 9. Page 4.9-10 notes that one or more reservoir will be constructed to store water for irrigation. Depending on the storage capacity and height of the dam for the reservoir(s), the reservoir(s) may fall under the jurisdiction of the California Division of Safety of Dams (DSOD), and the DEIR should include a discussion of DSOD jurisdiction relative to the storage reservoir(s). | 8Q |
| 10. On page 4.9-17, the DEIR lists management measures that <u>may</u> be employed to minimize nitrate impacts on water quality. The DEIR should be specific as to which management measures <u>will</u> be employed to minimize nitrate impacts. | 8R |
| 11. The discussion of impacts from development of the site on peak storm runoff doesn't specify the storm event used for the calculations or for what event(s) the project will mitigate for increases in peak runoff. | 8S |
| 12. The discussion of Annual Groundwater Recharge indicates there is projected to be a net increase in groundwater recharge as a result of the project; however, the discussion doesn't clearly state why recharge would increase if irrigation lost to groundwater will be minimal as stated on page 4.9-18. | 8T |
| 13. The DEIR notes the applicant is committed to using recycled water if and when it is available to the site; however, the impacts of using recycled water for irrigation should be evaluated, particularly with regard to water quality. | 8U |
| 14. Page 4.14-8 states that the irrigation system will be used to apply fertilizer and pesticides, but the DEIR does not discuss how the system will be designed to avoid backflow of chemicals into the Cross-Valley pipeline. This should be addressed in the DEIR. | 8V |
| 15. The project is understating the irrigation requirement by overstating effective precipitation and probably irrigation efficiency. For effective precipitation, the industry standard is 25% of annual precipitation (DWR's Model Water Efficient Landscape Ordinance). Table 4 in Appendix K assumes effective rainfall to be 90% to 100%, depending on the month. The report is also assuming an irrigation efficiency of 90%, which is achievable for a well designed, maintained drip irrigation system. However, for overhead spray this would be considered high (as noted in the appendix). Finally, the descriptions (page 7) for columns 6 and 7 in Table 4 (page 8) don't match what is actually in columns 6 and 7. | 8W |
| 16. The DEIR states, page 1 of Appendix K Water Supply Analysis, the site is not served by a municipal water system currently or in the foreseeable future. Though the site is currently not served by a municipal water system, according to District information, the site (excluding APN: 712-03-103) is within the San Jose Municipal Water service area. The DEIR discussion of water supply should clearly state it is located within an existing water retail service area. The retailer may require the applicant to purchase water through them even if the water is provided via the Cross Valley Pipeline, <i>i.e.</i> the District will act as the wholesaler to San Jose Municipal Water. | 8X |
| 17. The discussion of non-urban water relative to the project's consistency with the Open Hillside Designation and Hillside Policies should include a definition of non-urban water. The examples of non-urban water provided on page 4.10-10 are on-site well water, | 8Y |

rainfall catchment and recycled water. The water proposed for use, raw surface water directly from the Cross Valley Pipeline, is not treated or considered potable; however, water from this pipeline is a main source of supply for the District's water treatment plants which distribute potable water to the County. The impact of the use of this water is considered a significant unavoidable impact.

8Y

18. As noted in our comments on the NOP, DEIR should note that the District's land where the access road is proposed is subject to the Master Reservoir Lease with the County of Santa Clara allowing for recreational uses of the District's property. Neither the project summary nor discussion of recreational impacts notes the access road would be within the Master Reservoir Lease area.

8Z

19. The Cross Valley Pipeline is due for rehabilitation. Pipeline draining and construction activities including excavation to replace buried valves are planned to occur on District lands, including those identified for the access road. It is tentatively scheduled for October 2015 but could be postponed. Planned and unplanned activities involving the pipeline in the future may result in significant noise and or disruption in the vicinity of the proposed Memorial Park. The DEIR should include a discussion of the potential for impacts to the access road due to District maintenance and operation of the Cross Valley Pipeline from the scheduled work in 2015 and from future activities.

8Z1

Reference District File No. 30163 on further correspondence regarding this project. If you have any questions or need further information, you can reach me at (408) 630-2322.

Sincerely,



Colleen Haggerty, P.E.
Associate Civil Engineer
Community Projects Review Unit

cc: Elish Ryan
Santa Clara County Parks Department
Elish.Ryan@PRK.SCCGOV.ORG

Yves Zsutty
Trails, Parks and Neighborhood Services
City of San Jose
Yves.Zsutty@sanioseca.gov

William B. Baron
Brandenburg Properties
bbaron@bsm-group.com

S. Tippetts, C. Haggerty, M. Martin, A. Baker, G. Hall, S. Shaikh, J. Fiedler, T. Hemmeter, J. De la Piedra, File

8: RESPONSE TO SANTA CLARA VALLEY WATER DISTRICT

8A: Comment noted. The text has been amended to identify the SCVWD as a responsible agency.

8B: Comment noted. Although no formal application and/or request has been made, the applicant and SCVWD staff are in active dialogue regarding water service to the project. The text has been amended to clarify this.

8C: Comment noted. As stated above, SCVWD staff and the applicant are in active dialogue regarding water service to the project. The DEIR does not indicate that there is a “guaranteed delivery of water to the site,” nor does the applicant indicate that this is the case. The applicant, through a related entity, has an MOU to divert surface water whereby the SCVWD has agreed to deliver raw, untreated water through the Cross Valley Pipeline subject to SCVWD rules and regulations, and further subject to supply disruptions due to higher priority needs, maintenance, drought, change in policies, and the like. The applicant has acknowledged that the SCVWD raw water is interruptible and may or may not be delivered in sufficient quantities for basic operations or at the times required.

As stated throughout the DEIR (see Section 4.14), the applicant has an alternative water supply from well(s) located in the Coyote Valley adjacent to the site and will utilize this water if and when needed. The alternative water supply from these wells would provide at least minimum quantities to operate the project. Regardless, either raw, non-potable water delivered by the SCVWD or well water by applicant are viewed as solely short term, interim sources as recycled water is viewed as the primary long term water source when made available. SCVWD staff and the applicant have been in long term discussions regarding the provision of recycled water service to the project site.

8D: Comment noted. Please refer to Response 8C. In addition, the applicant will reasonably work with the SCVWD to further implement appropriate measures to ensure that no adverse impact to stable system performance occurs.

8E: Comment noted. Please refer to Response 8C.

8F: A water supply plan for fire suppression will be reviewed by the City’s Bureau of Fire Prevention and resolved at the Planned Development (PD) permit stage. Also, please refer to Response 8C.

8G: Comment noted.

8H: Comment noted. Please refer to Response 8C. The text has been amended to reflect the uncertainty related to the use of water from the Cross Valley Pipeline.

8I: Comment noted. The text has been amended.

8J: The text has been amended. The trail would be constructed on SCVWD property.

- 8K:** Comment noted. Please refer to Response 3G.
- 8L:** Comment noted. The City and applicant acknowledge that the Grant of Option to Acquire an Access Easement has conditions that must be met to exercise the option. The text has been revised to clarify this.
- 8M:** All trees will be replaced and planted in accordance with the City and District requirements.
- 8N:** The only SCVWD owned lands that are not shown in Figure 4.4-1 are the easement over the 50' wide strip for access and utilities for the proposed entry road, which extends from McKean Road to the applicant's fee ownership. The entirety of the access road lands are owned in fee by the SCVWD until the access road enters the rezone site.
- 8O:** Comment noted. The applicant will obtain a District well permit for any modifications to the existing well.
- 8P:** The footnote at the bottom of page 4.9-1 should be attached to the first sentence under 4.9.1.1. The discussion of Calero Reservoir at the top of page 4.9-3 properly describes the multiple uses of the reservoir. This has been expanded in the amended text to indicate that "Calero Reservoir is an integral part of the overall water supply sources in the County."
- 8Q:** Comment noted. The California Division of Safety of Dams (DSOD), under the Department of Water Resources, is responsible for reviewing and approving plans and specifications and overseeing the construction of dams to insure protection of public safety. Their regulatory jurisdiction is based on the height of the dam and reservoir storage capacity, which includes 1) any dam over 25-feet high with reservoir storage capacity of 15 acre-feet or more, and 2) any dam over 6-feet high with reservoir storage capacity of 50 acre-feet or more. Any irrigation storage reservoir(s) for the project meeting either of these thresholds would be subject to design, construction, and related requirements of the DSOD. The City will require referral of plans to DSOD as a condition of approval of any development that proposes to construct a reservoir.
- 8R:** All management measures listed on page 4.9-17 of the DEIR will be considered and employed in the project to minimize the use and resulting environmental impacts of nitrogen-based fertilizers.
- 8S:** The projected changes in peak storm runoff (increase or decrease) presented in the DEIR hydrology analysis were made for each sub-watershed on the basis of planned modifications of drainage area (A) and runoff coefficient (C), which are two of the three factors in the Rational Method for peak runoff calculation. The third, rainfall intensity (I), represents the storm event under consideration (i.e., 2-yr, 5-yr, 10-yr, 100-yr storm). The runoff analysis and conclusions (increase or decrease) apply to all storm events, since the development of the project would not affect the rainfall intensity for any given storm frequency (i.e., remains constant). Per the identified Mitigation Measure HYD-1

and City of San José hydromodification requirements, the project will be required to demonstrate no net increase in peak storm runoff for all storm frequencies, up to and including the applicable 100-yr rainfall event.

- 8T:** Even though the projected irrigation seepage losses (10 percent of applied water) are considered “minimal,” they still amount to a net positive contribution to groundwater recharge. Additionally, the planned grading and conversion of the most of the site to managed turfgrass will also result in a small net increase in annual groundwater recharge from rainfall percolation. The combination of these two factors is responsible for the projected net increase in groundwater recharge over the project site. This is demonstrated through the detailed water balance analysis in the “Hydrology and Water Quality Assessment” (Appendix K).
- 8U:** As requested, an evaluation of potential water quality impacts associated with the potential future use of recycled water for cemetery irrigation has been conducted by Questa Engineering and the DEIR text amended. This evaluation considered recycled water standards, use area requirements, human contact with treated wastewater, wastewater runoff to local watercourses, bacterial contamination of groundwater or local watercourses, and nitrate loading impacts. The updated analysis concluded that the project would result in less-than-significant water quality impacts related to future substitution or blending of recycled water for turf irrigation. See Section 2.0 of this document.
- 8V:** To the extent that a computerized fertilizing system is used on the site, this system will not be connected with or to the Cross Valley Pipeline. The water from the Cross Valley Pipeline would be stored in a reservoir.
- 8W:** This comment cites the term “effective precipitation” and asserts that the “industry standard” is 25% of annual precipitation, based on its inclusion in DWR’s Model Water Efficient Landscape Ordinance. The water supply consultant, Questa Engineering Corporation, disagrees with this assertion as follows.

The term “effective precipitation” is understood to be the portion of rainfall that can be used to meet the evapotranspiration (ET) demand of crops or landscape vegetation. Effective precipitation is influenced by many factors, such as topography and runoff characteristics, soil conditions, vegetation type and rooting depth, management practices, and rainfall distribution patterns (USDA, National Engineering Handbook-Part 623, Chapter 2 Irrigation Water Requirements, 1993).¹

The 25% allowance contained in the DWR Model Ordinance is merely a simplified approximation of the minimum amount of “effective precipitation” that could be expected on any site, regardless of the landscape, soil, vegetation and management factors. It is a “safe” value, easily calculated, and accounts for the worst case situations. But it is not a valid substitute for site specific analysis as was done for the EIR. The irrigation water demand analysis by Questa Engineering presented in Appendix K was

¹ <ftp://ftp.wcc.nrcs.usda.gov/wntsc/waterMgt/irrigation/NEH15/ch2.pdf>

based on a detailed monthly water balance, including assessment of rainfall runoff and retention following USDA guidelines and procedures. While the rainfall available to meet monthly ET demand was estimated to range from 90 to 100 percent, depending on the time of year, on an annual basis the resultant “effective precipitation” would be calculated as 44.6% of average annual rainfall (Appendix K, Table 4, column 5 – 6, divided by column 1). Further refinement of the irrigation-water balance could be achieved using daily time steps and/or soil storage calculations; but this was not deemed necessary for the EIR planning level of analysis. The site specific, monthly estimates of precipitation, ET and irrigation water demand are reasonable and considerably more accurate than would be produced by defaulting to the simplified annual methods contained in the DWR Model Ordinance.

Regarding the assumption of a projected irrigation efficiency of 90%, the EIR authors believe this is attainable for a modern computer-based irrigation controller system utilizing an on-site weather station, as proposed. Also, in assessing irrigation water demand, the analysis included two additional conservative assumptions: 1) that all 75 acres of planned cemetery at build-out would be covered entirely in turfgrass, with no allowance for pathways, or other structures (e.g, headstones) or other non-planted areas; and (2) no credit was given to the volume of water runoff contributed to turf areas from the paved access road network, which will be designed to sheet flow across the adjacent turf areas. If included in the analysis, these factors would contribute to a reduction in the estimated total irrigation water demand.

Finally, regarding the discussion of Table 4 in Appendix K, the commenter is mistaken. The discussion on page 7 properly describes the information in columns 6 and 7 in Table 4.

- 8X:** To the extent that APN 712-03-103 is within a retailer boundary, such parcel is part of the non-irrigated protected open space area and as a result, not part of the proposed cemetery (project site). Moreover, City policies do not allow for the extension of “urban services” to areas located outside of the urban service area.
- 8Y:** The City of San José Envision 2040 Policy LU-19.6(3) states in part: “Distinguish between urban and non-urban uses in terms of water usage by limiting water consumption for new development to use of non-urban sources, including on-site well water and rainfall catchment” (emphasis added as it does not state “limited to”). Historically and practically, urban services such as treated water distribution lines and sanitary sewer lines could not be extended into areas of the City of San José located outside of the Urban Service Area. The source of water flowing within the Cross Valley Pipeline comes directly from rainfall catchment and from the Sierra Nevada snowpack. Such water source is often stored in both above ground reservoirs and below ground water aquifers located in non-urban locations. This same non-urban sourced water is indeed utilized for urban demand yet is also utilized for non-urban purposes such as the filling of reservoirs for non-urban recreation and filling of ground water aquifers in part utilized by agricultural water wells all outside of the urban service boundary. Water within the Cross Valley Pipeline is deemed by the City to be non-urban sourced water because it has not been treated for urban use.

The text has been amended to clarify the City's finding of consistency with LU-19.6(3).

- 8Z:** Comment noted. The text has been amended to indicate that DEIR the SCVWD's land where the access road is proposed is subject to the Master Reservoir Lease with the County of Santa Clara, allowing for recreational uses of the District's property.
- 8Z1:** The project applicant would cooperate and collaborate with the District prior to and during its construction activities. The intermittent construction activities are not expected to generate major disruptions or impacts to memorial park operations.

Letter 9

From: Robert B Tucker <rtucker@stanford.edu>
Sent: Monday, October 6, 2014 3:32 PM
To: Berry, Whitney
Cc: rtucker@stanford.edu
Subject: Heritage Oaks Memorial Project, File No. PDC13-016, DEIR

Whitney,

I am Emailing you with respect to the Heritage Oaks Memorial Park Project, File No. PDC13-016.

By way of introduction I will say that myself and two of my brothers (Gerald and Richard) were at the Thursday, Oct. 24th, 2013 meeting at the Almaden Community Center where the above project was discussed. Perhaps you were there also.

One thing that was surprising was that neither the Developers nor the S. J. City staff members were aware that we have a residence bounded on two sides by the project (1990 Bailey Ave). The "overhead" photograph of the area (by Google?) wasn't an overhead photograph at all but one taken an an angle such that one only saw the trees in the surrounding area and Bailey Ave. just drawn in.

I am interested in knowing if the developers have submitted and accurate description of the boundaries of their project in the Bailey Ave. area. Has the San Jose City staff reviewed this sort of boundary information? I have seen no survey markers, etc, that clearly define the boundaries. Can you supply me with this boundary description?

Thank you very much,

Robert B. Tucker
2019 Harvard
Palo Alto, CA, 94306
Phone: 650-857-0929

9A

9: RESPONSE TO TUCKER, ROBERT

9A: While adjacent to the project site, the subject property is approximately 1,000 feet from the project site and is separated by trees, hills, and Bailey Avenue. An APN map showing the location of the Tucker parcel is attached.

Letter 10

From: Kirk Vartan <kirk@kvartan.com>

Sent: Tuesday, October 7, 2014 10:44

PM To: Berry, Whitney

Subject: Heritage Oaks

Dear Mr. Whitney,

I would like to give some input to this project and frankly any project that is going to consume water, especially large amounts of water like a cemetery.

In 2014, everyone across the state was asked to reduce water by 20%. This is not likely a unique event and will probably happen again, maybe often. Our society continues to use its resources as if they will never end. While we are getting better at recycling, we need to continue to look to smaller countries in Europe that focus on protecting and guarding their limited space and resources.

Water is a precious resource that we cannot afford to waste. Citizens and businesses alike need to develop strategies for conservation of water that is used on their site.

Specifically, I would like San Jose to ***REQUIRE*** the cemetery to be completely run off recycled water. They should also integrate a water retention system and reuse plan so they can minimize their water needs and impacts.

They should be encouraged to use drought resistant and native plants that require little water.

Creating a 100 acre lawn to water is not good for California and definitely not good for San Jose.

Please require the plan to not depend on potable water.

Thank you,

Kirk Vartan
District 6

10A

10B

10: RESPONSE TO VARTAN, KIRK

10A: As described and highlighted in Section 4.14 of the DEIR, water supply for the project would be provided by non-urban sourced onsite water well for potable needs, and non-urban sourced water obtained from the SCVWD's Cross Valley Pipeline for irrigation and other non-potable needs. Other non-urban sourced water supplies that may also be used in the future include: 1) well water from adjoining applicant-owned lands in the Coyote Valley (vicinity of Laguna Ave and Santa Teresa Boulevard); and 2) recycled water from the regional recycled water distribution system, once extended to the project site. The long-term goal of the project is to rely on recycled water if/when available. With regards to revegetation, non-invasive plant materials that do not require routine irrigation are proposed along and around the boundaries of the project site where it interfaces with non-disturbed areas. Non-routinely irrigated, non-invasive plant materials would also be used in "naturalized" burial areas. The area of routinely irrigated area is expected on no more than 75 acres of the project site at buildout (over a period of 200+ years) and would be planted with non-invasive, drought tolerant species.

10B. Comment noted

3.0 REVISIONS TO THE DRAFT EIR

3.1 Introduction

The following section provides revisions to the text of the DEIR, in amendment form, pursuant to CEQA Guidelines Section 15088(d). The revisions are listed by page number. All additions to the text are presented in underline, and all deletions are shown in ~~strike-out~~. These revisions are made to the text in response to comments offered during public circulation of the DEIR and to provide minor corrections as needed. These changes might be considered important clarifications or amplifications, but are not significant modifications to the text or conclusions of the DEIR.

3.2 Revisions to DEIR

Page 2-1, second paragraph, the second to last sentence is revised as follows:

Access is proposed from McKean Road and would consist of a fully improved private driveway along an existing Santa Clara Valley Water District access road on District owned property.

Page 2-4, Mitigation Measure BIO-2, second paragraph, the first sentence is revised as follows:

Should evidence of a burrowing owl be located on the project site in the non-breeding season (September through January), construction activities shall not be allowed within this 250-foot buffer unless the following avoidance measures are adhered to:

Page 2-9, Mitigation Measure BIO-7 is revised as follows:

The project proponent shall replace any tree to be removed with new trees in accordance with the City's Tree Replacement Ratios, as set forth below. For the nine trees along the proposed access road, replacement trees will be planted in accordance with the Santa Clara Valley Water District Guidelines and Standards for Land Use Near Streams. The project shall obtain permits from the City of San José for trees to be removed, and shall plant replacement trees according to the City's tree ordinance requirements as shown below in Table 4.4-2.

Page 2-15, the following water conservation measure is added to mitigation measure UTL-1:

- Comply with all conditions of any future SCVWD permit, upon purchase of raw water from SCVWD.

Page 3-1, the following text is inserted after the third paragraph:

In addition, the Coyote Valley Open Space Preserve, operated by the Santa Clara Valley Open Space Authority, is located on approximately 348 acres just southeast of the project site. The Authority purchased the property in 2010 and plans to complete a staging area, trails, and other improvements that will be open to the public Spring 2015.

Page 3-4, third paragraph, the first sentence is revised as follows:

The SCVWD owns a fee strip through a small portion of the rezone site, and the small portion is not subject to the proposed rezoning nor is it part of the project site. The SCVWD and applicant have discussed the District locating a trail within the District's fee ownership alongside the proposed access road on lands owned entirely by the District. ~~an access easement through portions of the rezone site. The SCVWD and the applicant have discussed locating a trail within the District's right-of-way through the rezone site and alongside the proposed access road on lands entirely owned by the SCVWD.~~ Note that the SCVWD's land where the access road is proposed is subject to the Master Reservoir Lease with the County of Santa Clara, allowing for recreational uses of the District's property.

Page 3-4, sixth paragraph, is revised as follows:

Access to the cemetery would be from McKean Road via a private driveway on property owned by the SCVWD, ~~granted by SCVWD through agreement, as memorialized and recorded.~~ The project proponent has a Grant of Option to Acquire an Access Easement from the SCVWD for this access road, and conditions must be met to exercise the option. The access road also crosses a small area of land owned by Pacific Gas & Electric (PGE), granted by PGE through a recorded easement. The access road would be located approximately 1/4 mile south of Bailey Avenue. The access road would be 30 feet in width and approximately 2,400 lineal feet in length from its intersection at McKean Road to the cemetery (approximately two acres).

Page 3-5, fourth paragraph, is revised as follows:

Potable water ~~Water~~ supply for the project will be provided by non-urban sourced onsite water well. ~~for potable and~~ The project proposes to use non-urban sourced raw water obtained from the SCVWD's Cross Valley Pipeline, subject to discretionary approval by the SCVWD, for irrigation and other non-potable needs. Other non-urban sourced water supplies that may also be used in the future include: 1) well water from adjoining applicant-owned lands in the Coyote Valley (vicinity of Laguna Ave and Santa Teresa Boulevard); and 2) recycled water from the regional recycled water distribution system, once extended to the project site from its current terminus near the Metcalf Energy Center. The proposed water system, including wells, pumps, and associated works, is described in more detail in Section 4.14 Utilities under "water supply."

Page 3-8, Section 3.5, the SCVWD is added to the list of responsible agencies as follows:

The EIR is also intended for use by the following responsible, trustee, and other agencies that have jurisdiction or approval authority for the project for the following actions, if they are required:

- U.S. Army Corps of Engineers Section 404 Permit
- California Department of Fish & Wildlife Streambed Alteration Agreement
- San Francisco Bay Regional Water Quality Control Board Section 404 Certification
- Santa Clara Valley Water District, various permits

Page 3-9, Figure 3-1, is revised as shown on the attached page.

Page 4.4-12, first paragraph, the first sentence is revised as follows:

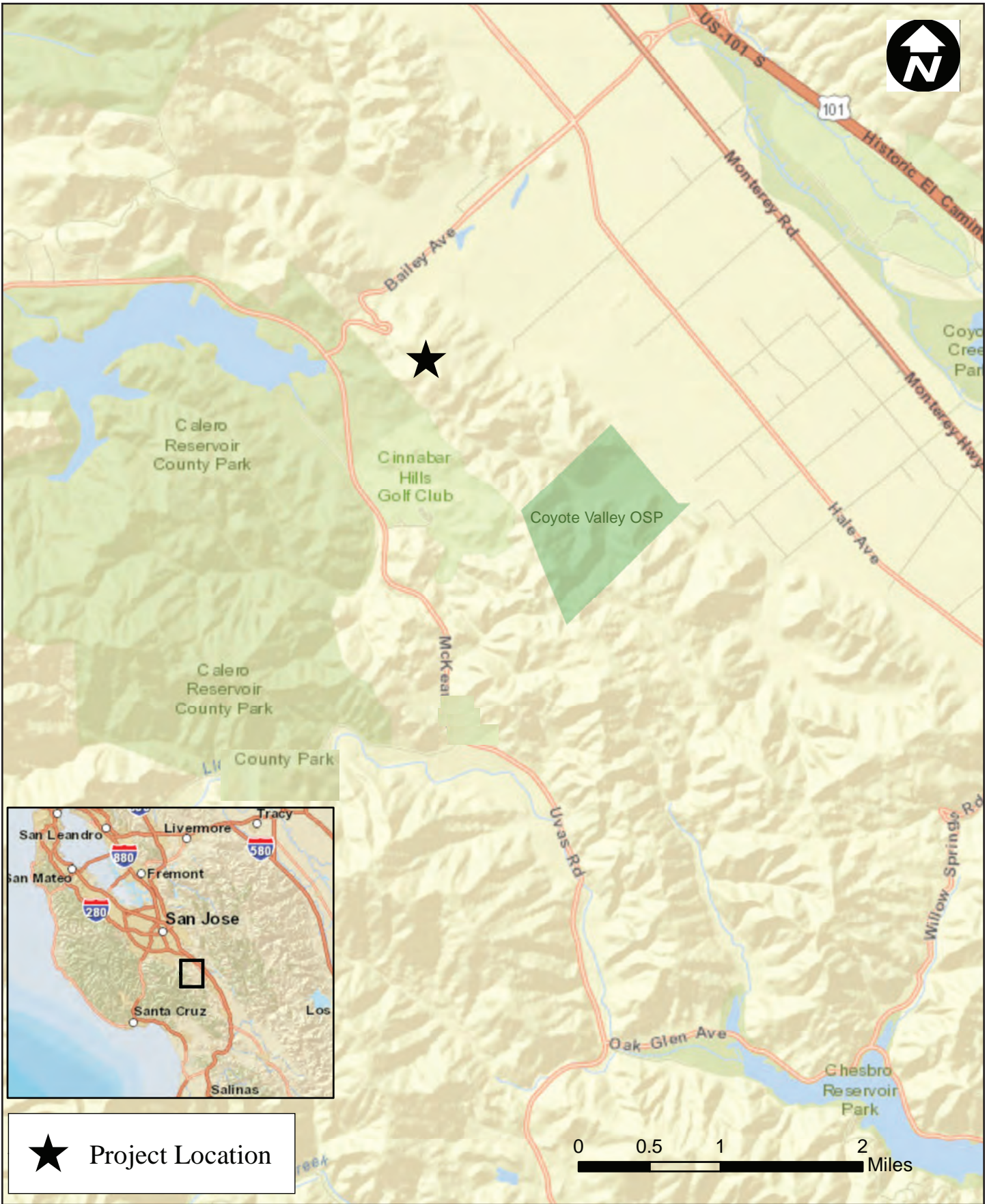
Based on the results of the biological assessment, 267 special status animal species occur, or once occurred, regionally.

Page 4.4-12, first paragraph, the fourth and fifth sentences are revised as follows:

The remaining 156 special status animal species potentially occur more frequently as regular foragers, transients, or may be resident to the rezone and project site. These include the California tiger salamander, white-tailed kite, northern harrier, Swainson's hawk, peregrine falcon...

Page 4.4-21, the last paragraph is revised as follows:

Chapter 9 of the SCVHP identifies fees that may be required for the project. The development area (project site area plus a 50-foot buffer) is within Fee Zone A "Ranchland and Natural Lands," with most of the proposed conservation lands also in Zone A. The current SCVHP fees (June 2014 – May 2015) for development of Zone A lands are \$17,028 ~~15,416~~ per acre. Additional fees may apply to impacts to sensitive resources including, but not limited to, seasonal wetland, riparian, pond and stream habitats. The current additional fees for impacts to sensitive resources are: \$383,238 ~~374,842~~ per acre for seasonal wetlands; \$142,838 ~~139,708~~ per acre for riparian habitat; \$156,755 ~~153,321~~ per acre for pond habitat; and \$601 ~~588~~ per linear foot for stream habitat. The Burrowing Owl fee is not expected to apply to this project, however, if a nesting pair is identified on the project site, a Burrowing Owl fee of \$51,568 ~~50,438~~ per acre may be required in addition to the Zone A fees. A Nitrogen Deposition Fee would also be required at \$3.98 ~~19~~ for each projected new vehicle trip.



★ Project Location

Location Map

Figure 3-1
Revised

Page 4.4-22, the first two paragraphs are revised as follows:

The SCVHP provides the option of protecting conservation lands in lieu of fees. ~~Land in lieu of fees may include lands coordinated with the County Parks, Open Space Authority, or other organization. Wetland fees cannot be waived; however, restoration or creation, management, and monitoring of onsite wetlands, streams, ponds, or riparian for mitigation may replace some or all wetland fees for a site if approved by the Implementing Entity. Land in lieu of fee must be approved by the Implementing Entity for the SCVHP, CDFW and USFWS. If approved, land in lieu of fee will become part of the Reserve System under the SCVHP once success criteria have been met (for restoration projects). Off-site conservation lands in lieu of fee may be acceptable if both the Implementing Entity and the Wildlife Agencies (CDFW and USFWS) approve the proposed conservation lands. However, it is important to note that land in lieu of fees only offsets costs related to land fees, and does not include an offset for management fees.~~

~~The Implementing Entity has approved Draft Resolution No. I-2014, which the Implementing Entity has approved, indicates that identifies which fees that are offset by “land in lieu of fee” and which fees cannot be offset by dedication of land. Fees that are offset include land cover, serpentine, burrowing owl, and/or temporary impact fees. Fees that cannot be offset include land management or monitoring, plan preparation, endowment, wetland, nitrogen deposition, and/or any non-development fee charge including, but not limited to, administrative charges, processing, and evaluation charges, and other charges such as the Participating Special Entity (PSE) charge. The dollar total of fees that cannot be offset (Land Management or monitoring, Plan Preparation and Endowment) is approximately 35 percent of a site’s total land cover fees. Although wetland fees cannot be waived, restoration or creation, management, and monitoring of onsite wetlands, streams, ponds, or riparian for mitigation may replace some or all wetland fees for a site if approved by the Implementing Entity. Land in lieu of fees may include lands coordinated with the County Parks, Open Space Authority, or other organization. If approved by the Implementing Entity, land in lieu of fees will become part of the Reserve System under the SCVHP once success criteria have been met (for restoration projects). Off-site conservation lands in lieu of fees may be acceptable if both the Implementing Entity and the Wildlife Agencies (CDFW and USFWS) approve the proposed conservation lands. Should the Implementing Entity approve land in lieu of fee for this project, preservation of the proposed conservation area would sufficiently mitigate for the loss of habitat for sensitive habitats proposed for development. Should the Implementing Entity not approve the conservation area as land in lieu of fees, fees would be assessed at current (June 2014 – May 2015) SCVHP values.~~

Page 4.4-28, first paragraph, the first paragraph is revised as follows:

The loss of nesting and foraging habitat for white-tailed kite, northern harrier, Swainson’s hawk, peregrine falcon, bald eagle, and golden eagle would not constitute a significant adverse impact. Impacts to individuals, however, would be considered significant. Trees on the rezone and project site provide suitable nesting habitat for white-tailed kite, and other protected raptors, and common raptor species protected by the California Fish and Game Code, as well as migratory birds protected by both the California Fish and Game Code and the Migratory Bird Treaty Act.

Page 4.4-22, the first two paragraphs are revised as follows:

The SCVHP provides the option of protecting conservation lands in lieu of fees. ~~Land in lieu of fees may include lands coordinated with the County Parks, Open Space Authority, or other organization. Wetland fees cannot be waived; however, restoration or creation, management, and monitoring of onsite wetlands, streams, ponds, or riparian for mitigation may replace some or all wetland fees for a site if approved by the Implementing Entity. Land in lieu of fee must be approved by the Implementing Entity for the SCVHP, CDFW and USFWS. If approved, land in lieu of fee will become part of the Reserve System under the SCVHP once success criteria have been met (for restoration projects). Off-site conservation lands in lieu of fee may be acceptable if both the Implementing Entity and the Wildlife Agencies (CDFW and USFWS) approve the proposed conservation lands. However, it is important to note that land in lieu of fees only offsets costs related to land fees, and does not include an offset for management fees.~~

~~The Implementing Entity has approved Draft Resolution No. I-2014, which the Implementing Entity has approved, indicates that identifies which fees that are offset by “land in lieu of fee” and which fees cannot be offset by dedication of land. Fees that are offset include land cover, serpentine, burrowing owl, and/or temporary impact fees. Fees that cannot be offset include land management or monitoring, plan preparation, endowment, wetland, nitrogen deposition, and/or any non-development fee charge including, but not limited to, administrative charges, processing, and evaluation charges, and other charges such as the Participating Special Entity (PSE) charge. The dollar total of fees that cannot be offset (Land Management or monitoring, Plan Preparation and Endowment) is approximately 35 percent of a site’s total land cover fees. Although wetland fees cannot be waived, restoration or creation, management, and monitoring of onsite wetlands, streams, ponds, or riparian for mitigation may replace some or all wetland fees for a site if approved by the Implementing Entity. Land in lieu of fees may include lands coordinated with the County Parks, Open Space Authority, or other organization. If approved by the Implementing Entity, land in lieu of fees will become part of the Reserve System under the SCVHP once success criteria have been met (for restoration projects). Off-site conservation lands in lieu of fees may be acceptable if both the Implementing Entity and the Wildlife Agencies (CDFW and USFWS) approve the proposed conservation lands. Should the Implementing Entity approve land in lieu of fee for this project, preservation of the proposed conservation area would sufficiently mitigate for the loss of habitat for sensitive habitats proposed for development. Should the Implementing Entity not approve the conservation area as land in lieu of fees, fees would be assessed at current (June 2014 – May 2015) SCVHP values.~~

Page 4.4-28, first paragraph, the first paragraph is revised as follows:

The loss of nesting and foraging habitat for white-tailed kite, northern harrier, Swainson’s hawk, peregrine falcon, bald eagle, and golden eagle would not constitute a significant adverse impact. Impacts to individuals, however, would be considered significant. Trees on the rezone and project site provide suitable nesting habitat for white-tailed kite, and other protected raptors, and common raptor species protected by the California Fish and Game Code, as well as migratory birds protected by both the California Fish and Game Code and the Migratory Bird Treaty Act.

Mitigation Measures (Included in Project)

BIO-7 The project proponent shall replace any tree to be removed with new trees in accordance with the City's Tree Replacement Ratios, as set forth below. For the nine trees along the proposed access road, replacement trees will be planted in accordance with the Santa Clara Valley Water District Guidelines and Standards for Land Use Near Streams. The project shall obtain permits from the City of San José for trees to be removed, and shall plant replacement trees according to the City's tree ordinance requirements as shown below in Table 4.4-2.

Page 4.4-38, the discussion starting at the bottom of the page is revised as follows:

Fees

Chapter 9 of the SCVHP identifies fees that may be required by this project. The project development area (project site plus a 50-foot buffer) is located within Fee Zone A, with most of the proposed conservation lands also in Zone A. The current SCVHP fees for development of Zone A lands are ~~\$17,028~~ ~~15,416~~ per acre. Additional fees may apply to impacts to sensitive resources; including, but not limited to, seasonal wetland, riparian, pond and stream habitats. The current (June 2014 – May 2015) additional fees for impacts to sensitive resources are as follows: ~~\$383,238~~ ~~374,842~~ per acre for seasonal wetlands; ~~\$142,838~~ ~~139,708~~ per acre for riparian habitat; ~~\$156,755~~ ~~153,321~~ per acre for pond habitat; and ~~\$601~~ ~~588~~ per linear foot for stream habitat. The Burrowing Owl fee is not expected to apply to this project, however, if a nesting pair are identified on the project site, a Burrowing Owl fee of ~~\$51,568~~ ~~50,438~~ per acre may also be required in addition to the Zone A fees. A Nitrogen Deposition Fee would also be required at ~~\$3.9819~~ for each projected new vehicle trip.

Page 4.9-3, the following is inserted to the end of the first paragraph:

Calero Reservoir is an integral part of the overall water supply sources in the County.

Page 4.9-10, first paragraph under Irrigation System and Storage Reservoir is revised as follows:

The primary use of water for the project will be for irrigation of the cemetery lawns and other landscaping. Pursuant to an agreement with the SCVWD, the applicant proposes to obtain non-urban sourced water (untreated) from the Cross Valley Pipeline that runs roughly along the western boundary of the proposed rezone site. The terms and conditions of the agreement are formalized in a 2005 Memorandum of Understanding (MOU) between the applicant and SCVWD. The MOU outlines the process for purchase of raw water ~~allows for the project to obtain water~~ from the existing turn-out valve that serves the Cinnabar Hills Golf Club. From that point the water would be piped to one or more storage reservoirs on the project site (roughly 1 to 1.5 acres area), and from there fed into the irrigation system. The reservoir(s) would also provide storage of the required volume of water for fire suppression. The tentative location of a water storage reservoir in the northern portion of the project site is shown in Figure 4.9-2.

Page 4.9-17, first paragraph, is revised as follows:

The following management practices would be considered and employed during project implementation to minimize the transport of fertilizers from the cemetery turf areas into local drainages and downstream receiving waters, as well as to minimize nitrate additions to ground water.

Page 4.9-19, the following is inserted at the end of Section 4.9:

4.9.3.7 Water Quality Impacts from Recycled Water for Irrigation

The Memorandum of Understanding between the applicant and the SCVWD provides, among other things, that in the future if and when recycled water becomes available to the project site, the applicant will make use of the recycled water so long as the recycled water meets "...then current, commercially reasonable standard for water quality necessary for the irrigation of turf and landscape plantings in Coyote Valley...". Surplus recycled water is currently available in the Coyote Valley, but the distribution system would need to be extended a significant distance to reach the project site. Additionally, the Santa Clara Valley Water District has recently initiated a pilot project, including ultra-filtration and reverse osmosis processes, to further enhance the quality of water and recycled water opportunities in the South Bay Recycled Water service area (<http://purewater4u.org/>). Following is a review of potential water quality issues associated with potential future use of recycled water for cemetery irrigation.

Recycled Water Standards

In order for treated wastewater to be recycled for cemetery irrigation it must be treated to a tertiary level, consistent with requirements contained in California Code of Regulations, Title 22 - Water Recycling Criteria. According to Title 22, recycled water used for unrestricted landscape or cemetery irrigation must meet requirements for "disinfected tertiary recycled water". Among other things, this requires that, following secondary (biological) treatment, the oxidized wastewater must be filtered and disinfected by an approved process meeting the following limits: (a) median concentration of total coliform bacteria of less 2.2 MPN (most probable number) per 100 mL and turbidity of less than 2 turbidity units.

Title 22 includes various provisions related to sampling and analysis to verify compliance with the above effluent quality requirements. The sampling requirements are established to assure protection of the public health because there is significant risk of human exposure to the recycled water.

Use Area Requirements

Title 22 also contains the following requirements pertaining to the areas where tertiary recycled water will be applied, all of which can be met at the proposed cemetery.

- No application of tertiary recycled water shall occur within 50 feet of a domestic well, unless supported by a geological investigation;

- No impoundment of tertiary recycled water shall occur within 100 feet of any domestic water well;
- No runoff of irrigation water from the recycled use area shall occur unless determined not to pose a public health threat and authorized by the regulatory agency;
- No spray, mist or runoff shall enter dwellings, designated outdoor eating areas, or food handling facilities;
- Drinking water fountains shall be protected against contact with recycled water spray, mist or runoff;
- Standard warning signs shall be posted where recycled water is uses that are accessible to the public;
- No physical connection shall be allowed between recycled water systems and potable water systems; and
- No hose bibs shall be allowed in the recycled water system in areas accessible to the public; quick couplers shall be used instead.

Human Contact With Treated Wastewater

If implemented, the treated wastewater will be used entirely for irrigation of cemetery turf grass and related landscape plantings in areas used by the visiting public and tended to daily by the maintenance staff. The public health threat will be mitigated by the fact that the wastewater will be treated to a tertiary level, deemed by California Title 22 standards to be suitable for surface irrigation in areas where human contact with the treated water can be expected, e.g., at a cemetery. Additionally, under normal practice, cemetery irrigation is managed to take place when visitors are not present and when the wind conditions are most favorable. The only people likely to have significant exposure to the treated wastewater will be the cemetery maintenance workers, who will be educated and trained regarding health and safety hazards and procedures.

Wastewater Runoff to Local Watercourses

The chance of any runoff of treated effluent from the irrigation areas is remote. The proposed cemetery irrigation areas will be gently to moderately sloping, with native grass buffer areas between the irrigated area and local watercourses. Irrigation with recycled water will be controlled with a computerized irrigation controller, utilizing real-time onsite climatic information to regulate and optimize irrigation water use. Irrigation will take place primarily during the dry season based on water demand. Water will be obtained as needed from a recycled water distribution pipeline, and sufficient storage capacity will be provided in one or more on-site storage ponds to assure that there will be no need to apply water to the turf during wet weather conditions when there could be a risk of run-off to local watercourses.

Bacterial Contamination of Groundwater or Local Watercourses

The potential for bacterial contamination of groundwater or local watercourses from the use of recycled water for cemetery irrigation will be negligible because:

- The wastewater will be treated to a tertiary level, consistent with the requirements for unrestricted wastewater recycling for landscape irrigation.
- In accordance with State Title 22 Water Recycling requirements, no wastewater irrigation may occur within 50 feet of a domestic water supply well.
- Irrigation of the cemetery using with recycled water will be matched to the water needs (evapotranspiration) of the turf grass.

Nitrate Loading Impacts

Recycled water will most probably contain nitrate-nitrogen at concentrations higher than raw water supplies available through the Cross Valley Pipeline. However, the future effluent concentrations can't presently be known, as efforts led by the Santa Clara Valley Water District (<http://purewater4u.org/>) are currently underway to greatly improve the mineral quality (including nitrate) of recycled water in the South Bay Recycled Water system. Regardless of how much improvement (i.e., reduction) is achieved in recycled water nitrate concentrations, the remaining nitrate in the water will provide some benefit to the turf grass and landscaping as an alternative source of fertilizer. This may result in a reduction of nitrogen fertilizer applications. Additionally, nitrate-nitrogen contained in recycled water delivered for irrigation water use can be expected to undergo reduction through pond storage, plant uptake and denitrification processes in the soils as follows:

- **Pond Storage.** Nitrate-nitrogen removal (by denitrification) from storage of treated water in irrigation storage pond can range up to 40 percent (Water Pollution Control Federation. Natural Systems for Wastewater Treatment, Manual of Practice FD-16.1986.).
- **Plant Uptake.** The amount of nitrate removal by turf grass uptake is commonly found to be on the order of 50 to 65 percent or more for well-managed irrigation systems (Water Pollution Control Federation, 1986).
- **Soil Denitrification and Dilution.** Within the soil, residual nitrate in the percolating water not utilized by the vegetation will be subject to denitrification (i.e., conversion to nitrogen gas) and dilution by percolating rainfall. Denitrification can be expected to decrease the residual nitrate concentration by 10% to 25% or more. (National Academy of Sciences. "Nitrates: An Environmental Assessment". A report by Panel on Nitrates of the Coordinating Committee for Scientific and Technical Assessments of Environmental Pollutants. Washington D.C., 1978).

The future nitrate concentration of recycled water available to the site will determine more precisely the level of potential nitrate impact to groundwater quality. However, based on the above factors it can be seen that starting from an initial recycled water nitrate concentration

of 10 mg-N/L (a conservatively high assumption), the resultant concentration ultimately percolating to groundwater beneath the irrigation area would be reduced down to an insignificant concentration of no more than a few mg-N/L.

- **Conclusion: Less-than-Significant.** The project would result in less-than-significant water quality impacts related to future substitution or blending of recycled water for turf irrigation.

Page 4.10-10, last paragraph is revised as follows:

City Policy LU-19.6 also requires that rural and hillside development outside the Urban Service Area and UGB distinguish between urban and non-urban uses in terms of water usage by limiting water consumption for new development to use of non-urban sources, including on-site well water, rainfall catchment, and recycled water. The source of the raw water flowing within the Cross Valley Pipeline comes directly from rainfall catchment and from the Sierra Nevada snowpack. Such water is often stored in both above ground reservoirs and below ground water aquifers located in non-urban locations. Some of this water is treated and sold to urban retailers. Some of this water is also used in its raw state to fill reservoirs for recreation uses and to fill ground water aquifers for agricultural water well uses. Thus, water delivered by the SCVWD through its reservoirs and pipelines is used for many different purposes, including urban and non-urban uses.

The project proposes to limit water consumption to non-urban sources, consistent with City policy, including onsite well water, raw untreated water from the SCVWD's Cross Valley Pipeline, and recycled water. Irrigation of Open Hillside areas with these water sources is allowed provided that the proposed use would not result in a substantial direct or indirect environmental impact upon sensitive habitat areas, special status species, geologic hazards, or the visual environment.

Page 4.12-2, the following text is inserted after the second full paragraph:

In addition, the Coyote Valley Open Space Preserve, operated by the Santa Clara Valley Open Space Authority, is located on approximately 348 acres just southeast of the project site. The Authority purchased the property in 2010 and plans to complete a staging area, over three miles of trails, and other improvements that will be open to the public in Spring 2015.

Page 4.12-2, Table 4.12-1 is revised as follows:

Revised Table 4.12-1 Trails Within Vicinity of Project Site	
Trail	Description
Guadalupe /Calero Trail (C18)	Connects Almaden-Quicksilver County Park with Calero County Park and the Calero/Santa Teresa (C19) alignment on McKean Road
Calero / Santa Teresa Trail (C19)	Connects McKean Road/Calero County Park with Santa Teresa County Park
Bailey Road Trail (C20)	Connects Calero County Park with Juan Bautista de Anza National Historic Trail (R1-A) and the Bay Area Ridge Trail (R5-C)
Willow Springs Trail (C24)	Connects Bay Area Ridge Trail (R5-C) and West Valley Trail (S6) routes via Hale Road
West Valley Trail (S6)	Connects Almaden Lake Park to the southern county via McKean/Uvas Road
Juan Bautista de Anza National Historic Trail (R1-A)	Connects a multi-state National Historic Trail via the Northern Retracement Route along Santa Teresa Boulevard
Bay Area Ridge Trail (R5-C)	Connects to a multi-county regional trail via the El Somroso/Penitencia Scenic Road Route
<u>Coyote Valley Open Space Preserve Trails</u>	<u>New trails to connect to Calero County Park and Rancho Cañada del Oro Open Space Preserve (open Spring 2015)</u>

Page 4.14-1, third paragraph is revised as follows:

Potable water ~~Water~~ supply for the project will be provided by non-urban sourced onsite water well. ~~for potable needs, and~~ The project proposes to use non-urban sourced raw water obtained from the SCVWD’s Cross Valley Pipeline for irrigation and other non-potable needs. In 2008, the applicant and the SCVWD entered into an agreement outlining the conditions for obtaining the ability to purchase raw (non-potable) water from the SCVWD via the Cross Valley Pipeline to irrigate the site. This memorandum of understanding (MOU) outlines the process for purchase of raw water which begins with a request by the applicant for delivery of water. The SCVWD will act upon this request in a manner consistent with the intent of the MOU and in consideration of the following:

- District’s Water Rules and Regulations for the Service of Surface Water
- Impacts to the District’s water supply reliability and capacity
- Future uses of the Cross Valley Pipeline
- District policies

Page 4.14-1, the following paragraph is added to the end of the section 4.14.1.1 *Water Supply*:

The current historic drought in California and Santa Clara County has led to unprecedented curtailments of water delivery from both Federal and State Water projects to the SCVWD. In

response to these reductions in imported water and dwindling local supplies, the SCVWD for the first time ever notified all raw water customers earlier this year that SCVWD water deliveries for all uses, including fire suppression, would cease. These deliveries have ceased in all but a few cases where extensions have been granted to allow time for customers to secure other water. It is assumed that raw water deliveries will be restored once the drought has ended; however, the severity and duration of this drought coupled with projections that such droughts may become more commonplace has reinforced the SCVWD's commitment to the continual evaluation of the sustainability and reliability of the SCVWD's water supply system, which may include changes to SCVWD rules and regulations for raw water deliveries.

Page 4.14-9, the following sentences are added to the last paragraph as follows:

The project applicant proposes to utilize non-urban sourced water obtained from the Cross Valley Pipeline to supply the required fire flow. Recycled water or water from the onsite well would be used if and when water from the Cross Valley Pipeline is unavailable for an extended period of time (i.e., six months or longer). A final water supply plan for fire suppression would be reviewed by the City's Bureau of Fire Prevention and resolved at the Planned Development (PD) permit stage. The water would be stored in the onsite lake(s) used also for storage and distribution of irrigation water. The pond water level will fluctuate with the normal operation of the irrigation system, but would be designed and operated to maintain a minimum available volume sufficient to meet the fire flow requirements. For example, a fire flow volume requirement of 180,000 gallons of water would equate to a little over 0.5 feet of water depth in a one-acre pond, which would have to be kept in reserve, available for use at all times. Additionally, a portion of the volume in the water tank planned in the vicinity of the onsite well could be set aside to supply some of the fire flow demand. The project would be responsible for providing an approved fire pumping system from the lake(s) or an equivalent delivery system to produce the required pressure needed for fire suppression at the building locations.

Page 4.14-12, the following water conservation measure is added to mitigation measure UTL-1:

- Comply with all conditions of any future SCVWD permit, upon purchase of raw water from SCVWD.

Appendix E, Biological Evaluation, is revised and attached on CD.