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# MEMORANDUM

**DATE:** May 26, 2022

**TO:** Cassandra van der Zweep, Supervising Planner, City of San José

**FROM:** Kyle Simpson, Associate
Theresa Wallace, AICP, Principal

**SUBJECT:** Gschwend Residential Project Initial Study/Mitigated Negative Declaration Response to Comments

In accordance with Section 15074 of the CEQA Guidelines, prior to approving a project, the decision-making body of the Lead Agency shall consider the proposed environmental document together with any comments received during the public review process. Although there is no legal requirement to formally respond to comments on a proposed Mitigated Negative Declaration (MND) as there is for an Environmental Impact Report (EIR), this memorandum provides responses to the written comments received on the proposed Gschwend Residential Project (Project) Initial Study/Mitigated Negative Declaration (IS/MND) to aid the City of San José decision-makers in their review of the proposed Project.

The Draft IS/MND was available for public review and comment from July 16, 2021 to August 5, 2021. A total of five comment letters were received on the IS/MND. The comment letters are attached to this memorandum. In the following pages, the comments and responses are enumerated to allow for cross-referencing of CEQA-related comments. As noted above, CEQA does not require or provide guidance on responding to comments on MNDs; therefore, this memorandum follows CEQA Guidelines Section 15088, applicable to responses to comments on EIRs, which requires that agencies respond only to significant environmental issues raised in connection with the proposed Project. Therefore, this document focuses primarily on responding to comments that relate to the adequacy of the information and environmental analysis provided in the IS/MND.

The sections below list the comments received during the comment period (Section A), followed by the enumerated comments and responses to those comments (Section B). Text changes are included in the Errata to the IS/MND, which is a separate document. The responses included in this memorandum take into account the addition of a proposed agriculture orchard added to the proposed Project proposed by the Project Applicant. The Errata to the IS/MND shows specific changes to the IS/MND that are amended as a result of the addition of the proposed agriculture orchard. Text changes required by comments included in this memorandum are provided in the Errata to the IS/MND.

## A. COMMENT LETTERS

This memorandum includes a reproduction of each comment letter received on the IS/MND. Each comment letter is assigned a letter (A, B, C, etc.) and individual comments within each are numbered consecutively. For instance, Comment A-1 is the first numbered comment in Letter A.

The comment letters listed below were submitted to the City regarding the IS/MND. Letter E was submitted after the close of the public comment period, but the City has included a response to this letter as courtesy to the commenter and for completeness of the record.

**LETTER A**
Andrew Mattioda, Ph.D.
August 1, 2021

**LETTER B**
County of Santa Clara, Parks and Recreation Department
Kelly Gibson, Assistant Planner
August 5, 2021

**LETTER C**
Santa Clara Valley Water District, Community Projects Review Unit
Colleen Haggerty, PE, Associate Civil Engineer
August 5, 2021

**LETTER D**
Santa Clara Valley Audubon Society, Sierra Club Loma Prieta Chapter, California Native Plant Society, Santa Clara Valley Chapter, and Green Foothills
August 5, 2021

**LETTER E**
Pathways for Wildlife
Tanya Diamond
October 7, 2021

Please note that text within individual letters that has not been numbered does not raise environmental issues or relate to the adequacy of the information or analysis within the IS/MND and, therefore, no comment is enumerated or response required, per CEQA Guidelines Section 15132.

Responses to the comments included below were prepared with the assistance from LSA biologists Steve Forman and John Kunna. Mr. Foreman is a Principal with LSA and is a certified wildlife biologist with more than 40 years of professional experience with the design and implementation of biological mitigation plans, environmental impact assessments, baseline studies, habitat analyses, population censuses, threatened and endangered species assessments, and wetland permitting. Mr. Foreman's responsibilities also include the management and preparation of biological resource

studies, evaluation of and compliance with regulatory policies, and permit processing associated with State and federal wetland and endangered species regulations.

Mr. Kunna is a Senior Biologist with LSA with over 16 years of wildlife biology experience. He conducts construction site monitoring and surveys for special-status species. Mr. Kunna prepares technical documents and permit applications for submittal to regulatory agencies, including the USACE, CDFW, RWQCB, and USFWS. Responsibilities also include management and preparation of biological resource studies, evaluation of and compliance with regulatory policies, and permit processing associated with State and federal wetland and endangered species regulations.

## B. COMMENTS AND RESPONSES

### LETTER A

Andrew Mattioda, Ph.D.
August 1, 2021

**Comment A-1:** Dear Mr. Burton, Director, Planning, Building and Code Enforcement.

Please accept the comments regarding the Mitigated Negative Declaration document. As you can see, I, and the majority of my neighbors, disagree with the declaration. The following comments are broken down into Aesthetics and Biological Resources.

**Response A-1:** This comment provides an introduction to the comment letter, and does not provide specific comments on the adequacy of the analysis included in the IS/MND. No further response is necessary.

**Comment A-2:** AESTHETICS— The project would not have a significant impact on this resource, therefore no mitigation is required.

Under San Jose municipal code (Ordinance 20.100.720), a conditional use permit, such as CP17-010 (aka Gschwend Residence Project), cannot be issued by the planning office if the issuing of the permit would impair the value of properties in the vicinity or peace, health, safety, morals or welfare of persons residing or working in the surrounding area. We, the property owners neighboring the proposed build, have already provided documentation, from real estate experts, to the Planning office indicating the issuance of CP17-010 would negatively impact the neighboring property values. As the initial study indicates, the proposed structure would be clearly visible from Manresa Ct. and the Laguna Seca Community Garden (see Figures 5-4 and 5-5), significantly altering the character of these community areas. Similarly, the proposed structure would be visible along Bayless Dr., again altering the character of the Avenida Espana and surrounding neighborhoods decreasing the property values. Furthermore, over 100 people (~85%) of the people residing in the vicinity of the Gschwend Residence Project are opposed to the project as it will adversely impact our community.

Furthermore, the proposed house, at 4,464 square feet, is twice the size and not of similar structure as those found in the Avenida Espana neighborhood, which typically range from 1500 to 2500 square feet. Again, this alters the character of our community.

Mitigation actions to offset these negative impacts include:

1. Reduction of the house size to community norms.

2. Planting of trees around the house to obscure the view of it from the valley below.

**Response A-2:** This comment cites Section 20.100.720 of the City of San José Municipal Code to state that property values would be negatively affected by the construction of the proposed Project. Section 20.100.720 of the San José Municipal Code states that in addition to any findings required for a Conditional Use Permit (CUP), the Planning Commission or the City Council, may issue a CUP only after finding that, among other requirements, the proposed use at the location will not "impair the utility or value of property of other persons located in the vicinity of the site…".

As discussed in Response 5.1.3(c), beginning on page 5-7 of the IS/MND, the proposed Project would be compatible with the zoning regulations for the Agricultural zone, including a minimum 50-foot setback from abutting streets and highways and from abutting property zoned for non-residential uses, and a minimum 300-foot setback from residential zones or properties. The proposed residence would be a maximum of 31 feet, 6 inches in height, and would be located more than 300 feet from residential zones or properties. The proposed Project would be consistent with permitted uses in the General Plan designation of Open Hillside, which allows for single-family dwellings on large, privately-owned sites.

In addition, the proposed Project would be set back into the hillside and would include earth-tone materials, including the roof shingle and siding that would blend into the surrounding setting. Since the circulation of the IS/MND, the proposed landscaping plan was revised to include a small orchard of 15 agriculture trees located between the proposed residence and the existing residential neighborhood located north of the Project site to create an additional a visual break between the proposed residence and the existing residential neighborhood.

Furthermore, a change in the use or visual character of the Project site does not inevitably result in a substantial degradation of the existing visual character or quality of public views of the Project site or its surroundings. Although the comment includes suggested mitigation measures to offset perceived impacts related to the character of the Project site, implementation of these measures is based on a subjective determination that the proposed Project would degrade the character of the Project site and its surroundings. The IS/MND includes five visual simulations of the proposed Project located within the topography of the Project site (Figures 5-1 through 5-5). As shown, the public view of the Project site would be altered; however, the development of the proposed Project would not substantially degrade the character of the Project site or its surroundings. As described in the IS/MND, the design of the proposed Project would be compatible with zoning regulations and General Plan goals and policies. Furthermore, the proposed Project would be designed to set back into the hillside and would include earth-tone materials, including the roof shingles and siding, and a 15-tree agriculture orchard that would blend into the surrounding setting. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment A-3:** BIOLOGICAL RESOURCES.

Milkweed

The Negative Mitigation Declaration failed to mention the abundant patch of milkweed growing at the proposed build site for the house (see Figure 1). As the Planning Office is aware, milkweed is where the Monarch lays it eggs and it serves as food for the larvae (caterpillars). The Monarch Butterfly is soon to be listed as an endangered species, mostly due to the loss of the milkweed plant (due to development and weedkillers). Therefore, it is important to preserve this natural growth of milkweed to help preserve the Monarch butterfly population.

Possible mitigation actions to preserve this natural resource include:

1. Move the location of the proposed residence to prevent destruction of the milkweed and Monarch Butterfly habitat.

2. Prohibit the use of weedkillers on the property.

Figure 1. (Left) Cluster of milkweed plants located at the base of the proposed residence build site. (Right) A view of the proposed residence build site. The

greenery in the gulley area is primarily milkweed. The plants in the left picture are located at the lower left corner of this green patch, by the canal.

**Response A-3:** This comment identifies the location of narrowleaf milkweed (*Asclepias fascicularis*) within the Project site, and identifies the importance of this plant to the monarch butterfly (*Danaus plexippus*) population. The monarch butterfly is not currently listed as an endangered or threatened species under the Endangered Species Act (ESA) or the California Endangered Species Act (CESA), however, the monarch butterfly is a candidate under the ESA.[1] In December 2020, the monarch butterfly was found to be "warranted but precluded" for listing by the United States Fish and Wildlife Service (USFWS). With that decision, the monarch became a candidate for listing under the ESA, and its status will be reviewed each year until it is no longer a candidate. Candidate species receive no statutory protection under the ESA.[2] During the reconnaissance-level surveys conducted for this Project in June 2020, no monarch butterflies or caterpillars were observed nor recorded in the Biological Resources Assessment. However, the purpose of the surveys were to verify the land cover types for the SCVHP application, note the condition of potentially protected trees, and confirm that there was no riparian vegetation associated with the Coyote-Alamitos Canal. The surveys were not intended to be a floristic inventory, nor were they focused surveys for monarch butterfly, which was not a CESA candidate at the time of the surveys. There are no California Natural Diversity Database (CNDDB) records for monarch butterflies within five miles of the Project site, although the CNDDB only tracks large aggregations of overwintering monarchs. As such, the analysis in the IS/MND found that the removal of narrowleaf milkweed within the Project site would not result in a significant impact to the monarch butterfly because the area that would be disturbed is small relative to the amount of protected habitat where narrowleaf milkweed could grow immediately to the east, south, and west of the Project site. The patch of narrowleaf milkweed was located in an area approximately one-quarter acre in size. The proposed Project would result in the disturbance of approximately 0.81 acre of the Project site, approximately 4.8 percent of the total Project site. In summary, the presence of narrowleaf milkweed does not necessarily constitute a habitat of high value to the Monarch butterfly, and with larger,

1 U.S. Fish and Wildlife Service. 2021. Monarch Butterfly. Website: https://www.fws.gov/savethemonarch/ssa.html (accessed August 2021).

2 U.S. Fish and Wildlife Service. 2001. The Endangered Species Act and Candidate Species. Website: https://nctc.fws.gov/Pubs9/esa_cand01.pdf. September.

open expanses available within close proximity to the Project site, the loss of a small patch of milkweed, located in an area of the Project site approximately one-quarter of an area in size, would not be significant. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment A-4:** Unique Wildlife Corridor

The Santa Clara Valley Habitat Agency's plan (Chapter 5), calls out this property for perseveration. This area serves as a corridor for wildlife to travel from the Santa Teresa Hills to the Diablo range. In fact, in order to preserve the wildlife, a proposed wildlife overpass is slated to be built near where the Coyote Alamitos Canal goes under Santa Teresa Avenue.

However, as shown in Figure 2 below, wildlife are already utilizing the Coyote Alamitos Canal as an underpass for Santa Teresa Blvd., preventing countless animal-vehicle collisions per year.

Figure 2. (Left) Black tailed buck preparing to go under Santa Teresa Blvd via the Coyote Alamitos Canal. (Right) Young black tailed deer preparing to go under Santa Teresa Blvd. via the Coyote Alamitos Canal. If you look closely, you can see the silhouette of another deer on the opposite side of Santa Teresa Blvd.

The Gschwend Residence project will result in a driveway adjacent to the Coyote Alamitos Canal, destroying the wildlife underpass.

However, the Coyote Alamitos Canal serves as more than just a wildlife underpass for Santa Teresa Blvd. As the Figures 3-8 show, the canal serves as a literal wildlife highway between the East side of Santa Teresa Blvd and the Santa Teresa County Park. The canal allows the wildlife to travel unobserved and unobstructed by the surrounding human population, even in the middle of the day! As such, it is a unique San Jose Wildlife resource that deserves preservation and study as potential template for future wildlife transit corridors.

Figure 3. Deer heading to and from the Santa Teresa Blvd. wildlife underpass via the canal. The proposed driveway for the Gschwend Residence project would be just to the right (left picture) and just to the left (right picture).

Figure 4. (Left) A doe and two yearlings leaving Santa Teresa County Park and heading towards the Santa Teresa Blvd. wildlife underpass. (Right) A bobcat leaving

Santa Teresa County Park and heading towards the Santa Teresa Blvd. wildlife underpass.

Figure 5. (Left) Two bucks coming down the canal. The proposed driveway would be just to the left of the canal and visible from it. (Right) Three bucks in the canal, midway between Santa Teresa County Park and the wildlife underpass.

Figure 6. (Left & Right) Coyotes utilizing the canal for travel.

Figure 7. (Left) Raccoons utilizing the canal to cross between the park and Santa Teresa Blvd. (Right) Bobcat cub leaving Santa Teresa Park via the canal.

Figure 8. (Left) Two fawns exiting from under Santa Teresa Blvd. via the canal. (Right) One fawn exiting from under Santa Teresa Blvd. via the canal.

As this document shows, the Gschwend Residence Project would have significant impact on both the surrounding neighborhoods and the wildlife. Mitigation efforts can address some of the issues. However, there are no mitigations that would advert the damage to the unique Coyote Alamitos Canal wildlife corridor (highway). The preservation of this unique wildlife corridor is of utmost concern.

**Response A-4:** This comment states that the Coyote-Alamitos Canal located within an easement on the Project site is a wildlife corridor that allows various animal species to cross under Santa Teresa Boulevard. As discussed on page 5-44 of the IS/MND, the primary barrier to wildlife movement between open areas west of the Project site (Santa Teresa County Park) and Tulare Hill east of the Project site, is Santa Teresa Boulevard. The Coyote-Alamitos Canal is culverted under Santa Teresa Boulevard and may provide a way for some wildlife species to move between the areas safely. The proposed Project would not block the Coyote-Alamitos Canal or result in any permanent barriers to local wildlife movement. The Project would not alter the canal culvert, and most new human activity on the Project site would occur within or adjacent to the proposed single-family residence. Furthermore, the proposed residence would be located more than 250 feet from the nearest portion of the Coyote-Alamitos Canal, and more than 1,000 feet from the culvert under Santa Teresa Boulevard.

Illegal dumping and trespassing within the Coyote-Alamitos Canal commonly occur, and the presence of a single-family residence on the Project site may actually discourage human activity in and around the Coyote-Alamitos Canal. In a comment letter dated November 17, 2017, the County Parks stated that this “informal use of the levee trail by neighbors is not currently supported by SCVWD.” At the time of the 2020 survey there were large amounts

of trash in the canal, including paint cans and the bumper of a car. Graffiti on the culvert walls and the presence of empty alcohol bottles indicates that trespassing occurs in the canal and culvert. In addition, the presence of worn trails along the north side of the Coyote-Alamitos Canal indicates that residents trespass along the canal and potentially interface with wildlife species.

The proposed Project would not install new lighting along the driveway, and would therefore not add lighting that could impact wildlife movement in the Coyote-Alamitos Canal at night. As discussed on page 5-16 of the IS/MND, consistent with the City's Outdoor Lighting on Private Development Policy 4-3,7, all outdoor lighting on site would be directed downward and shielded to minimize off-site spill, and the location of all exterior lighting would comply with lighting standards established in Section 20.50.250 of the City's Municipal Code. Furthermore, the proposed Project would result in a single-family-residence and would result in approximately 9.43 vehicle trips per day.[1] The vehicular lights for access in and out of the Project site would be a new source of light to the area. However, given the relatively low number of vehicles anticipated to be used within the Project site, and that not all vehicle trips would occur during night hours, the potential impacts of vehicle lights on wildlife would not be considered significant to wildlife already conditioned and adapted to living at the interface of open space and urban development.

There is an existing unshielded high-pressure sodium streetlamp on the south side of Santa Teresa Boulevard approximately 90 feet from where the culvert crosses under the Santa Teresa Boulevard; and another streetlamp on the north side, approximately 170 feet from where the culvert passes under streetlamp. In addition, vehicle trips on Santa Teresa Boulevard includes night travel and vehicle lights.

As previously stated, given that the proposed Project would disturb a relatively small percentage of the Project site (approximately 4.8 percent, or approximately 0.81 acres of the total 16.86 acres of the Project site); the proposed residence and associated improvements would be more than 250 feet away from the Coyote-Alamitos Canal and more than 1,000 feet from the culvert under Santa Teresa Boulevard; proposed lighting would be shielded as described above; screening vegetation (the proposed orchard) would be planted; and increased human and vehicular activity within proximity to the canal

[1] Institute of Transportation Engineers, Trip Generation Manual, 11th Edition.

would be limited to occasional driveway use; the proposed Project would not present a barrier to local wildlife movement through the Project site. As noted, the Santa Clara Valley Water District maintains an access road adjacent to the Coyote-Alamitos Canal that is used by pedestrians. In addition, the proposed development on the Project site, including the addition of the proposed 15-tree orchard, would not significantly impact the use of the property by wildlife as a landscape linkage between the Santa Teresa Hills to Metcalf Canyon. The comment does not provide new information or substantial evidence that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

## LETTER B

County of Santa Clara, Parks and Recreation Department
Kelly Gibson, Assistant Planner
August 5, 2021

**Comment B-1:** The Santa Clara County Parks and Recreation Department (County Parks Department) has received the Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project (Project).

The County Parks Department functions to provide a sustainable system of diverse regional parks, trails, and open spaces that connects people with the natural environment and supports healthy lifestyles while balancing recreation opportunities with natural, cultural, historic, and scenic resource protection. The County Parks Department is also charged with the planning and implementation of the Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan), an element of the Parks and Recreation Section of the County General Plan (adopted by the Board of Supervisors on November 14, 1995). The Countywide Trails Plan indicates the following trail route is located adjacent to the Project site:

> *Juan Bautista de Anza National Historic Trail (R1-A):* an on-street bicycle route extending from the San Benito County line traveling north along the west side of Santa Clara Valley to the San Mateo County line.

The completed segment of the Juan Bautista de Anza National Historic Trail (Anza Trail) adjacent to the Project site is located within the Santa Teresa Boulevard road right-of-way. Please label this trail route on any future Project documents. Also, it is imperative that the proposed development remain within property boundaries and out of the Santa Teresa Boulevard road right-of-way in order to minimize any impacts to the Anza Trail.

The two parcels located on the Project site (APNs 708-21-004, 708-21-005) share a property boundary with Santa Teresa County Park. The required setbacks and limitations to any proposed development set by the City of San Jose's Department of Planning, Building and Code Enforcement should be followed and enforced to minimize any impacts to the adjacent Santa Teresa County Park, including, but not limited to restricting personal access to Santa Teresa County Park.

In addition to the Project site being adjacent to the Anza Trail and Santa Teresa County Park, there is a segment of Santa Clara Valley Water District's Coyote-Alamitos Canal which traverses the Project site via an easement. This canal continues into Santa Teresa County Park and is closed to the public. The County Parks Department recommends that the proposed development minimize any impacts to the Coyote-Alamitos Canal on site and restrict any access to the continued segment within Santa Teresa County Park.

Thank you for the opportunity for County Parks Department to provide comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project. If you have any questions, please email me at kelly.gibson@prk.sccgov.org

**Response B-1:** This comment states that the Project site is adjacent to the Juan Bautista de Anza National Historic Trail route and requests that any future project documents identify this facility and that all components of the proposed Project stay with the boundaries of the Project site and not encroach within the Santa Teresa Boulevard road right-of-way.

This comments also states that the Project site is located adjacent to Santa Teresa County Park, and states that all setbacks and limitations within the Project site should be followed.

Lastly, this comment acknowledges that the Santa Clara Valley Water District's Coyote-Alamitos Canal traverses the Project site via an easement and recommends that the proposed Project minimize impacts and restrict access to the segment of the canal that continues into Santa Teresa County Park.

The proposed Project would not extend past the property line. In addition, both the City of San Jose and Santa Clara County would be responsible for compliance with standards. Furthermore, the proposed Project would not directly alter or impact the existing Coyote-Alamitos Canal.

The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or

mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5

**LETTER C**

Santa Clara Valley Water District, Community Projects Review Unit
Colleen Haggerty, PE, Associate Civil Engineer
August 5, 2021

**Comment C-1:** Valley Water has reviewed the MND for City File CP71-010 Gschwend Residence Project received on July 16, 2021. Based on our review we have the following comments:

1. The list of permits needed for the project on pages 2-1 and 3-5 should be modified to include the need for a Valley Water permit for the construction of the new well to service the site as per Valley Water Ordinance 90-1.

**Response C-1:** This comment provides an introduction to the letter and states that text on pages 2-1 and 3-5 of the IS/MND should be modified to identify the inclusion of a permit to construct a new well within the Project site. As shown in the Errata to the IS/MND, page 2-1 and page 3-5 have been amended to reflect this requested change. These omissions and subsequent text changes do not affect the adequacy of the information or analysis provided in the IS/MND. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment C-2:** 2. Pages 5-93 and 5-99 incorrectly note the site is located on FEMA Flood Panels 06085C0263 and 264. The site is located on panel 06085C0409H and page 5-93 correctly references this panel.

**Response C-2:** This comment states that the IS/MND incorrectly identifies the Federal Emergency Management Agency (FEMA) Flood Panels for which the Project site is located on. As shown in the Errata to the IS/MND, page 5-93 has been amended to reflect this requested change. This correction and subsequent text change do not affect the adequacy of the information or analysis provided in the IS/MND. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or

mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment C-3:** 3. Based on Figure 3-3 it appears that work at the site will be located outside of Valley Water's easement for the Coyote-Alamitos Canal; however, the grading envelope shown is very close to the easement. If any work, including grading is proposed to occur on Valley Water's easement plans showing the work need to be submitted to Valley Water for reviewing and permit issuance.

**Response C-3:** This comment states that if any work including grading occurs within the easement area of the Santa Clara Valley Water District's Coyote-Alamitos Canal, the Project plans would need to be submitted to the Santa Clara Valley Water District for consideration and permit issuance. No work is currently proposed to occur within the easement, however if any work within the easement should subsequently occur, the applicant, subject to standard conditions, shall coordinate with Santa Clara Valley Water District, as required. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

## LETTER D

Santa Clara Valley Audubon Society, Sierra Club Loma Prieta Chapter, California Native Plant Society, Santa Clara Valley Chapter, and Green Foothills
August 5, 2021

**Comment D-1:** The undersigned local environmental organizations have reviewed the July 12, 2021 Gschwend Residence Project (Project) mitigated negative declaration (MND) and submit the following comments for your consideration. We urge the City of San Jose (City) to deny the conditional use permit (CP17-010/ER20-205) for the Project which authorizes the construction of a 4,464-square-foot, two story single-family home, a 1,441-square-foot garage, retaining wall, well, septic field, and 0.27-mile driveway on a 17-acre property on the Santa Teresa ridge. The Project, as currently proposed, will inflict devastating impacts to biological resources, obstruct wildlife movement, and impair critical butterfly habitat.

The Santa Clara Valley Audubon Society's (SCVAS) mission is to promote the enjoyment, understanding, and protection of birds and other wildlife habitat by engaging people of all ages in birding, education, and conservation. The Sierra Club Loma Prieta Chapter's members and supporters work to protect and restore the

quality of the natural and human environment. The California Native Plant Society Santa Clara Valley Chapter's mission is to protect, promote, and enhance native plant habitat through advocacy, education, restoration, and the application of scientific knowledge. Green Foothills' mission is to protect the open spaces, farmlands, and natural resources of San Mateo and Santa Clara Counties for the benefit of all through advocacy, education, and grassroots action. Together, our organizations represent thousands of Santa Clara County residents who care about the environment and wildlife in our valley and beyond.

The Project is located at the southern edge of the City, outside San Jose's Urban Growth Boundary (Green line), on a section of the Santa Teresa ridge that connects the Santa Cruz Range, Santa Teresa County Park, Tulare Hill, and the Diablo Range. The zoning – Agriculture - may accommodate a residence under certain circumstances, but the site is not suitable for a residential property. The property is delineated by the Coyote-Alamitos Canal - a Santa Clara Valley Water District easement which is classified as a Habitat Plan Category 2 Stream - to the north and is bordered to the south by PG&E property. Coyote Valley and Laguna Seca are located south of the ridge. The San Jose General Plan, Envision San Jose 2040, designates the site as "Open Hillside". A 0.26-mile-long driveway / access road to the home is planned, in part, within Santa Clara County's (County) jurisdiction.

Our organizations submitted comments in 2018 on a previous iteration of this Project (See 2018 Comment Letter, attached as Attachment 1.) Environmental conditions in the Project's vicinity have worsened since 2018, with a prolonged drought increasing fire danger and further threatening wildlife populations. The serious concerns we raised in the 2018 letter regarding the Project's potential impact to wildlife populations are even more concerning today. Since the Project as described in the IS/MND has not changed in any substantive way which would reduce the impacts to biological resources, the concerns raised in the 2018 comment letter remain unaddressed, are still valid, and are relevant to the City's review of the current Project.

We remain concerned that the current Project will significantly affect the environment in the following ways:

**Response D-1:** This comment provides an introduction to the comment letter and summarizes the proposed Project and project comments that follow, prior to the circulation of the IS/MND. This comment does not provide specific comments on the adequacy of the analysis included in the IS/MND. No further response is necessary.

**Comment D-2:** 1. Section 3.2 PROPOSED PROJECT

The Project description is inadequate, as presented, because it omits certain elements that may impact the environment, such as a clear description of the driveway, lighting, gates, and fences, as described in greater details below.

- The MND lacks a clear depiction of the design for the driveway including new pavement, roadway expansion, retention walls, bulb-outs, graded areas, areas of permanent and temporary impact etc. is needed. Please note that, as provided, Figure 3-3 is incomprehensible:
    - The legend of Figure 3-3 does not include many of the elements that are shown in the figure. Furthermore, the figure is in black and white, small, and includes unspecified abbreviations.
    - Figure 3-3 as provided cannot be deciphered by the layperson and thus, defeats the purpose of CEQA to inform the public with an adequate project description.
    - Figure 2 of the Biological Resources Assessment shows a "Permanent Development Area" (Permanent Impacts plus 50' buffer) delineation that encroaches into the 35-foot required setback of the Coyote-Alamitos Canal and a grading area that encroaches into the 35-foot setback not far from the culvert before it goes under Santa Teresa Blvd. Details of any encroachment or project elements (temporary or permanent) should be fully described in the Project Description section.
- The MND does not describe any required or voluntary new lighting, especially where light may trespass into or may be visible from the Coyote-Alamitos canal. A baseline photometric study of the site should be conducted.
- The MND does not describe any gates, fences, walls, and other barriers to animal movement on the property should be provided and, as needed, mitigated.
- If lighting, fencing and other barriers to animal movement are not included, a Conditional Use Permit must include conditions that prohibits additions of such elements in the future.

**Response D-2:** This comment states that the Project Description is inadequate, and greater detail of the proposed components is required. The Project Description provides a text description of the proposed Project and Figure 3-3 of the IS/MND provides a technical site plan that identifies the areas where physical improvements would be located. Figure 2 of the Biological Resources Assessment (BRA), as referenced in the comment, defines the development area as all permanent improvements, as well as the 50-foot buffer area around all permanent improvements that is applied to the Project site for the purpose of calculating fees that have to be paid to the Santa Clara Valley Habitat Agency. Figure 2 of the BRA also identifies the limits of grading, which would not reach the top of the bank of the Coyote-Alamitos Canal. As stated previously in Response A-4, the

proposed Project would not alter the Coyote-Alamitos Canal through permanent or temporary impact. Taken together, the Project Description, Figure 3-3 of the IS/MND, and Figure 2 of the BRA provide a sufficient description of the components of the proposed Project to identify potential environmental impacts to biological resources that could result from the proposed Project.

Since the circulation of the IS/MND, additional landscaping changes are proposed and text change are made and disclosed in the Errata to the IS/MND.

The comment states that the Project Description does not identify gates, fences or any other barriers to wildlife movement. Those features are not included in the Project Description because the proposed Project does not propose the installation of any gates or fences or any other barriers to wildlife movement. Tiered retaining walls, with a maximum height of 5 feet, would be located directly adjacent to the proposed residence, and a 4-foot retaining wall would be located adjacent to the water tanks located south of the proposed residence. As previously mentioned, since the submittal of this comment letter, the proposed Project has been revised to add an additional 15-tree orchard located approximately 75 feet northwest of the proposed residence. The components of the proposed Project would add new features to the Project site; however, the proposed Project would still allow for wildlife movement through the Project site because not physical barriers would preclude wildlife movement.

Furthermore, as shown on Figure 3-3, there would be no new required or voluntary lighting along the driveway near the Coyote-Alamitos Canal. As discussed in Response A- 4, portions of the canal are currently illuminated by a nearby streetlight on Santa Teresa Boulevard, as well as spillover from the residences on Aaron Place. As stated in the IS/MND, no lighting would be placed along the proposed driveway and all outdoor lighting adjacent to the proposed single-family residence would be directed downward and shielded to minimize off-site spill. The location of all exterior lighting would comply with lighting standards established in Section 20.50.250 of the City's Municipal Code. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require

recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-3:** 2. Sections 2.8 Project-Related Approvals, Agreements, and Permits and 3-3 3.3 APPROVALS/PERMITS

The Habitat Agency should be added to Project Related Approvals, Agreements, and Permits. In addition, consultation with Valley Water and with State and Federal wildlife agencies is warranted.

**Response D-3:** This comment states that the Santa Clara Valley Habitat Agency (Habitat Agency) should be added to Section 3.3 of the IS/MND. As shown in the Errata to the IS/MND, page 2-1 and page 3-5 have been amended to reflect this requested change. The text addition does not affect the adequacy of the information or analysis provided in the IS/MND.

The comment also states that consultation with the Santa Clara Valley Water Agency, California Department of Fish and Wildlife (CDFW), and USFWS is warranted. As stated above in Response C-1, the Project requires the approval of a well permit per the Valley Water Ordinance 90-1.

The City, through its partnership in the adoption of the Santa Clara Valley Habitat Plan (SCVHP) in 2013, is a co-permittee for federal and State incidental take permits and applies the SCVHP conditions to projects that do not opt to obtain their own clearance from those wildlife agencies. This SCVHP was developed in association with the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW), and in consultation with stakeholder groups and the general public. Permits issued by the USFWS and CDFW (jointly the Wildlife Agencies) would authorize incidental take of 18 plant and animal species included in the SCVHP. Rather than separately permitting and mitigating individual projects, the SCVHP evaluated natural-resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats. In addition, the City includes policies to adopt the SCVHP in the 2040 General Plan and the City approved the Final joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on January 29, 2013 (Resolution No. 76546). Therefore, compliance with the SCVHP's conditions, which includes payment of fees, means that the ground disturbing activity is permitted under local regulations, State and federal law. The proposed Project is required to pay SCVHP fees and conform to applicable conditions that will contribute to the creation and maintenance of the SCVHP's

conservation program, which will preserve and manage a minimum of 33,205 acres for the benefit of covered species, natural communities, biological diversity, and ecosystem function in Santa Clara Valley. The City has coordinated with the Santa Clara Valley Habitat Agency with regards to the need for a formal setback exception, consistent with Condition 11 of the SCVHP. On November 20, 2020, the Santa Clara Valley Habitat Agency determined that the Coyote-Alamitos Canal is a man-made canal, and therefore, the Coyote-Alamitos Canal does not meet the definition of a stream as outlined in Condition 11. The proposed Project does not include construction of the proposed driveway in the 35-foot setback area, and only includes grading activities. This comment does not provide any evidence that the proposed Project would result in a significant impact within the 35-foot setback area; therefore, no mitigation is required. Furthermore, evidence of potential impacts on wildlife associated with driveway operations has not been presented. As described above, the Santa Clara Valley Habitat Agency has determined that the Coyote-Alamitos Canal is a man-made canal and therefore, is considered a Category 2 stream. As such, the Project applicant would be required to identify potential Habitat Plan fees and conditions for the proposed Project in the Habitat Plan Application Package. Because the proposed Project would be required to comply with Santa Clara Valley Habitat Agency requirements, including payment the required mitigation fees, the proposed Project would not conflict with the SCVHP. Furthermore, it should be noted that the Santa Clara Valley Water District maintains an access road adjacent to the Coyote-Alamitos Canal for inspection of the canal.

As mentioned above and described on page 5-46 of the IS/MND, the Project applicant would be required to pay potential SCVHP fees and identify conditions to be implemented for the proposed Project in the SCVHP Application Package prior to issuance of any grading permits, and because the proposed Project would be required to comply with the SCVHP requirements, including payment of the required mitigation fees, the proposed Project would not conflict with the SCVHP. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-4:** 3. Section 3.2.3 Utilities and Infrastructure

We are concerned the Project may significantly affect the hydrological balance of natural springs and seeps on Tulare Hill and Santa Teresa County Park, as well as on Fisher Creek and Laguna Seca. These features provide critical water resources for plant life and wildlife in the region. A hydrological analysis is needed to assess the potential impact of the new well and of pumping water for this Project, including any new landscaping or farming operations on the property.

The interactions of groundwater with surface water and the effects of pumping wells are well-documented:

- In https://www.e-education.psu.edu/earth111/node/929 we find, "Not only does the cone of depression draw water to the well, but if the pumping rate is large enough or pumping is sustained for a long time, it can reverse the natural hydraulic gradient hundreds of meters to several tens of km away from the well(s). In some cases, this may result in interception of groundwater that would normally feed a stream or river as baseflow, and even in the interception of streamflow itself by inducing infiltration in the stream bed or banks (Figure 35B). In other cases, large cones of depression (up to a few miles wide!) associated with industrial or municipal well fields may reverse regional topographically-driven hydraulic gradients and lead to problems like saltwater intrusion (Figure 35B)."

- Chapter 12, Springs and Wells, of 'Part 650 Engineering Field Handbook National Engineering Handbook' (USDA Natural Resources Conservation Service" on pdf pg. 27) Contains a list of considerations that should be undertaken before building a well. Has the project taken these into consideration? https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=32186.wba

- Sustained groundwater pumping has negative effects that should be evaluated. The study https://www.usgs.gov/special-topic/water-science-school/science/groundwaterdecline- and-depletion?qt-science_center_objects=0#qt-science_center_objects states,

  "There is more of an interaction between the water in lakes and rivers and groundwater than most people think. Some, and often a great deal, of the water flowing in rivers comes from seepage of groundwater into the streambed. Groundwater contributes to streams in most physiographic and climatic settings. The proportion of stream water that comes from groundwater inflow varies according to a region's geography, geology, and climate.

  Groundwater pumping can alter how water moves between an aquifer and a stream, lake, or wetland by either intercepting groundwater flow that discharges into the surface-water body under natural conditions, or by increasing the rate of water movement from the surface-water body into an aquifer. A related effect of groundwater pumping is the lowering of

groundwater levels below the depth that streamside or wetland vegetation needs to survive. The overall effect is a loss of riparian vegetation and wildlife habitat."

Additional evidence for the linkage between ground and surface water can be found here: https://www.usgs.gov/special-topic/water-science-school/science/rivers-containgroundwater? qt-science_center_objects=0#qt-science_center_objects

- More details about how streams interact with groundwater can be found in the study 'Effects of ground-water development on ground-water flow to and from surface-water bodies' https://pubs.usgs.gov/circ/circ1186/html/gw_effect.htm, showing that

  "A pumping well can change the quantity and direction of flow between an aquifer and stream in response to different rates of pumping. Figure 13 of this document illustrates a simple case in which equilibrium is attained for a hypothetical stream-aquifer system and a single pumping well. The adjustments to pumping of an actual hydrologic system may take place over many years, depending upon the physical characteristics of the aquifer, degree of hydraulic connection between the stream and aquifer, and locations and pumping history of wells. Reductions of streamflow as a result of ground-water pumping are likely to be of greatest concern during periods of low flow, particularly when the reliability of surface-water supplies is threatened during droughts.

  At the start of pumping, 100 percent of the water supplied to a well comes from ground-water storage. Over time, the dominant source of water to a well, particularly wells that are completed in an unconfined aquifer, commonly changes from ground-water storage to surface water. The surface-water source for purposes of discussion here is a stream, but it may be another surface-water body such as a lake or wetland. The source of water to a well from a stream can be either decreased discharge to the stream or increased recharge from the stream to the ground-water system. The streamflow reduction in either case is referred to as streamflow capture.

  In the long term, the cumulative stream- flow capture for many ground-water systems can approach the quantity of water pumped from the ground-water system. This is illustrated in Figure 14, which shows the time-varying percentage of ground-water pumpage derived from ground-water storage and the percentage derived from streamflow capture for the hypothetical stream-aquifer system shown in Figure 13. The time for the change from the dominance of withdrawal from ground-water storage to the dominance of streamflow capture can range from weeks to years to decades or longer."

Valley Water has recently provided a presentation that predicts potential decline in groundwater in South County and land subsidence in North Councty in 2021.

A hydrological analysis is needed to determine if the new well could reduce seasonal or year-round flows and water availability in local springs and seeps at Santa Teresa County Park and Tulare Hill, as well as Fisher Creek and Laguna Seca. The analysis should include successive dry years.

**Response D-4:** This comment states that a hydrological analysis is needed to determine if the proposed well could reduce seasonal or year-round flows and water availability in local springs and seeps at Santa Teresa County Park and Tulare Hill, as well as Fisher Creek and Laguna Seca. As discussed beginning on page 5-100 of the IS/MND, the Project site is located within the Santa Clara groundwater subbasin, which according to the 2016 Groundwater Management Plan, has been in a sustainable condition for many decades. The Santa Clara groundwater subbasin has a volume of approximately 350,000 acre-feet (AF). As stated in the Santa Clara Valley Water District's 2016 Groundwater Management Plan, nearly all groundwater used in the Santa Clara Subbasin is for municipal and industrial uses, with only 1 percent for agricultural and domestic uses.[1] Therefore, because the proposed Project would consist of one single-family residential use and small-scale agriculture, water demand associated with the proposed Project would constitute a very small portion of the 1 percent used for agricultural and domestic uses within the Santa Clara Subbasin. In addition, the Geologic and Geotechnical Study (included as Appendix C of the Initial Study) states that no evidence was observed that indicated that springs or seeps are located within the construction area, and the impacts to local springs and seeps would not be significant.

As noted in the comment and in the IS/MND on page 5-100, an increase in impervious surface area decreases infiltration, which can decrease the amount of water that is able to recharge the aquifer/groundwater. The proposed Project would increase the impervious surface area within the Project site by approximately 0.3 acre. When compared to the volume of the groundwater basin (350,000 AF), the reduction of 0.3 acre in on-site infiltration would not be substantial given the total acreage of the groundwater subbasin is 385 square miles. The comment does not provide new information that would change the proposed Project's impact,

[1] Santa Clara Valley Water District. 2016. Groundwater Management Plan for the Santa Clara and Llagas Subbasins. November 22.

provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-5:** 4. Impacts and mitigation measures:

4.1. Wildlife movement and riparian buffers

Evidence negates the MND's conclusion that impacts to wildlife are significant but are mitigated to below a level of significance. First, the Coyote-Alamitos Canal's importance as a wildlife corridor, especially the culvert under Santa Teresa Blvd., has been established in multiple studies, in our 2018 comment letter and in letters from the local community. The IS/MND acknowledges wildlife movement in the Coyote-Alamitos Canal, but underestimates the impacts of construction activities and permanent use and maintenance of the driveway and associated retaining walls, lighting and traffic will have on animal movement, and the potential for species to stop using the culvert and the canal in the vicinity of the driveway.

- The project encompasses the Coyote-Alamitos Canal. As such, the requirement for a minimum permanent setback of 35-ft should be mentioned in Section 2.7 HABITAT PLAN DESIGNATION.

- Figure 2 of the Biological Resources Assessment shows permanent impacts encroaching on the 35-ft setback, especially in the area closer to the intersection with Santa Teresa Blvd. and to the culvert under Santa Teresa Blvd. This is the bottleneck where wildlife are at greatest risk, and where preserving their movement and migration are in greatest need of protection. In this bottleneck, the Project's permanent impacts consume the entire setback on the south side of the canal. Permanent impacts within the required 35-ft setback conflict with the Valley Habitat Plan, and should be considered significant and unavoidable impacts. This encroachment nullifies the finding that the project does not "Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan."

Partial screenshot taken from Figure 2 of the Biological Resources Assessment:

- Green line: top-of-the-bank

- Yellow line: 35-ft setback

- Red line: Permanent impact

The Biological Resources Assessment finds a significant yet mitigable impact related to the Project's potential to "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." We agree that the impacts are indeed, significant, and because the mitigation measures are limited to reducing impacts to nesting birds, and not to maintaining the viability of this area as a wildlife corridor for animals moving through the landscape, the impacts to wildlife are not properly mitigated.

- The IS suggests that animals can move throughout the landscape, are not limited to the canal, and thus the impacts to overall wildlife movement are not significant. This evaluation is not based on observations of wildlife movement through the landscape, and it is particularly incorrect at the bottleneck where the property narrows and the driveway approaches Santa Teresa Blvd. We believe that significant and unmitigable impacts remain.

Studies show that human activity decreases habitat quality and deters many wildlife species from using the landscape through many processes:

- https://experts.illinois.edu/en/publications/human-footprint-and-human-presen ce-have-non-equivalent-effects-on;

- https://onlinelibrary.wiley.com/doi/full/10.1111/ecog.02801,

Light pollution, from just a single light to street lighting, disturbs migratory movement and can increase roadkill (https://cescos.fau.edu/observatory/lightpol-Mammals.html). Noise can also affect the way animals use habitat (https://www.sciencemag.org/news/2020/08/pandemic-stilled-human-activity-what-did-anthro pause-mean-wildlife).

The property encompasses Linkage #8 of the Santa Clara Valley Habitat Plan, Santa Teresa Hills to Metcalf Canyon. Photographic evidence (some are included in Mr. Mattioda's letter, see Attachment 2) shows a large number of local mammal species using the culvert under Santa Teresa Blvd. and traveling along the Coyote-Alamitos Canal. The section of the canal closest to Santa Teresa Blvd. is critical to wildlife movement through Linkage #8. Yet this is the bottleneck where permanent impacts from the project intrude into the buffer - all the way to top-of-the-bank. The configuration of the property is not amenable to expanding the setback at this bottleneck and thus, the impact to wildlife movement is immitigable. We expect human presence, vehicles, vehicle lights at night, potential new lighting fixtures, and noise to interfere substantially with the movement of wildlife species and with this well-established native wildlife corridor.

The animals that are sensitive to human impacts (badger, for example) would suffer the greatest deterrence from using the culvert and the canal, and would most likely attempt to cross Santa Teresa Blvd. elsewhere, at the risk of being hit by vehicles.

These species are also the ones in most need of gene flow and the underpass is one of our best opportunities to prevent the isolation of small populations and to maintain their genetic diversity.

This is one of the reasons why buffers, or setbacks, are required by the Habitat Agency. The setbacks serve to shield riparian corridors (which are usually used as wildlife movement corridors) from permanent impacts, including requirements such as vegetation management.

- The County Fire Department requirement of 30-50-ft vegetation clearance along the road precludes any potential mitigation to shield wildlife movement at the culvert and along the canal from the impacts of the new road (especially near the Santa Teresa Blvd. culvert). For example, screening vegetation and trees could not be planted along the canal to protect wildlife movement there from vehicle lights, noise, traffic, and other activity-related disturbance. The buffer is also meant to protect the canal from pollutants, including herbicides, tire residues, oils, and other road related pollutants.

- Since ongoing vegetation management within the 35-ft setback is required by the Fire Department, the impacts of the driveway along the Coyote-Alamitos Canal on wildlife movement in the canal cannot be buffered. The impacts of the driveway to wildlife movement through the culvert and along the canal must be considered permanent and unavoidable.

The proposed mitigations (MMBIO-2 and MM BIO-3) are limited to two measures that mitigate impacts to nesting birds. Thus, we expect significant, unavoidable impacts to wildlife movement.

**Response D-5:** This comment states that the Coyote-Alamitos Canal as an important wildlife corridor. Although the comment states that the importance of the Coyote-Alamitos Canal has been established in multiple studies, the studies have not been provided. The 2018 comment letter, included as Attachment 1 of this comment letter highlights issues that were addressed in the Biological Resources Assessment for the proposed Project (included as Appendix A of the IS/MND). The comment letter addresses encroachment on wildlife habitat, wildlife movement, impacts related to the proposed driveway, wildlife conflicts with human activity, and critical habitat for Bay checkerspot butterfly.

Section 2.7, Habitat Plan Designation, of the IS/MND correctly identifies the fee zone, development zone, and the landcovers mapped on the Project site by the Habitat Plan Geobrowser. The commenter conflates actual permanent impacts with the 50-foot buffer that is applied to the Project site for the purpose of calculating fees that have to be paid to the Santa Clara Valley

Habitat Agency. As stated in Response A-4, above, the proposed Project would not alter the Coyote-Alamitos Canal and would not restrict the use of the Coyote-Alamitos Canal for wildlife movement. The proposed driveway would be outside of the 35-foot setback from the top of bank. Furthermore, as stated in Response D-3 above, the Project Applicant has coordinated with the Santa Clara Valley Habitat Agency, and the Santa Clara Valley Habitat Agency determined that Coyote-Alamitos Canal is a man-made canal, and therefore, the Coyote-Alamitos Canal does not meet the definition of a stream as outlined in Condition 11. In addition, the proposed residence would be located more than 250 feet from the nearest portion of the Coyote-Alamitos Canal, and more than 1,000 feet from the culvert under Santa Teresa Boulevard. The proposed orchard would be located approximately 175 feet from the Coyote-Alamitos Canal. Other changes to the Project site, including the tiered retaining walls and water tanks, would be located to the south of the proposed residence, and not between the proposed residence and the Coyote-Alamitos Canal. Furthermore, there is already an existing access road that runs parallel to the Coyote-Alamitos Canal that is used by employees of Pacific Gas and Eclectic (PG&E) and the Santa Clara Valley Water District.

Noise is addressed in Section 5.13 of the IS/MND. Noise generated by the Project was determined to have a less than significant impact related to established noise control standards. The IS/MND acknowledges that noise during construction could impact nesting birds, causing them to abandon active nests. Mitigation Measure BIO-3 would reduce impacts to nesting birds to a less-than significant level. Because construction activities would occur primarily during daylight hours (7:00 a.m. to 7:00 p.m.), noise impacts to primarily nocturnal or crepuscular special-status wildlife such as American badger or mountain lion is expected to be less than significant.

Roadway traffic from Santa Teresa Boulevard immediately east of the Project site is the predominant noise source in the area. Implementation of the proposed Project would result in one single-family residence on the Project site. While this would be a new use on the Project site, one new residential use with associated physical features such as a driveway, water storage tanks, septic system and leach field, tiered retaining walls, and an orchard on the Project site, is not anticipated to generate a substantial amount of noise during operation. In addition, the proposed Project would not include any stationary noise sources, such as a continuously-operating generator. Much of the wildlife in the area is likely accustomed to

noise from single-family residences north of the Project site, and the incremental increase in occasional noise from an additional single-family home is unlikely to have a significant impact on animal behavior.

The IS/MND includes three mitigation measures to address impacts related to biological resources. For the most part, existing regulations address potential impacts to habitat through fees paid to the Santa Clara Valley Habitat Agency. The included mitigation measures address potential impacts to American badgers that may use the Project site and potential impacts to special-status bird species that may use the Project site. It should be noted that American badgers and special-status bird species were not observed within the Project, nor was there evidence that these animals used the Project site. The mitigation measures were included to address potential impacts. As noted in the Biological Resources Evaluation Assessment, the potential for most special-status wildlife species to occur within the Project site is low or there is no potential for occurrence.

Potential noise impacts to wildlife are considered to be temporary and the use of avoidance techniques and preconstruction surveys would address the need to modify construction operations, if required. Potential noise resulting from operation of the proposed Project would mostly occur with the proposed residence. Potential noise impacts on special-status animal species would not be considered significant given the distance of the proposed residence from the Coyote-Alamitos Canal. As stated above, the proposed residence would be located approximately 250 feet from the nearest portion of the Coyote-Alamitos Canal, and more than 1,000 feet from the culvert under Santa Teresa Boulevard. The culvert under Santa Teresa Boulevard is approximately 500 feet from an existing house.

Please refer to Response A-4 and Response D-10 regarding potential impacts related to light and light pollution.

This comment letter references photographs provided within Letter A as examples of wildlife movement within the Coyote-Alamitos Canal. Although the animal species photographed are not special-status animal specials, the photographs show use of the Coyote-Alamitos Canal for movement under Santa Teresa Boulevard. As stated in Section 5.4, Biological Resources, of the IS/MND and in Response A-4, the proposed Project would not affect the Coyote-Alamitos Canal, and movement by animal species would not be physically altered so as to result in any permanent barriers to local

wildlife movement. It should be noted that the animal species identified in the photographs use the Coyote-Alamitos Canal although the canal is located adjacent to urban development that includes residential structures and roadways with substantial human activity and lighting. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-6:** 4.2 Listed species

Mountain Lion

The mountain lion has recently been listed as a state candidate for listing under the threatened and endangered species list. The Central Coast North population of mountain lions (page 9 of the petition) https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline) contains the project area. Connectivity is crucial for expanding genetic diversity in this population, and a great amount of effort is invested in restoring movement corridors for this species. The ability of the species to traverse roadways safely, as through culverts, (including Santa Teresa Blvd.) is critical to the persistence of mountain lions in California. A petition to List the Southern California/Central Coast Evolutionarily Significant Unit (ESU) of Mountain Lions as Threatened under the California Endangered Species Act https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171208&inline provides scientific information that identifies large culverts as key conservation measures for mountain lions. Studies of nocturnal patterns of movement suggest mountain lions tend to avoid areas with human disturbance including residential developments and two-lane paved roads. As with other species, the Habitat Plan Linkage #8 is a critical movement corridor for the mountain lion between the Santa Cruz Mountains and the San Jose hillside. The culvert under Santa Teresa Blvd. is large enough to allow large mammals safe crossings (mature bucks have been observed to cross using this culvert).

- The IS should study and evaluate the importance of the Coyote-Alamitos canal and the culvert under Santa Teresa Blvd. for mountain lion movement.

- Since the mountain lion is not a covered species by the Valley Habitat Plan, consultation and permits from wildlife agencies are needed.

**Response D-6:** This comment states the IS/MND should study and evaluate the importance of the Coyote-Alamitos Canal and the culvert under Santa Teresa Boulevard for mountain lion movement and, because the mountain lion is not a covered species by the SCVHP,

consultation and permits from wildlife agencies are needed related to proposed impacts resulting from the proposed Project.

As stated on page 5-44 of the IS/MND, components of the proposed Project, including the proposed driveway, retaining wall, single-family residence, garage, water well and tanks, septic system, leach field, and associated 15-tree orchard, would result in physical changes to the Project site, but the changes would be located within in approximately 0.81 acres of the 16.86-acre Project site (approximately 4.8 percent of the total Project site. Please note that the proposed orchard was added after the IS/MND was circulated, and is described and shown on Figure 3-3 of the Errata to the IS/MND. In addition, the proposed residence would be located more than 250 feet from the nearest portion of the Coyote-Alamitos Canal, and more than 1,000 feet from the culvert under Santa Teresa Boulevard.

In addition, most new human activity within the Project site would occur within or adjacent to the proposed single-family residence. Furthermore, barbed wire currently exists around the property along Santa Teresa Boulevard and the southeastern and southwestern property boundaries, and no new fencing is proposed as a part of the proposed Project. A tiered retaining wall would be located adjacent to the proposed residence to provide grade separation and allow for the residence to be located lower against the existing ridgeline. The residential properties located north of the Project site are fenced with chain link and/or wood fences. No lighting would be installed along the driveway. Although components of the proposed Project (i.e., proposed driveway, orchard, single-family residence, and garage) would alter the existing character and physical features of the Project site, these changes would not present a barrier to local wildlife movement through the Project site.

The primary barrier to wildlife movement between open areas west of the Project site and Tulare Hill, east of the Project site, is the heavily trafficked Santa Teresa Boulevard. The Coyote-Alamitos Canal is culverted under Santa Teresa Boulevard and may provide a way for some animal species to move between the areas safely. However, as previous stated in responses above, the proposed Project would not impact the Coyote-Alamitos Canal or result in any permanent barriers to local wildlife movement. The comment does not provide new information that would change the Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures

than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-7:** Badger

The only mitigation proposed for impacts to the badger is pre-construction surveys. Badgers are a very reclusive animal, shy of people and traffic. They are known to use culverts for safe passage. The new driveway and related activity plus the degradation of the area around the culvert are likely to cause badgers to abandon the area. This can cause fragmentation of their habitat, with population-wide adverse impacts.

**Response D-7:** This comment states that the proposed driveway and the changes to the Project site would cause American badgers to abandon the area, and as a result of the proposed Project, American badger habitat would be fragmented. No evidence of American badgers (such as potential dens) were observed within the Project site during the surveys conducted in December 2016 and June 2020. Furthermore, there are very few burrows of potential badger prey species such as California ground squirrel. However, the IS/MND states that there is a moderate potential for the species to hunt within the Project site. Although the American badger is a Species of Special Concern, it is not a covered species under the SCVHP.[1] The IS/MND identified Mitigation Measure BIO-1 to address potential construction-period impacts related to American badgers and requires pre-construction surveys, as well as avoidance measures, to prevent the injuring or killing of American badgers within the Project site.

Furthermore, the proposed Project does not include any fencing or impediments to the existing Coyote-Alamitos Canal, and would thus continue to allow the culverted canal to be used for wildlife movement to large, open expanses of habitat in the Santa Teresa Hills and Metcalf Canyon. As a result, the IS/MND found that the proposed Project would not result in a significant impact to American badgers. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new

[1] Santa Clara Valley Habitat Agency. 2012. Final Santa Clara Valley Habitat Plan. Chapter 6. Conditions on Covered Activities and Application Process. Website: scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan (accessed July 20, 2020). August.

information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-8:** Monarch Butterfly

In December 2020, the U.S. Fish and Wildlife Service found that listing the monarch butterfly was warranted. The monarch is now a candidate under the Endangered Species Act, slated to be listed in 2024 (https://www.fws.gov/savethemonarch/SSA.html). In California, monarchs are included on the California Department of Fish and Wildlife's (CDFW) Terrestrial and Vernal Pool Invertebrates of Conservation Priority list (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149499&inline) and identified as a Species of Greatest Conservation Need in California's State Wildlife Action Plan (https://wildlife.ca.gov/SWAP).

The U.S. Fish and Wildlife Service has recently developed, in consultation with the California Department of Fish and Wildlife and the Xerces Society, the attached conservation recommendations for the western monarch butterfly (see Attachment 5). The western population of the monarch butterfly is particularly vulnerable with less than 2,000 individuals observed at overwintering sites on the California Coast last fall (recent Xerces Society Western Count Data: https://xerces.org/blog/fifth-annual-western-monarch-new-years-count-confirms-continued-de cline-in-western-monarch.

The project site is located in Priority 1 Breeding and Migratory Habitat. Monarch butterflies breed and migrate across multiple generations each year throughout the western U.S. The early breeding zone is an estimated area in California where monarchs are likely to breed and/or lay their eggs on milkweed after departing the overwintering groves in mid-winter to early spring each year (See Figure 1, Priority Restoration Zones in California map, above). Early emerging milkweed species are likely a limiting factor on the landscape in the early breeding zone and may be associated with the severe population decline of western monarchs, and these plants are essential to successfully create the next generation of migratory butterflies. For Priority 1 zone, the U.S. Fish and Wildlife Service recommends:

> Enhance and maintain habitat in the Priority 1 early breeding zone of California, (Figure 1, above), by identifying and protecting existing habitat, and planting native, insecticide free early-emerging milkweed species (e.g., Asclepias vestita, A. californica, A. eriocarpa, A. cordifolia, A. erosa), and native, insecticide-free flowering plants that are available to monarchs from January-April, as appropriate for the project location (Nectar Planting Lists; Milkweed Seed Finder).
>
> U.S. Fish and Wildlife Services Western Monarch Butterfly Conservation Recommendations, April 29, 2021:

The Project and its immediate vicinity contain patches of narrowleaf milkweed (*Asclepias fascicularis*) (evidence submitted by Mr. Andrew Mattioda in a letter to San Jose Planning Director on on August 1st, and personal observations in and along the canal by Mr. Dave Poeschel, Dr. Merav Vonshak, and Dr. Shani Kleinhaus). Milkweed is an obligatory host plant for monarch butterflies, and the Narrowleaf milkweed is probably the single most important host plant for monarch butterflies in California (https://calscape.org/Asclepias-fascicularis-()). It is important to preserve areas where this species is abundant and likely used by monarch butterflies during migration.

The surveys conducted by LSA (December 30, 2016 and June 5, 2020) missed the milkweed on the site and its immediate vicinity. California native milkweeds have an unusually long winter dormancy and may not send up new shoots until the beginning of May (California Native Plants for the Garden, Bornstein, Fross, O'Brien (2007) pg. 62). It is possible the plants were not visible to an untrained eye on December 30, 2016, but the survey of June 5, 2020 should have identified the narrowleaf milkweed, even if it was not yet in flower. Missing such an important and abundant species during the survey puts in question the entire biological survey of 2020. This is especially surprising given that in our 2018 letter, we highlighted the abundance of narrowleaf milkweed on the property.

- A new survey should be performed to identify plant species, at the appropriate time of year, including especially milkweed.

- The IS should evaluate the importance of milkweed on the property to monarch migration.

- Since the monarch butterfly is not a covered species by the Valley Habitat Plan, consultation and permits from wildlife agencies are required.

The designated home site on the property is positioned directly on a patch of milkweed - the host plant for monarch butterflies (as shown in Mr. Mattioda's letter). The elimination of this patch has a significant impact in this Critical Habitat Area.

- The IS and MND do not mention monarch butterflies. Due to the ubiquity of narrowleaf milkweed at the project site, analysis is required by CEQA and by both the San Jose and the County General Plans.

- Impacts to the monarch butterfly should be evaluated in context of the disastrous decline in monarch butterfly population in California and the new U.S. Fish and Wildlife Service recommendations which highlight the importance of critical migratory stepping stones and linkages, such as the Project site.

**Response D-8:** This comment states that the Monarch butterfly is now considered a candidate species under the ESA and references the photos and

comment letter provided as Letter A. This comment letter states that the surveys of the Project site did not identify narrowleaf milkweed.

As discussed in Response A-3, the Monarch butterfly was not a listed species under the ESA at the time of the surveys, nor is it now. Because the monarch butterfly is not a listed species, Critical Habitat has not been designated. Please refer to Response A-3 for additional information regarding the Monarch butterfly. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-9:** 4.3 The San Jose and Santa Clara County General Plans

In our 2018 letter, we discussed some of the goals and policies of the two general plans. In addition,

The San Jose General Plan allows single residence homes on Open Hillside, but directs:

> "... the Open Hillside designation limits uses within this area to those which can be conducted with very little physical impact on the land, which do not require urban facilities or services, and which will have minimal visibility from the Valley floor. Specifically, new development is limited to projects that will not result in substantial direct or indirect environmental impacts upon sensitive habitat areas, special status species, geologic hazard avoidance or the visual environment." [Emphasis added]

The San Jose General Plan continues:

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

The IS and MND provide no mitigation for impacts to wildlife movement, and offer inadequate mitigation for impacts to listed species. The documents offer no assurance that future additional development will not occur. The IS/MND provides no permanent preservation or conservation easements to preclude future development. The Project should, at a minimum, provide mitigation by donating all the undeveloped land on the property to conservation by the Habitat Agency and the Open Space Authority.

**Response D-9:** This comment states that the proposed Project would be in conflict with the San José General Plan and the Santa Clara County General Plan due to impacts to biological resources related to wildlife movement and conservation. As stated on page 2-1, the project site has an Envision San José 2040 General Plan designation of Open Hillside and an (A) Agricultural Zoning District. Development under the Open Hillside General Plan designation is limited to 0.02 floor area ratio. In compliance with the General Plan, the project proposes a single-family residence with a 0.006 total FAR below the urban use density limitation. The majority of the land would remain undeveloped, with 0.81 acre of the 16.87-acre site disturbed for the driveway construction and home site. Only 0.3 acre (1.8 percent of the site) would consist of impervious surface (driveway and house), with the remainder of disturbed vegetated areas to be revegetated.

As stated on page 5-44 of the IS/MND, the proposed Project, including the proposed orchard, would not present a barrier or impediment to local wildlife movement through the Project site, and would therefore not significantly impact the use of the property by wildlife as a landscape linkage between the Santa Teresa Hills to Metcalf Canyon. Please refer to Response A-4, Response D-2, and Response D-5 regarding additional information pertaining to wildlife movement through the Project site. Each response describes the components of the propose Project and further elaborates on the limited effect that the proposed Project would have on wildlife movement.

It is speculative to assume future changes to the proposed Project and to analyze those assumptions under CEQA. However, any future development, such as addition, within the Project site would be subject to City of San José and Santa Clara County policies and regulations regarding new accessory dwellings and could be subject to further discretionary actions between the two agencies, as applicable.

This comment also suggests that the portions of the Project site that would not be developed as part of the proposed Project should be donated to provide permanent conservation. Given the limited

habitat value, and the ability of the proposed mitigation measures to reduce potential impacts to biological resources, the Project Applicant is not considering any dedications or donating portions of the Project site at this time. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-10:** Artificial Light At Night (ALAN) lighting is widely recognized as a significant impediment to wildlife movement through the landscape. The impacts of lighting are pervasive and affect biological function and behavior in almost all living things. The following studies show how ALAN harms all ecosystems and ecological networks:

- The book "Ecological Light Pollution" shows how light pollution affects foraging, reproduction, communication, and other critical behaviors in wildlife. ALAN also disturbs interspecific relations that have evolved dependent upon light and dark cycles, which then disrupts ecosystem integrity (https://esajournals.onlinelibrary.wiley.com/doi/full/10.1890/1540-9295%282004%2900 2%5B0191%3AELP%5D2.0.CO%3B2)

- ALAN affects ecology relations between flowers, pollinators, and predators (https://www.nature.com/articles/s41467-021-24394-0 )

- A review that draws together wide-ranging studies performed over the last decades that catalogue the effects of artificial-light-at-night (ALAN) upon living species and their environment. Numerous examples are given of how widespread exposure to ALAN is perturbing many aspects of plant and animal behaviour and survival: foraging, orientation, migration, seasonal reproduction, colonization and more. We examine the potential problems at the level of individual species and populations and extend the debate to the consequences for ecosystems. https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full

- Isolated (rural) and mobile (e.g., vehicle headlight) sources of ALAN may have both very widespread and important biological influences. https://academic.oup.com/icb/advance-article/doi/10.1093/icb/icab145/6309306

- Cold, harsh white light with high Correlated Color Temperature (CCT) is a main driver for species disturbance. The International Dark Sky Association released new outdoor lighting guidelines this year, outlining that outdoor lighting fixtures

should have a CCT of no more than 2200K (common industry now has a low temperature of 2700K) in order to protect wildlife (https://www.darksky.org/values-centered-lighting-resolution/?eType=EmailBlastConten t&eId=e18a9f9f-e20c-469d-9cea-fc43510d1c14).

- A United Nations report highlights the many biological and ecological impacts of ALAN, and outlines guidelines to help preserve ecosystems, species and our night sky (https://www.iau.org/static/publications/dqskies-book-29-12-20.pdf).

These studies show that new light sources can impose adverse impacts on the biological resources.

- The IS should conduct a baseline photometric study at the project site.
- The IS should provide a lighting plan for the entire site and discuss any new lighting in detail, including a discussion of Correlated Color Temperature (CCT).
    - Light trespass into the canal and the 35-ft setback should be avoided, or recognized as a significant unavoidable impact.
    - Will new lighting be installed at the driveway intersection with Santa Teresa Blvd?

The photographs below were taken on Santa Teresa Blvd. at the entrance to the Project site. (Photographs taken by Gregory Peck on August 4th at 4:15AM without camera correction for low light. Thus, the photos represent what people, and animals see at this time )

A. Santa Teresa Blvd. entrance to Project site

B. Santa Teresa Blvd. looking towards Tulare Hill

C. Looking from the project site towards San Jose

D. Looking from the project site towards Morgan Hill

The photographs show how dark the site is at this time, and why a photometric study is needed to evaluate any new lighting impacts to wildlife movement.

**Response D-10:** This comment states that a photometric study should be prepared for the proposed Project, and a full lighting plan for the Project site should be made available. As stated in Response D-2, the proposed Project does not include required or voluntary new lighting near the Coyote-Alamitos Canal or driveway. As stated in Section 5.1, Aesthetics, of the IS/MND, no lighting would be installed along the

proposed driveway, and all exterior lighting adjacent to the proposed single-family residence would be directed downward and shielded to minimize off-site spill. The location of all exterior lighting would comply with lighting standards established in Section 20.50.250 of the City's Municipal Code. Furthermore, portions of the canal are currently illuminated by a nearby streetlight on Santa Teresa Boulevard, as well as spillover from the residences located on Drumm Place, Aaron Place, and Phinney Place. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment D-11:**5. In a letter dated October 27, 2017 (see Attachment 3, PRA-1), San Jose planner Rina Shah explains the myriad reasons why City Staff planned to recommend to the Planning Commission early denial of this project. Even with some changes to the project, the City's concerns with impacts to biological resources remain valid and significant.

6. We attended a public meeting in 2017 that attracted dozens of participants and over 100 comments (see Attachments 3 and 4, PRA-1 and PRA-2). We ask for additional public outreach and a new public meeting to reveal the project to neighbors and stakeholders.

We thank you for the opportunity to comment on this Mitigated Negative Declaration. We ask for community meetings and for a full EIR to be prepared for this Project. We believe we can make a fair argument, based on substantial evidence and in light of the whole record, that the Project as a whole would have significant, unavoidable impact to the environment.

**Response D-11:** This comment summarizes the concerns raised in the comment letter and identifies concerns raised by City staff and local citizens. In addition, this comment generally states the commenter's opinion that the IS/MND is flawed and inadequate and that preparation of an EIR is required to satisfy the requirements of CEQA, is noted.

The City first prepared an Initial Study to determine if the proposed Project could have a significant effect on the environment and to determine whether or not an MND or EIR would be the appropriate environmental document under CEQA. Based on the evaluation of all environmental issue topics in the Initial Study, the City determined that, in light of the whole record, the proposed Project could have a significant effect on the environment but that

measures agreed to by the Project Applicant would avoid or mitigate the effects of the proposed Project to a point where no significant effect on the environment would occur. The City also determined that there is no substantial evidence in light of the whole record that the proposed Project, as revised to include the proposed orchard, would have a significant effect on the environment. Therefore, per CEQA Guidelines Section 15064(f)(2), the City prepared an MND.

The IS/MND includes an evaluation of all environmental issue topics outlined in the CEQA Guidelines and identifies impacts of the proposed Project relative to established significance criteria. In some cases, compliance with established regulations would ensure that the appropriate standards would be followed and appropriate measures would be implemented consistent with best practices to ensure that an environmental impact would not result with either construction or operation of the proposed Project. In other cases, specific mitigation measures are recommended to ensure that impacts would not exceed the established threshold. In addition, consistent with CEQA Guidelines Section 15097 the City has prepared a Mitigation Monitoring and Reporting Program (MMRP). The MMRP identifies each required mitigation measure, the schedule or timing for implementation, and the parties responsible for implementing and monitoring the required action. The MMRP is designed to ensure implementation of the mitigation measures identified in the IS/MND and would be adopted by the City as part of approval of the proposed Project. The Project Applicant would be required to implement the MMRP as a condition of project approval.

It should be noted that the existence of public controversy over the environmental effects of a project does not in and of itself require the preparation of an EIR if there is no substantial evidence before the City that the project may have a significant effect on the environment. Substantial evidence must consist of facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. The lead agency must be presented with a “fair argument” that the project may have a significant effect on the environment in order to require an EIR.

Specific points raised by this commenter and other commenters that relate to the adequacy of the IS/MND are responded to in this memorandum. Based on all of the comments received on the IS/MND, the City has determined that, with implementation of the recommended mitigation measures, the proposed Project would

not have a significant effect on the environment and that a fair argument that a significant effect would occur that has not already been identified and mitigated has not been presented, and therefore, the IS/MND satisfies the requirements of CEQA. Further, the IS/MND provides an adequate level of information to allow the decision-makers to consider the potential physical changes to the environment associated with the project and make a determination regarding project approval.

**LETTER E**

Pathways for Wildlife
Tanya Diamond
October 7, 2021

**Comment E-1:** I am a wildlife biologist and Founder and Co-Principal at Pathways for Wildlife (PFW). PFW has been commissioned by the Santa Clara Valley Audubon Society to review and evaluate the potential impacts to biological resources and wildlife connectivity from the proposed Gschwend Residential Project (Project). I have been conducting wildlife connectivity studies in Coyote Valley and its vicinity since 2008. My Master's thesis at San Jose State University, titled 'Using GIS and Roadkill Data to Evaluate Habitat Connectivity Models for North American Badgers' (2009 (1)), included delineating habitat requirements and designing wildlife linkages for the American Badger in the Coyote Valley. In 2010, I formed PFW where, in addition to conducting surveys and monitoring habitat use, wildlife linkages, and safe road crossings, I conduct workshops for conservation organizations such as land trusts, citizen science groups, and colleges with particular emphasis on identifying suitable road crossing locations and habitat permeability for wildlife.

PFW is a consulting firm which specializes in identifying, monitoring and protecting wildlife linkages and implementing wildlife connectivity enhancements. Scientific research confirms that safeguarding wildlife movement for access to needed resources (food, water, etc.), dispersal and colonization, gene flow, seasonal migration, and population movement is critical for species' survival, especially when faced with a changing climate. It is widely recognized that by restricting animal movement, new development, roads and other barriers fragment wildlife habitat and threatens the long-term existence of wildlife populations. Preserving existing blocks of contiguous habitat and to maintain connectivity is the best solution to maintaining species' viability.

Since 2010, PFW has monitored wildlife movement, landscape permeability, connectivity and roadkill incidents in Santa Clara, Santa Cruz, Monterey, and San Benito counties. We regularly work with Caltrans, Midpeninsula Regional Open Space District, Peninsula Open Space Trust, the Land Trust of Santa Cruz County and other groups to identify important linkages wildlife utilize in their habitats that cross linear infrastructure barriers. Using data from wildlife cameras, telemetry data, and

roadkill surveys, we are able to identify suitable locations to enhance or install safe wildlife crossing structures for wildlife, including mountain lions. Some of our important engagements include wildlife connectivity projects for highways 17, 152 101, and 280 and roads in South San Jose and Coyote Valley. PFW is currently engaged with the Coyote Valley Road Ecology Study, funded by the CA Department of Fish and Wildlife, whose purpose is to identify vital locations where wildlife travel between the newly protected properties in Coyote Valley, the Santa Cruz mountains (and Santa Teresa Ridge) to the west and Diablo Range to the east, and to develop wildlife connectivity enhancement recommendations.

I have reviewed the Initial Study, Appendix A Biological Resources Assessment (BRA) and the Mitigated Negative Declaration for the proposed Gschwend Residence Project which concludes that "Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The Project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings."

In my opinion, the proposed Project has the potential to irreversibly damage a critical wildlife linkage that has region-wide importance for the conservation of biodiversity (Conservation Lands Network Linkage, Valley Habitat Plan Linkage #8). I believe that an environmental impact report (EIR) is needed to fully assess and mitigate the likely significant and unavoidable impacts the Project would have on wildlife connectivity for the American Badger (California Species of Special Concern), Mountain Lion (candidate for listing under the California Endangered Species Act) and other wildlife species.

**Response E-1:** This comment provides an introduction to the comment letter and provides a summary of the topics discussed in the comment letter. The comment also states the opinion of the commenter that a fair argument for the preparation of an EIR has been presented by comments submitted on the IS/MND. The City has reviewed the comments received on the IS/MND and, as outlined in the response to the comments, maintains the opinion that the comments do not present substantial evidence of a fair argument that the Project, as proposed, would result in a significant and unavoidable impact to wildlife. As a result, the City does disagrees that an EIR is required for the proposed Project.

**Comment E-2:** The Project site is within a Critical Wildlife Linkage
The Conservation Lands Network identifies linkage between the Santa Cruz mountains and the Diablo Range as critical to the viability of wildlife populations in the Bay Area (2). Linkages that allow wildlife movement across the landscape are

essential to sustain wildlife populations. In 2011, the Conservation Lands Network released its first report (CLN 1.0). The report concluded that "looking ahead, the broader land and resource conservation communities must focus on linkage protection while the linkages still exist". The latest report (2019) of the Bay Area Critical Linkages study (3) shows that connected blocks of habitat are increasingly important in light of climate change, providing potential for refugia and migration across latitudinal and elevational gradients.

The proposed Project location disrupts a critical connection within the Bay Area Critical Linkage Design for the Santa Cruz Mountains to Diablo Range linkage (Figure 1, see also Habitat Connectivity map and Critical Linkage map (4)). This area is a critical thoroughfare area for wildlife movement between Santa Teresa County Park and Tulare Hill, and a critical connection between Santa Cruz Mountains to Diablo Range. This critical connection is also highlighted by the Santa Clara Valley Habitat Plan (VHP). Linkage 8 of the VHP is delineated and discussed in chapter 5, Conservation Strategy (5), which provides under Land Acquisition Requirements by Conservation Analysis Zone, "Complete the linkage between the Diablo Range and the Santa Cruz Mountains across Tulare Hill".

Figure 1. Bay Are Critical Linkage Design for Coyote Valley.

**Response E-2:** This comment states that the proposed Project would disrupt an existing wildlife linkage. As discussed, in Response A-4, Response D-2, and Response D-5, the components of the proposed Project would not affect the existing Coyote-Alamitos Canal. The Project site may be used by animal species traversing the Project site, but as noted on page 24 of the Biological Resources Assessment, the proposed Project would not modify or affect the existing Coyote-Alamitos Canal. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-3:** Wildlife Connectivity across Santa Teresa Boulevard
From 2015-2016, PFW conducted the Coyote Valley Linkage Assessment (6) with funding from the California Department of Fish and Wildlife. This study provided the basis for the Coyote Valley Landscape Linkage report (7). Monitoring wildlife movement in north Coyote Valley and its surroundings, we identified only two wildlife crossing locations, both undercrossings, that were available for wildlife to safely travel across Santa Teresa Blvd. These locations are: 1) the culvert of the Coyote Alamitos Canal; and 2) the twin box culverts of the Fisher Creek undercrossing.

In 2019, the Santa Clara County Wildlife Corridor Technical Working Group, Coyote Valley Subcommittee published recommendations to reduce wildlife-vehicle collisions on the Monterey Road corridor in Coyote Valley (8). As a participant in this Technical Working Group, PFW researched wildlife-vehicle Collisions and roadkill along Santa Teresa Blvd. Our data showed multiple roadkills south of the project site (Figure 2 (8)), especially in the section between Fisher Creek and the ridge that connects Santa Teresa Park with Tulare Hill. The data shows that the ridge, which includes the Project site, is an important wildlife linkage and crossing area, and that the culvert under the Coyote Alamitos Canal provides a safe crossing, which results in fewer wildlife-vehicle collisions.

Figure 2: Wildlife-Vehicle Collisions and roadkill along Santa Teresa Blvd (PFW, 2019).

Also in 2019, PFW observed that the Fisher Creek channel (including the two box culverts under Santa Teresa Blvd.) was flooded year-round. Since many wildlife species are hesitant to cross flooded channels, we reached out to Valley Water to inquire about the situation. We were informed by Valley Water (Don Arnold, personal communications) that the Fisher Creek undercrossing may be flooded for very long periods of time in the future. Our data from wildlife cameras installed in many culverts in the region show that most of our local terrestrial species (including mountain lions, badgers, coyotes, deer, bobcats and skunks) do not utilize flooded culverts. Thus, the Fisher Creek undercrossing is not always accessible to facilitate wildlife movement. This new information changed our evaluation of safe crossings for wildlife in this area. Absent substantial improvements to wildlife crossings at Fisher Creek, only one culvert will always be available for safe crossing in the north Coyote Valley area year round: the Coyote Alamitos Canal on the Gschwend property, which remains relatively dry throughout the year.

Road crossings, such as the Coyote Alamitos Canal, are important for the safety of both wildlife and people. The proposed house and associated driveway development would deter wildlife from using the Coyote Alamitos Canal culvert under Santa Teresa Blvd. Animals would then have to cross the road at grade at an increased risk of wildlife-vehicle collisions. In my opinion, this should be considered a significant impact to wildlife and a significant hazard to motorists.

**Response E-3:** This comment states that the proposed Project would deter the usage of the Coyote-Alamitos Canal by wildlife species. The Coyote-Alamito Canal is located approximately 500 feet south of existing residences. The proposed residence would be located more than 250 feet from the nearest portion of the Coyote-Alamitos Canal, and more than 1,000 feet from the culvert under Santa Teresa Boulevard. The proposed orchard would be located approximately 175 feet from the Coyote-Alamitos Canal. The majority of human activity associated with operation of the proposed Project would occur in the immediate area surrounding the proposed residence.

The comment speculates that due to the proposed Project, wildlife would not use the culvert; however, the proposed house would be located over 1,000 feet to the west, and the new driveway would substantially overlap with an existing, maintained access road; therefore, conditions within the vicinity of the existing canal would not substantially change. The comment also states that animals would have to, or perhaps choose to, cross Santa Teresa Boulevard at grade, despite the presence of street lamps and vehicle headlights. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-4:** Impacts to wildlife species
The Conservation Lands Network reports show that connectivity between the Santa Cruz Mountains and the Diablo Range is critical for conservation of Bay Area wildlife, especially wide-ranging species with low population densities, like mountain lions and the American badger.

**Response E-4:** This comment provides an introduction to the topics discussed in this section of the comment letter. This comment does not provide specific comments on the adequacy of the analysis included in the IS/MND. No further response is necessary.

**Comment E-5:** 1. American Badger
The American badger is a California Species of Special Concern (9) with low population sizes in open space areas throughout Santa Clara County. Badgers are very sensitive to human disturbance around burrows and can be easily displaced (10). The Biological Resources Assessment for the Project acknowledges "Suitable habitat is present, and there are 14 CNDDB occurrences within 5 miles of the project site." In my work, I recorded badger presence in proximity to the proposed Project site: at Santa Teresa County Park to the west, and Tulare Hill to the east (Figure 3 (1)).

My work designing wildlife linkage models for American badgers and then ground-truthing them shows that the Project's location falls within a critical habitat connection for American Badgers within the Coyote Valley linkage design. In Figure 3, I provide a least-cost path analysis that highlights the importance of the Project site and the culvert under Santa Teresa Blvd. The figure identifies this culvert as a critical route - one of the only safe crossings for badgers in Coyote Valley for badgers to safely cross Santa Teresa Blvd.

Badgers are likely to avoid this area due to increased human presence and are susceptible to vehicle collisions on roads (11) so the Project and the driveway by the culvert could sever this critical linkage for badgers. In my opinion, loss of habitat in this critical linkage, compounded by the loss of safe crossing within this linkage, are likely to jeopardize the ability for badgers to travel safely between the Santa Cruz Mountains and the Diablo Range, further fragmenting American Badger populations. This should be considered a significant, unavoidable impact.

Figure 3. American badger connectivity modeling and field validation in Coyote Valley, 2008-2010 (1).

**Response E-5:** This comment states that the proposed Project would result in American Badgers avoiding the Project site and vicinity due to increased presence of human activity. Mitigation Measure BIO-1 would reduce potential impacts to American badgers during the construction of the proposed Project. The proposed Project does not include any fencing or impediments to the existing Coyote-Alamitos Canal, and would thus continue to allow the culverted canal to be used for wildlife movement to large, open expanses of habitat in the Santa Teresa Hills and Metcalf Canyon. The Project site currently includes an access road for maintenance of the Coyote-Alamitos Canal that is used by pedestrians. In addition, the proximity of existing residential development to the Project site and the culvert under Santa Teresa Boulevard is approximately 500 feet. As stated on page 22 of the Biological Resources Assessment, although the proposed Project could result in potential impacts to American badgers, implementation of Mitigation Measure BIO-1 would reduce the impact to American badgers by requiring preconstruction surveys and, if an active American badger den is identified, a no-work buffer would be implemented and a plan for passive relocation would be implemented. Based on the determination of a qualified biologist, it was determined that the proposed Project, in combination with Mitigation Measure BIO-1, would not result in significant impacts, considering existing access to the Project site, and the proximity of existing urban development. It should also be noted that no badger dens were observed on the Project site. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5

**Comment E-6:** 2. Mountain lion

The Biological Resources Assessment unjustifiably neglected to consider the mountain lion. Mountain lions are legally classified as "specially protected species". The California Department of Fish and Wildlife is currently completing a 12-month status review of mountain lions within the proposed evolutionarily significant unit (ESU) located in Southern California and along the central coast of California. This is due to the species low genetic effective population size in this ESU, which includes the Project site. Under the California Endangered Species Act (CESA), species classified as a candidate species are afforded the same protection as listed species. As a result, mountain lions in this proposed ESU are CESA-protected during the review period.

The low genetic effective population size is due to habitat fragmentation restricting the ability for mountain lions to travel between local populations, highlighting the importance of linkages between the Santa Cruz Mountains and the Diablo Range. Mountain lions have been recorded traveling through North Coyote Valley at Tulare Hill along Fisher Creek and Fisher Flats (Figures 4 and 5).

Figure 4. Mountain lion traveling along Fisher Creek at Tulare Hill on 2-11-2018 at 9:26pm.

Figure 5. Mountain lion traveling along Fisher Flats at Tulare Hill on 2-11-2018 at 9:45pm, 19 minutes later.

It is critical to facilitate mountain lion movement between the Santa Cruz Mountains and the Diablo Range, and to avoid restrictions of such movement. Further habitat loss in this critical linkage will result in impacting wildlife movement and take away important habitat for species such as mountain lions. Many other wildlife linkages throughout the Bay Area have been lost due to homes deterring animals from using habitat and movement corridors within important linkages.

**Response E-6:** This comment states that the proposed Project would result in potential impacts to mountain lions. Please refer to Response D-6 for further discussion of the Project's impacts to Mountain Lions. It should be noted that the photographs provided in the comment letter are not of the Project site, nor do they demonstrate the use of the Project site or the Coyote-Alamitos Canal by mountain lions. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-7:** 3. Other species
Bobcat

In 2017-2018, PFW participated in a research team led by Chris Wilmers at UC Santa Cruz (12), in which we radio collared bobcats throughout Coyote Valley to identify important habitat areas bobcats were using and road crossings they used to travel through.

The first bobcat we collared, B01 Serpentine, was at Tulare Hill (Figure 6). The type of radio collared that B01 Serpentine was fitted with collected data on his movements every 5 minutes, resulting in recording fine scale movement patterns. The red lines in Figure 7 show the data collected from B01 Serpentine's radio collar.

The Project site is part of B01 Serpentine home range.

Figure 6. B01 Serpentine, radio collared at Tulare Hill on June 1st, 2017.

Figure 7. B01 Serpentine Radio Collar Data from Santa Teresa County Park to Tulare Hill, 2017- 2018.

The radio collar data also shows that B01 Serpentine used the Project's property on a regular basis, hunting there or travelling through. The data also show that the bobcat kept a distance from homes. The culvert of the Coyote-Alamitos Canal provided this bobcate with safe passage under Santa Teresa Blvd. The proposed Project location was utilized by B01 Serpentine more than the habitat just south in Coyote Valley and Laguna Seca (Figure 8). There was a higher preference for traveling through the proposed Project site than the valley floor south of this location, indicating that the project site provides important habitat for bobcats.

Figure 8. B01 Serpentine Radio Collar Data at the proposed Project location and on the valley floor at Laguna Seca.

**Response E-7:** This comment states that the proposed Project would impact bobcat habitat. Bobcats are not a special-status species, nor are bobcats a covered species by the SCVHP. As stated in Section 5.4, Biological Resources, of the IS/MND and in Response A-4, Response D-2, and Response D-5, the proposed Project would not affect the Coyote-Alamitos Canal, and movement by animal species would not be physically altered so as to result in any permanent barriers to local wildlife movement. It should be noted that the animal species identified in the photographs use the Coyote-Alamitos Canal although the canal is located adjacent to urban development that includes residential structures and roadways with substantial human activity and lighting. Most new human activity within the Project site would occur within or adjacent to the proposed single-family residence. The bobcat B01 Serpentine used the Coyote-Alamitos Canal culvert to pass under Santa Teresa Boulevard despite the presence of a home approximately 500 feet to the north. Therefore, it is unlikely that the proposed new home 1,000

feet to the southwest would deter the bobcat from continuing to use the culvert. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-8:** The Biological Resource Assessment is inadequate
The Biological Resources Assessment mistakenly suggests that the Project site is "in the vicinity of what the Habitat Plan identifies as terrestrial landscape Linkage #8". In fact, the site is entirely within terrestrial landscape Linkage #8, and it includes one of the most critical aspect of Linkage #8 - the Coyote Alamitos Canal.

Barriers to animal movement can, but do not have to be physical. In this case, the Project functions as a physical barrier due to the placement of this home which inhibits wildlife usage due to human presence and activity, lighting, vehicle headlights and driving along the Coyote Alamitos Canal within this critical linkage. In such a critical location, these are not minor changes to the property. Species such as mountain lion, and American badger, which may utilize the Project area, are sensitive to light disturbance (Beier 2006 (13), Rich and Longcore 2006 (14), Quinn 2008 (10), Wilmers et al. 2013 (15)), and tend to keep a distance from human residences Wilmers et al. 2013 (15). The Project will introduce human residence, activity and light into the Linkage area which currently features limited human presence and light at night. More detail and analysis are needed regarding specific mitigation measures intended to minimize the significant and unavoidable impacts of new sources of artificial light (e.g., due to light emission from the home, outdoor lighting, the driveway and vehicle headlights).

**Response E-8:** This comment highlights the importance of terrestrial landscape Linkage #8 of the SCVHP. As discussed in the Biological Resources Assessment, the Project site is in the vicinity of Linkage #8, but as discussed on page 5-44 of the IS/MND, the primary barrier to wildlife movement between open areas west of the Project site (Santa Teresa County Park) and Tulare Hill east of the Project site, is Santa Teresa Boulevard. The Coyote-Alamitos Canal is culverted under Santa Teresa Boulevard and may provide a way for some wildlife species to move between the areas safely. The proposed Project would not block the Coyote-Alamitos Canal or result in any permanent barriers to local wildlife movement. The proposed Project would not alter the canal culvert, and most new human activity on the Project site would occur within or adjacent to the proposed single-family residence. As previously stated, given that the proposed Project would disturb a relatively small percentage of

the Project site (approximately 4.8 percent, or approximately 0.81 acres of the total 16.86 acres of the Project site); the proposed residence and associated improvements would be more than 250 feet away from the Coyote-Alamitos Canal and more than 1,000 feet from the culvert under Santa Teresa Boulevard; proposed lighting would be shielded as described above; screening vegetation (the proposed orchard) would be planted; and increased human and vehicular activity within proximity to the canal would be limited to occasional driveway use; the proposed Project would not present a barrier to local wildlife movement through the Project site. As noted, the Santa Clara Valley Water District maintains an access road adjacent to the Coyote-Alamitos Canal that is used by pedestrians. In addition, the proposed development on the Project site, including the addition of the proposed 15-tree orchard, would not present a barrier to local wildlife movement through the Project site, and would therefore not significantly impact the use of the property by wildlife as a landscape linkage between the Santa Teresa Hills to Metcalf Canyon. Lighting proposed as part of the Project, including exterior lighting and interior lighting, would be designed to meet City requirements. In addition, exterior lighting would be directed downwards, and would not include landscape or ornamental lighting.

The comment does not provide new information or substantial evidence that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-9:** The Biological Resources Assessment neglects to include the Mountain lion. As discussed above, mountain lions have been recorded in the area, may use this critical linkage, and should be included in the analysis.

**Response E-9:** This comment provides a statement that is expanded upon in Comment E-6. Please refer to Response E-6 and Response D-6 which address mountain lions and wildlife movement through the Project site.

**Comment E-10:** The Initial Study and Mitigated Negative declaration identify Impact BIO-1: "Development of the project site may result in impacts to the American badger and special-status birds including burrowing owl, white-tailed kite, loggerhead shrike, and grasshopper sparrow". Mitigation measures are limited to pre-construction surveys and avoidance measures, and implementation of construction buffers.

There is no mitigation for the impact of the Project on wildlife movement through this critical linkage.

**Response E-10:** As stated in Response A-4, the proposed Project does not alter the Coyote-Alamitos Canal or the undercrossing under Santa Teresa Boulevard. In addition, the Project site includes a 35-foot buffer area from top-of-bank of the Coyote-Alamitos Canal that covers the area between the canal and the proposed driveway. Figure 2 of the Biological Resources Assessment depicts the applicable buffer areas. The preconstruction survey required by Mitigation Measure BIO-1 is intended to reduce potential impacts to animal species residing in the Project site, of which none were observed in site surveys completed in December 2016 and June 2020. Taken together, the use of preconstruction surveys and not making any modifications to the existing Coyote-Alamitos Canal, the proposed Project would result in less-than-significant impacts to animal species within the Project site and animal species that use the Coyote-Alamitos Canal for movement. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-11:** The CEQA documents for the Project find impacts to wildlife movement less than significant with mitigation despite the fact that every study in the region, including PFW work, highlight the critical importance of the site and the Coyote Alamitos Canal as an established wildlife linkage. As described in the VHP, this location is the "most northerly and narrowest connection between Diablo Range and the Santa Cruz Mountains. It provides important linkages for a variety of mammals and invertebrates."

**Response E-11:** As stated in Response A-4, Response D-2, Response D-5, and Response E-10, the proposed Project would not affect the existing Coyote-Alamitos Canal. In addition, the proposed Project does not include modifications to the Project site outside of the proposed driveway, orchard, house and ancillary structures. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment E-12:** The proposed Project is likely to have a substantial adverse effect on American Badger (California Species of Special Concern) and mountain lion (Candidate for listing under the California Endangered Species Act). Moreover, I am certain that the Project will interfere substantially with the movement of the above species and many other native wildlife species. The Project has the potential to sever an established native resident and migratory wildlife corridors. In my opinion, the Project would result in the loss of critical wildlife habitat and connectivity for species such as American badger, mountain lions, bobcats, deer, coyote, and gray fox. It will further restrict wildlife movement in this critical location within the linkage, a linkage that is already a bottleneck and is constrained. Mountain lions and American badgers, which are sensitive to human developments and presence, exacerbate habitat fragmentation for these and other species, and threaten their persistence in the region (Wilmers et al 2013 (15), American Badger Species of Special Concern Report 2021 (16), It will also impede the completion of the linkage between the Diablo Range and the Santa Cruz Mountains across Tulare Hill towards Metcalf Canyon, thereby conflicting with the Valley Habitat Plan.

I believe that a fact-based, comprehensive Environmental Impact Report (EIR) must be prepared to provide an in-depth description of the Project site and plans for the home and the driveway in a local and regional context, and the context of cumulative impacts.

An EIR is needed to provide additional analysis and mitigation for potentially significant and unavoidable impacts. An EIR is needed to further analyze the potential direct and indirect impacts to American Badger and mountain lions, and to wildlife connectivity. Mitigation should consider:

1) compensatory mitigation for habitat loss;

2) the installation of an alternative safe road crossing for Santa Teresa Blvd. (culvert or land bridge) at the ridge that connects Santa Teresa hills with Tulare Hill, along with directional fencing to guide wildlife to the wildlife crossings

**Response E-12:** This comment provides a summary of the comment letter and suggests that the IS/MND should include mitigation that requires compensatory mitigation for habitat loss, and the installation of an alternative safe road crossing that connects Santa Teresa hills with Tulare Hill. As discussed in Response A-4, Response D-2, and Response D-5, the primary barrier to wildlife movement between open areas west of the Project site (Santa Teresa County Park) and Tulare Hill east of the Project site, is Santa Teresa Boulevard. In addition, the proposed Project would not alter the existing Coyote-Alamitos Canal or the culverted section of the canal under Santa Teresa Boulevard. The potential impacts to wildlife were based on the professional judgement of a qualified biologist following research and site surveys of the Project site. The analysis and

mitigation measures identified in the IS/MND are based on data and recorded observations.

Furthermore, per CEQA Guidelines Section 15126.4 (a)(4), mitigation measures must have a direct link to an identified impact (a nexus) and must be roughly proportional to the impact identified. The mitigation suggested in this comment for the installation of an alternative wildlife road crossing does not mitigate an identified potential impact related to habitat of a species of special concern observed or known to be located within the Project site, and is not proportional to the potential impacts to wildlife movement, considering that the culvert under Santa Teresa Boulevard is more than 1,000 feet from the location of the proposed residence, most of the Project site would be preserved as open space, and minimal lighting would be proposed to be located within the Project site. Please refer to Response D-11 regarding the potential for the proposed Project to require an EIR to address potential environmental impacts. The comment does not provide new information that would change the proposed Project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

# ATTACHMENT

## PUBLIC COMMENT LETTERS

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Comment Letter A

August 1, 2021

Dear Mr. Burton, Director, Planning, Building and Code Enforcement.

Please accept the comments regarding the Mitigated Negative Declaration document. As you can see, I, and the majority of my neighbors, disagree with the declaration. The following comments are broken down into Aesthetics and Biological Resources.

A-1

AESTHETICS— The project would not have a significant impact on this resource, therefore no mitigation is required.

Under San Jose municipal code (Ordinance 20.100.720), a conditional use permit, such as CP17-010 (aka Gschwend Residence Project), cannot be issued by the planning office if the issuing of the permit would impair the value of properties in the vicinity or peace, health, safety, morals or welfare of persons residing or working in the surrounding area. We, the property owners neighboring the proposed build, have already provided documentation, from real estate experts, to the Planning office indicating the issuance of CP17-010 would negatively impact the neighboring property values. As the initial study indicates, the proposed structure would be clearly visible from Manresa Ct. and the Laguna Seca Community Garden (see Figures 5-4 and 5-5), significantly altering the character of these community areas. Similarly, the proposed structure would be visible along Bayless Dr., again altering the character of the Avenida Espana and surrounding neighborhoods decreasing the property values. Furthermore, over 100 people (~85%) of the people residing in the vicinity of the Gschwend Residence Project are opposed to the project as it will adversely impact our community.

A-2

Furthermore, the proposed house, at 4,464 square feet, is twice the size and not of similar structure as those found in the Avenida Espana neighborhood, which typically range from 1500 to 2500 square feet. Again, this alters the character of our community.

Mitigation actions to offset these negative impacts include:

1. Reduction of the house size to community norms.
2. Planting of trees around the house to obscure the view of it from the valley below.

BIOLOGICAL RESOURCES.

**Milkweed**

The Negative Mitigation Declaration failed to mention the abundant patch of milkweed growing at the proposed build site for the house (see Figure 1). As the Planning Office is aware, milkweed is where the Monarch lays it eggs and it serves as food for the larvae (caterpillars). The Monarch Butterfly is soon to be listed as an endangered species, mostly due to the loss of the milkweed plant (due to development and weedkillers). Therefore, it is important to preserve this natural growth of milkweed to help preserve the Monarch butterfly population.

A-3

Possible mitigation actions to preserve this natural resource include:

1. Move the location of the proposed residence to prevent destruction of the milkweed and Monarch Butterfly habitat.
2. Prohibit the use of weedkillers on the property.

Comment Letter A cont.

A-3 cont

**Figure 1.** (Left) Cluster of milkweed plants located at the base of the proposed residence build site. (Right) A view of the proposed residence build site. The greenery in the gulley area is primarily milkweed. The plants in the left picture are located at the lower left corner of this green patch, by the canal.

**Unique Wildlife Corridor**

The Santa Clara Valley Habitat Agency's plan (Chapter 5), calls out this property for perseveration. This area serves as a corridor for wildlife to travel from the Santa Teresa Hills to the Diablo range. In fact, in order to preserve the wildlife, a proposed wildlife overpass is slated to be built near where the Coyote Alamitos Canal goes under Santa Teresa Avenue.

However, as shown in Figure 2 below, wildlife are already utilizing the Coyote Alamitos Canal as an underpass for Santa Teresa Blvd., preventing countless animal-vehicle collisions per year.

A-4

**Figure 2.** (Left) Black tailed buck preparing to go under Santa Teresa Blvd via the Coyote Alamitos Canal. (Right) Young black tailed deer preparing to go under Santa Teresa Blvd. via the Coyote Alamitos Canal. If you look closely, you can see the silhouette of another deer on the opposite side of Santa Teresa Blvd.

Comment Letter A cont.

The Gschwend Residence project will result in a driveway adjacent to the Coyote Alamitos Canal, destroying the wildlife underpass.

However, the Coyote Alamitos Canal serves as more than just a wildlife underpass for Santa Teresa Blvd. As the Figures 3-8 show, the canal serves as a literal wildlife highway between the East side of Santa Teresa Blvd and the Santa Teresa County Park. The canal allows the wildlife to travel unobserved and unobstructed by the surrounding human population, even in the middle of the day! As such, it is a unique San Jose Wildlife resource that deserves preservation and study as potential template for future wildlife transit corridors.

A-4 cont.


**Figure 3.** Deer heading to and from the Santa Teresa Blvd. wildlife underpass via the canal. The proposed driveway for the Gschwend Residence project would be just to the right (left picture) and just to the left (right picture).

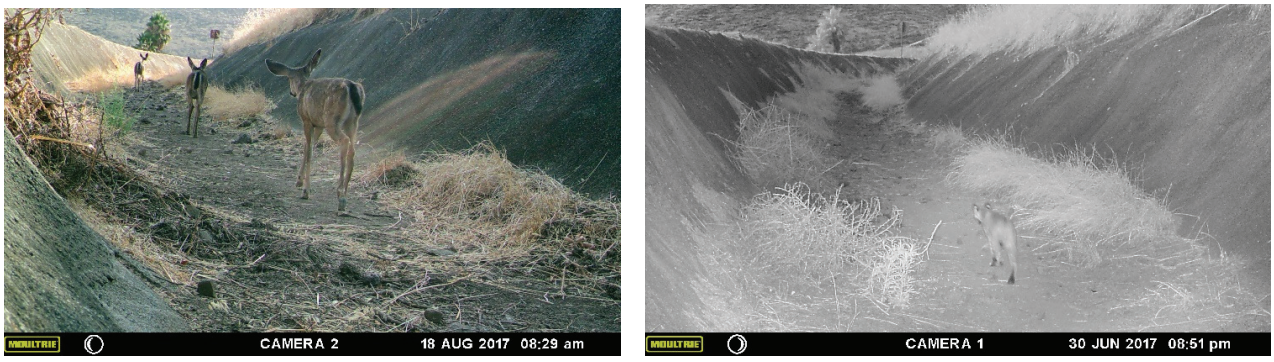


**Figure 4.** (Left) A doe and two yearlings leaving Santa Teresa County Park and heading towards the Santa Teresa Blvd. wildlife underpass. (Right) A bobcat leaving Santa Teresa County Park and heading towards the Santa Teresa Blvd. wildlife underpass.

Comment Letter A cont.


**Figure 5.** (Left) Two bucks coming down the canal. The proposed driveway would be just to the left of the canal and visible from it. (Right) Three bucks in the canal, midway between Santa Teresa County Park and the wildlife underpass.


A-4 cont.

**Figure 6**. (Left & Right) Coyotes utilizing the canal for travel.


**Figure 7.** (Left) Raccoons utilizing the canal to cross between the park and Santa Teresa Blvd. (Right) Bobcat cub leaving Santa Teresa Park via the canal.

Comment Letter A cont.


**Figure 8.** (Left) Two fawns exiting from under Santa Teresa Blvd. via the canal. (Right) One fawn exiting from under Santa Teresa Blvd. via the canal.

A4 cont.

As this document shows, the Gschwend Residence Project would have significant impact on both the surrounding neighborhoods and the wildlife. Mitigation efforts can address some of the issues. However, there are no mitigations that would advert the damage to the unique Coyote Alamitos Canal wildlife corridor (highway). The preservation of this unique wildlife corridor is of utmost concern.

Sincerely,

Andrew Mattioda, Ph.D.
7589 Manresa Ct.
San Jose, CA 95139

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Comment Letter B

# County of Santa Clara

**Parks and Recreation Department**

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

August 5, 2021

City of San Jose
Department of Planning, Building and Code Enforcement
Attn: Thai-Chau Le
200 E Santa Clara St
San Jose, CA 95113

SUBJECT: Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project

Dear Thai-Chau Le,

The Santa Clara County Parks and Recreation Department (County Parks Department) has received the Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project (Project).

The County Parks Department functions to provide a sustainable system of diverse regional parks, trails, and open spaces that connects people with the natural environment and supports healthy lifestyles while balancing recreation opportunities with natural, cultural, historic, and scenic resource protection. The County Parks Department is also charged with the planning and implementation of the Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan), an element of the Parks and Recreation Section of the County General Plan (adopted by the Board of Supervisors on November 14, 1995). The Countywide Trails Plan indicates the following trail route is located adjacent to the Project site:

> *Juan Bautista de Anza National Historic Trail (R1-A):* an on-street bicycle route extending from the San Benito County line traveling north along the west side of Santa Clara Valley to the San Mateo County line.

B-1

The completed segment of the Juan Bautista de Anza National Historic Trail (Anza Trail) adjacent to the Project site is located within the Santa Teresa Boulevard road right-of-way. Please label this trail route on any future Project documents. Also, it is imperative that the proposed development remain within property boundaries and out of the Santa Teresa Boulevard road right-of-way in order to minimize any impacts to the Anza Trail.

The two parcels located on the Project site (APNs 708-21-004, 708-21-005) share a property boundary with Santa Teresa County Park. The required setbacks and limitations to any proposed development set by the City of San Jose's Department of Planning, Building and Code Enforcement should be followed and enforced to minimize any impacts to the adjacent Santa Teresa County Park, including, but not limited to restricting personal access to Santa Teresa County Park.

**Comment Letter B cont.**

In addition to the Project site being adjacent to the Anza Trail and Santa Teresa County Park, there is a segment of Santa Clara Valley Water District's Coyote-Alamitos Canal which traverses the Project site via an easement. This canal continues into Santa Teresa County Park and is closed to the public. The County Parks Department recommends that the proposed development minimize any impacts to the Coyote-Alamitos Canal on site and restrict any access to the continued segment within Santa Teresa County Park.

**B-1 cont.**

Thank you for the opportunity for County Parks Department to provide comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project. If you have any questions, please email me at kelly.gibson@prk.sccgov.org

Sincerely,

Kelly Gibson

Kelly Gibson
Assistant Planner

**Comment Letter C**

**From:** Colleen Haggerty <CHaggerty@valleywater.org>
**Sent:** Thursday, August 5, 2021 3:21:56 PM
**To:** Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>
**Subject:** MND for City File CP71-010 Gschwend Residence Project

Hi Thai- Chau,
Valley Water has reviewed the MND for City File CP71-010 Gschwend Residence Project received on July 16, 2021. Based on our review we have the following comments:

1. The list of permits needed for the project on pages 2-1 and 3-5 should be modified to include the need for a Valley Water permit for the construction of the new well to service the site as per Valley Water Ordinance 90-1. **C-1**
2. Pages 5-93 and 5-99 incorrectly note the site is located on FEMA Flood Panels 06085C0263 and 264. The site is located on panel 06085C0409H and page 5-93 correctly references this panel. **C-2**
3. Based on Figure 3-3 it appears that work at the site will be located outside of Valley Water's easement for the Coyote-Alamitos Canal; however, the grading envelope shown is very close to the easement. If any work, including grading is proposed to occur on Valley Water's easement plans showing the work need to be submitted to Valley Water for reviewing and permit issuance. **C-3**

If you have any questions please let me know.

Colleen Haggerty, PE
Associate Civil Engineer
Community Projects Review Unit
Santa Clara Valley Water District
5750 Almaden Expressway, San Jose, CA 95118
(408) 630-2322 direct | (408)265-2600 main | chaggerty@valleywater.org | www.valleywater.org
* Mailing address for FedEx, UPS, Golden State, *etc.*
Winfield Warehouse-5905 Winfield Blvd. San Jose, CA 95123-2428

**Comment Letter B cont.**

In addition to the Project site being adjacent to the Anza Trail and Santa Teresa County Park, there is a segment of Santa Clara Valley Water District's Coyote-Alamitos Canal which traverses the Project site via an easement. This canal continues into Santa Teresa County Park and is closed to the public. The County Parks Department recommends that the proposed development minimize any impacts to the Coyote-Alamitos Canal on site and restrict any access to the continued segment within Santa Teresa County Park.

**B-1 cont.**

Thank you for the opportunity for County Parks Department to provide comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Gschwend Residence Project. If you have any questions, please email me at kelly.gibson@prk.sccgov.org

Sincerely,

Kelly Gibson

Kelly Gibson
Assistant Planner

**Comment Letter D**

August 5, 2021

Thai-Chau Le
Environmental Project Manager
thai-chau.le@sanjoseca.gov

Re: Gschwend Project Mitigated Negative Declaration: CP17-010/ER20-205

Dear Ms. Le,

The undersigned local environmental organizations have reviewed the July 12, 2021 Gschwend Residence Project (Project) mitigated negative declaration (MND) and submit the following comments for your consideration. We urge the City of San Jose (City) to deny the conditional use permit (CP17-010/ER20-205) for the Project which authorizes the construction of a 4,464-square-foot, two story single-family home, a 1,441-square-foot garage, retaining wall, well, septic field, and 0.27-mile driveway on a 17-acre property on the Santa Teresa ridge. The Project, as currently proposed, will inflict devastating impacts to biological resources, obstruct wildlife movement, and impair critical butterfly habitat.

The Santa Clara Valley Audubon Society's (SCVAS) mission is to promote the enjoyment, understanding, and protection of birds and other wildlife habitat by engaging people of all ages in birding, education, and conservation. The Sierra Club Loma Prieta Chapter's members and supporters work to protect and restore the quality of the natural and human environment. The California Native Plant Society Santa Clara Valley Chapter's mission is to protect, promote, and enhance native plant habitat through advocacy, education, restoration, and the application of scientific knowledge. Green Foothills' mission is to protect the open spaces, farmlands, and natural resources of San Mateo and Santa Clara Counties for the benefit of all through advocacy, education, and grassroots action. Together, our organizations represent thousands of Santa Clara County residents who care about the environment and wildlife in our valley and beyond.

**D-1**

The Project is located at the southern edge of the City, outside San Jose's Urban Growth Boundary (Green line), on a section of the Santa Teresa ridge that connects the Santa Cruz Range, Santa Teresa County Park, Tulare Hill, and the Diablo Range. The zoning – Agriculture - may accommodate a residence under certain circumstances, but the site is not suitable for a residential property. The property is delineated by the Coyote-Alamitos Canal - a Santa Clara Valley Water District easement which is classified as a Habitat Plan Category 2 Stream - to the north and is bordered to the south by PG&E property. Coyote Valley and Laguna Seca are located south of the ridge. The San Jose General Plan, Envision San Jose 2040, designates the site as "Open Hillside". A 0.26-mile-long driveway / access road to the home is planned, in part, within Santa Clara County's (County) jurisdiction.

D-1 cont.

Our organizations submitted comments in 2018 on a previous iteration of this Project (See 2018 Comment Letter, attached as Attachment 1.) Environmental conditions in the Project's vicinity have worsened since 2018, with a prolonged drought increasing fire danger and further threatening wildlife populations. The serious concerns we raised in the 2018 letter regarding the Project's potential impact to wildlife populations are even more concerning today. Since the Project as described in the IS/MND has not changed in any substantive way which would reduce the impacts to biological resources, the concerns raised in the 2018 comment letter remain unaddressed, are still valid, and are relevant to the City's review of the current Project.

We remain concerned that the current Project will significantly affect the environment in the following ways:

1. Section 3.2 PROPOSED PROJECT

The Project description is inadequate, as presented, because it omits certain elements that may impact the environment, such as a clear description of the driveway, lighting, gates, and fences, as described in greater details below.

- The MND lacks a clear depiction of the design for the driveway including new pavement, roadway expansion, retention walls, bulb-outs, graded areas, areas of permanent and temporary impact etc. is needed. Please note that, as provided, Figure 3-3 is incomprehensible:
    - The legend of Figure 3-3 does not include many of the elements that are shown in the figure. Furthermore, the figure is in black and white, small, and includes unspecified abbreviations.

D-2

- Figure 3-3 as provided cannot be deciphered by the layperson and thus, defeats the purpose of CEQA to inform the public with an adequate project description.
- Figure 2 of the Biological Resources Assessment shows a "Permanent Development Area" (Permanent Impacts plus 50' buffer) delineation that encroaches into the 35-foot required setback of the Coyote-Alamitos Canal and a grading area that encroaches into the 35-foot setback not far from the culvert before it goes under Santa Teresa Blvd. Details of any encroachment or project elements (temporary or permanent) should be fully described in the Project Description section.

- The MND does not describe any required or voluntary new lighting, especially where light may trespass into or may be visible from the Coyote-Alamitos canal. A baseline photometric study of the site should be conducted.
- The MND does not describe any gates, fences, walls, and other barriers to animal movement on the property should be provided and, as needed, mitigated.
- If lighting, fencing and other barriers to animal movement are not included, a Conditional Use Permit must include conditions that prohibits additions of such elements in the future.

**D-2 cont.**

2. Sections 2.8 Project-Related Approvals, Agreements, and Permits and 3-3 3.3 APPROVALS/PERMITS

The Habitat Agency should be added to Project Related Approvals, Agreements, and Permits. In addition, consultation with Valley Water and with State and Federal wildlife agencies is warranted.

**D-3**

3. Section 3.2.3 Utilities and Infrastructure

We are concerned the Project may significantly affect the hydrological balance of natural springs and seeps on Tulare Hill and Santa Teresa County Park, as well as on Fisher Creek and Laguna Seca. These features provide critical water resources for plant life and wildlife in the region. A hydrological analysis is needed to assess the potential impact of the new well and of pumping water for this Project, including any new landscaping or farming operations on the property.

**D-4**

The interactions of groundwater with surface water and the effects of pumping wells are well-documented:

- In https://www.e-education.psu.edu/earth111/node/929 we find,
  "Not only does the cone of depression draw water to the well, but if the pumping rate is large enough or pumping is sustained for a long time, it can reverse the natural hydraulic gradient hundreds of meters to several tens of km away from the well(s). In some cases, this may result in interception of groundwater that would normally feed a stream or river as baseflow, and even in the interception of streamflow itself by inducing infiltration in the stream bed or banks (Figure 35B). In other cases, large cones of depression (up to a few miles wide!) associated with industrial or municipal well fields may reverse regional topographically-driven hydraulic gradients and lead to problems like saltwater intrusion (Figure 35B)."

- Chapter 12, Springs and Wells, of 'Part 650 Engineering Field Handbook National Engineering Handbook' (USDA Natural Resources Conservation Service" on pdf pg. 27) Contains a list of considerations that should be undertaken before building a well. Has the project taken these into consideration? https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=32186.wba

- Sustained groundwater pumping has negative effects that should be evaluated. The study https://www.usgs.gov/special-topic/water-science-school/science/groundwater-decline-and-depletion?qt-science_center_objects=0#qt-science_center_objects states,

  "There is more of an interaction between the water in lakes and rivers and groundwater than most people think. Some, and often a great deal, of the water flowing in rivers comes from seepage of groundwater into the streambed. **Groundwater contributes to streams** in most physiographic and climatic settings. The proportion of stream water that comes from groundwater inflow varies according to a region's geography, geology, and climate.

  Groundwater pumping can alter how water moves between an aquifer and a stream, lake, or wetland by either intercepting **groundwater flow** that discharges into the surface-water body under natural conditions, or by increasing the rate of water movement from the surface-water body into an aquifer. A related effect of

**D-4 cont.**

groundwater pumping is the lowering of groundwater levels below the depth that streamside or wetland vegetation needs to survive. The overall effect is a loss of riparian vegetation and wildlife habitat."

Additional evidence for the linkage between ground and surface water can be found here:

https://www.usgs.gov/special-topic/water-science-school/science/rivers-contain-groundwater?qt-science_center_objects=0#qt-science_center_objects

- More details about how streams interact with groundwater can be found in the study 'Effects of ground-water development on ground-water flow to and from surface-water bodies' https://pubs.usgs.gov/circ/circ1186/html/gw_effect.htm, showing that

"A pumping well can change the quantity and direction of flow between an aquifer and stream in response to different rates of pumping. Figure 13 of this document illustrates a simple case in which equilibrium is attained for a hypothetical stream-aquifer system and a single pumping well. The adjustments to pumping of an actual hydrologic system may take place over many years, depending upon the physical characteristics of the aquifer, degree of hydraulic connection between the stream and aquifer, and locations and pumping history of wells. Reductions of streamflow as a result of ground-water pumping are likely to be of greatest concern during periods of low flow, particularly when the reliability of surface-water supplies is threatened during droughts.

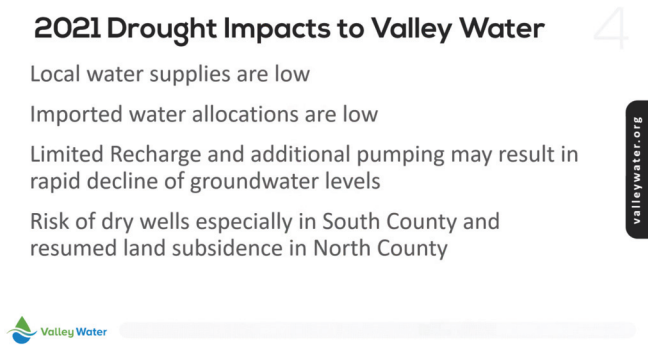
At the start of pumping, 100 percent of the water supplied to a well comes from ground-water storage. Over time, the dominant source of water to a well, particularly wells that are completed in an unconfined aquifer, commonly changes from ground-water storage to surface water. The surface-water source for purposes of discussion here is a stream, but it may be another surface-water body such as a lake or wetland. The source of water to a well from a stream can be either decreased discharge to the stream or increased recharge from the stream to the ground-water system. The streamflow reduction in either case is referred to as streamflow capture.

In the long term, the cumulative stream- flow capture for many ground-water systems can approach the quantity of water pumped from the ground-water system. This is illustrated in Figure 14, which shows the time-varying percentage

**D-4 cont.**

of ground-water pumpage derived from ground-water storage and the percentage derived from streamflow capture for the hypothetical stream-aquifer system shown in Figure 13. The time for the change from the dominance of withdrawal from ground-water storage to the dominance of streamflow capture can range from weeks to years to decades or longer."

Valley Water has recently provided a presentation that predicts potential decline in groundwater in South County and land subsidence in North Councty in 2021.




D-4 cont.

A hydrological analysis is needed to determine if the new well could reduce seasonal or year-round flows and water availability in local springs and seeps at Santa Teresa County Park and Tulare Hill, as well as Fisher Creek and Laguna Seca. The analysis should include successive dry years.

4. Impacts and mitigation measures:

4.1. Wildlife movement and riparian buffers

Evidence negates the MND's conclusion that impacts to wildlife are significant but are mitigated to below a level of significance. First, the Coyote-Alamitos Canal's importance as a wildlife corridor, especially the culvert under Santa Teresa Blvd., has been established in multiple studies, in our 2018 comment letter and in letters from the local community. The IS/MND acknowledges wildlife movement in the Coyote-Alamitos Canal, but underestimates the impacts of construction activities and permanent use and maintenance of the driveway and associated retaining walls, lighting and traffic will have on animal movement, and the potential for species to stop using the culvert and the canal in the vicinity of the driveway.

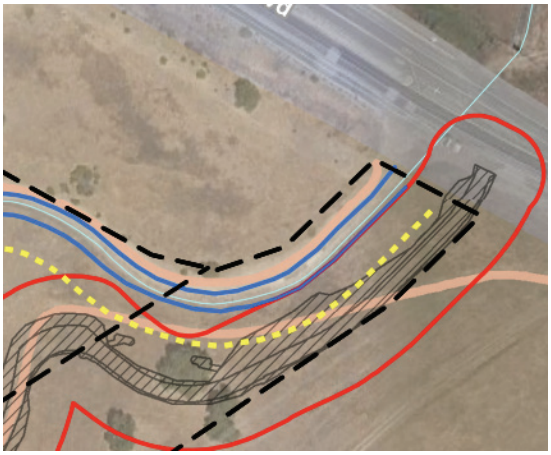
D-5

- The project encompasses the Coyote-Alamitos Canal. As such, the requirement for a minimum permanent setback of 35-ft should be mentioned in Section 2.7 HABITAT PLAN DESIGNATION.

- Figure 2 of the Biological Resources Assessment shows permanent impacts encroaching on the 35-ft setback, especially in the area closer to the intersection with Santa Teresa Blvd. and to the culvert under Santa Teresa Blvd. This is the bottleneck where wildlife are at greatest risk, and where preserving their movement and migration are in greatest need of protection. In this bottleneck, the Project's permanent impacts consume the entire setback on the south side of the canal.

  Permanent impacts within the required 35-ft setback conflict with the Valley Habitat Plan, and should be considered significant and unavoidable impacts. This encroachment nullifies the finding that the project does not "Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan."

D-5 cont.



Partial screenshot taken from Figure 2 of the Biological Resources Assessment:

- Green line: top-of-the-bank
- Yellow line: 35-ft setback
- Red line: Permanent impact

The Biological Resources Assessment finds a significant yet mitigable impact related to the Project's potential to "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife

corridors, or impede the use of native wildlife nursery sites." We agree that the impacts are indeed, significant, and because the mitigation measures are limited to reducing impacts to nesting birds, and not to maintaining the viability of this area as a wildlife corridor for animals moving through the landscape, the impacts to wildlife are not properly mitigated.

- The IS suggests that animals can move throughout the landscape, are not limited to the canal, and thus the impacts to overall wildlife movement are not significant. This evaluation is not based on observations of wildlife movement through the landscape, and it is particularly incorrect at the bottleneck where the property narrows and the driveway approaches Santa Teresa Blvd. We believe that significant and unmitigable impacts remain.

Studies show that human activity decreases habitat quality and deters many wildlife species from using the landscape through many processes:

- https://experts.illinois.edu/en/publications/human-footprint-and-human-presence-have-non-equivalent-effects-on;
- https://onlinelibrary.wiley.com/doi/full/10.1111/ecog.02801,

**D-5 cont.**

Light pollution, from just a single light to street lighting, disturbs migratory movement and can increase roadkill (https://cescos.fau.edu/observatory/lightpol-Mammals.html). Noise can also affect the way animals use habitat (https://www.sciencemag.org/news/2020/08/pandemic-stilled-human-activity-what-did-anthropause-mean-wildlife).

The property encompasses Linkage #8 of the Santa Clara Valley Habitat Plan, Santa Teresa Hills to Metcalf Canyon. Photographic evidence (some are included in Mr. Mattioda's letter, see Attachment 2) shows a large number of local mammal species using the culvert under Santa Teresa Blvd. and traveling along the Coyote-Alamitos Canal. The section of the canal closest to Santa Teresa Blvd. is critical to wildlife movement through Linkage #8. Yet this is the bottleneck where permanent impacts from the project intrude into the buffer - all the way to top-of-the-bank. The configuration of the property is not amenable to expanding the setback at this bottleneck and thus, the impact to wildlife movement is immitigable. We expect human presence, vehicles, vehicle lights at night, potential new lighting fixtures, and noise to interfere substantially with the movement of wildlife species and with this well-established native wildlife corridor.

The animals that are sensitive to human impacts (badger, for example) would suffer the greatest deterrence from using the culvert and the canal, and would most likely attempt to cross Santa Teresa Blvd. elsewhere, at the risk of being hit by vehicles. These species are also the ones in most need of gene flow and the underpass is one of our best opportunities to prevent the isolation of small populations and to maintain their genetic diversity.

This is one of the reasons why buffers, or setbacks, are required by the Habitat Agency. The setbacks serve to shield riparian corridors (which are usually used as wildlife movement corridors) from permanent impacts, including requirements such as vegetation management.

- The County Fire Department requirement of 30-50-ft vegetation clearance along the road precludes any potential mitigation to shield wildlife movement at the culvert and along the canal from the impacts of the new road (especially near the Santa Teresa Blvd. culvert). For example, screening vegetation and trees could not be planted along the canal to protect wildlife movement there from vehicle lights, noise, traffic, and other activity-related disturbance. The buffer is also meant to protect the canal from pollutants, including herbicides, tire residues, oils, and other road related pollutants.
- Since ongoing vegetation management within the 35-ft setback is required by the Fire Department, the impacts of the driveway along the Coyote-Alamitos Canal on wildlife movement in the canal cannot be buffered. The impacts of the driveway to wildlife movement through the culvert and along the canal must be considered permanent and unavoidable.

D-5 cont.

The proposed mitigations (MMBIO-2 and MM BIO-3) are limited to two measures that mitigate impacts to nesting birds. Thus, we expect significant, unavoidable impacts to wildlife movement.

4.2 Listed species

Mountain Lion

The mountain lion has recently been listed as a state candidate for listing under the threatened and endangered species list. The Central Coast North population of mountain lions (page 9 of the petition) https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline) contains the project area. Connectivity is crucial for expanding genetic diversity in this population, and a

D-6

great amount of effort is invested in restoring movement corridors for this species. The ability of the species to traverse roadways safely, as through culverts, (including Santa Teresa Blvd.) is critical to the persistence of mountain lions in California.

A petition to List the Southern California/Central Coast Evolutionarily Significant Unit (ESU) of Mountain Lions as Threatened under the California Endangered Species Act
https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171208&inline
provides scientific information that identifies large culverts as key conservation measures for mountain lions. Studies of nocturnal patterns of movement suggest mountain lions tend to avoid areas with human disturbance including residential developments and two-lane paved roads.

As with other species, the Habitat Plan Linkage #8 is a critical movement corridor for the mountain lion between the Santa Cruz Mountains and the San Jose hillside. The culvert under Santa Teresa Blvd. is large enough to allow large mammals safe crossings (mature bucks have been observed to cross using this culvert).

- The IS should study and evaluate the importance of the Coyote-Alamitos canal and the culvert under Santa Teresa Blvd. for mountain lion movement.
- Since the mountain lion is not a covered species by the Valley Habitat Plan, consultation and permits from wildlife agencies are needed.

**D-6 cont.**

Badger

The only mitigation proposed for impacts to the badger is pre-construction surveys. Badgers are a very reclusive animal, shy of people and traffic. They are known to use culverts for safe passage. The new driveway and related activity plus the degradation of the area around the culvert are likely to cause badgers to abandon the area. This can cause fragmentation of their habitat, with population-wide adverse impacts.

**D-7**

Monarch Butterfly

In December 2020, the U.S. Fish and Wildlife Service found that listing the monarch butterfly was warranted. The monarch is now a candidate under the Endangered Species Act, slated to be listed in 2024 (https://www.fws.gov/savethemonarch/SSA.html).
In California, monarchs are included on the California Department of Fish and Wildlife's (CDFW) Terrestrial and Vernal Pool Invertebrates of Conservation Priority list

**D-8**

(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149499&inline) and identified as a Species of Greatest Conservation Need in California's State Wildlife Action Plan (https://wildlife.ca.gov/SWAP).

The U.S. Fish and Wildlife Service has recently developed, in consultation with the California Department of Fish and Wildlife and the Xerces Society, the attached conservation recommendations for the western monarch butterfly (see Attachment 5). The western population of the monarch butterfly is particularly vulnerable with less than 2,000 individuals observed at overwintering sites on the California Coast last fall (recent Xerces Society Western Count Data:
https://xerces.org/blog/fifth-annual-western-monarch-new-years-count-confirms-continued-decline-in-western-monarch.

The project site is located in Priority 1 Breeding and Migratory Habitat. Monarch butterflies breed and migrate across multiple generations each year throughout the western U.S. The early breeding zone is an estimated area in California where monarchs are likely to breed and/or lay their eggs on milkweed after departing the overwintering groves in mid-winter to early spring each year (See Figure 1, Priority Restoration Zones in California map, above). Early emerging milkweed species are likely a limiting factor on the landscape in the early breeding zone and may be associated with the severe population decline of western monarchs, and these plants are essential to successfully create the next generation of migratory butterflies.
For Priority 1 zone, the U.S. Fish and Wildlife Service recommends:

> Enhance and maintain habitat in the Priority 1 early breeding zone of California, (Figure 1, above), by identifying and protecting existing habitat, and planting native, insecticide free early-emerging milkweed species (e.g., Asclepias vestita, A. californica, A. eriocarpa, A. cordifolia, A. erosa), and native, insecticide-free flowering plants that are available to monarchs from January-April, as appropriate for the project location (Nectar Planting Lists; Milkweed Seed Finder).

**D-8 cont.**

U.S. Fish and Wildlife Services Western Monarch Butterfly Conservation Recommendations, April 29, 2021:

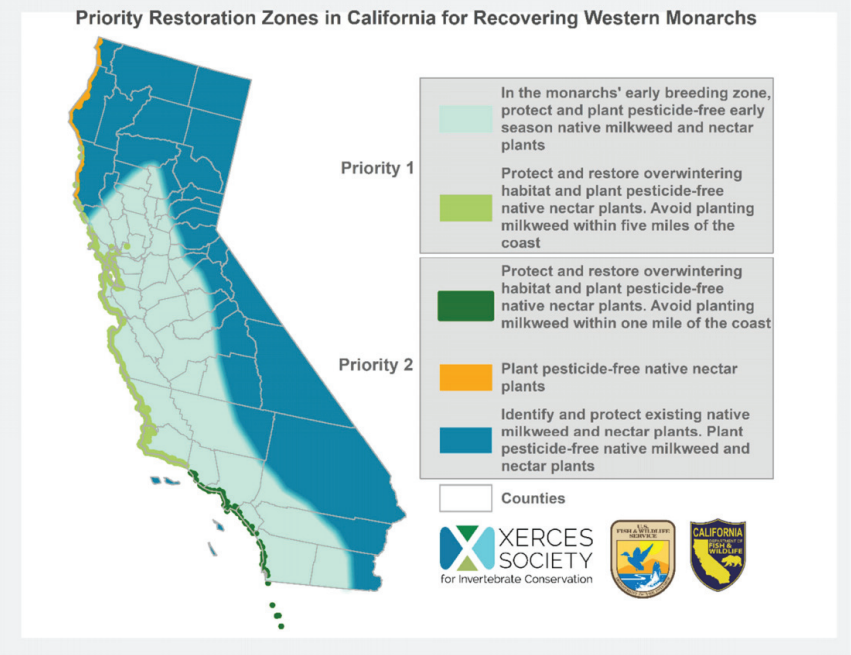



**Figure 1.** Priority Monarch Habitat Restoration Areas in California.

D-8 cont.

The Project and its immediate vicinity contain patches of narrowleaf milkweed (Asclepias fascicularis) (evidence submitted by Mr. Andrew Mattioda in a letter to San Jose Planning Director on on August 1st, and personal observations in and along the canal by Mr. Dave Poeschel, Dr. Merav Vonshak, and Dr. Shani Kleinhaus). Milkweed is an obligatory host plant for monarch butterflies, and the Narrowleaf milkweed is probably the single most important host plant for monarch butterflies in California (https://calscape.org/Asclepias-fascicularis-()). It is important to preserve areas where this species is abundant and likely used by monarch butterflies during migration.

The surveys conducted by LSA (December 30, 2016 and June 5, 2020) missed the milkweed on the site and its immediate vicinity. California native milkweeds have an unusually long winter dormancy and may not send up new shoots until the beginning of May (*California Native Plants for the Garden*, Bornstein, Fross, O'Brien (2007) pg. 62). It is possible the plants were not visible to an untrained eye on December 30, 2016, but the survey of June 5, 2020 should have identified the narrowleaf milkweed, even if it was not yet in flower. Missing such an important and abundant species during the survey puts in question the entire biological survey of 2020.

This is especially surprising given that in our 2018 letter, we highlighted the abundance of narrowleaf milkweed on the property.

- A new survey should be performed to identify plant species, at the appropriate time of year, including especially milkweed.
- The IS should evaluate the importance of milkweed on the property to monarch migration.
- Since the monarch butterfly is not a covered species by the Valley Habitat Plan, consultation and permits from wildlife agencies are required.

The designated home site on the property is positioned directly on a patch of milkweed - the host plant for monarch butterflies (as shown in Mr. Mattioda's letter). The elimination of this patch has a significant impact in this Critical Habitat Area.

- The IS and MND do not mention monarch butterflies. Due to the ubiquity of narrowleaf milkweed at the project site, analysis is required by CEQA and by both the San Jose and the County General Plans.
- Impacts to the monarch butterfly should be evaluated in context of the disastrous decline in monarch butterfly population in California and the new U.S. Fish and Wildlife Service recommendations which highlight the importance of critical migratory stepping stones and linkages, such as the Project site.

D-8 cont.

4.3 The San Jose and Santa Clara County General Plans

In our 2018 letter, we discussed some of the goals and policies of the two general plans. In addition,

The San Jose General Plan allows single residence homes on Open Hillside, but directs:

> "... the Open Hillside designation limits uses within this area to those which can be conducted with very little physical impact on the land, which do not require urban facilities or services, and which will have minimal visibility from the Valley floor. **Specifically, new development is limited to projects that will not result in substantial direct or indirect environmental impacts upon sensitive habitat areas, special status species,** geologic hazard avoidance or the visual environment." [Emphasis added]

D-9

The San Jose General Plan continues:

> **"The permissible implementation of these uses,** consistent with other Envision General Plan policies, **avoids areas of valuable habitat,** areas of geologic sensitivity (landsliding, soil creep, earthquake faults), and areas important for watershed and percolation. Allowed development within the Open Hillsides, including new structures, roadways, landscaping or agricultural activity, minimizes grading and ensures substantial open space and wildlife corridor protections. **Consistent with Santa Clara County General Plan policies, as part of the development of Open Hillside lands, up to 90% of a site may be required to be preserved permanently as open space or conservation easement precluding future development. ...."** [Emphasis added]
>
> The IS and MND provide no mitigation for impacts to wildlife movement, and offer inadequate mitigation for impacts to listed species. The documents offer no assurance that future additional development will not occur. The IS/MND provides no permanent preservation or conservation easements to preclude future development. The Project should, at a minimum, provide mitigation by donating all the undeveloped land on the property to conservation by the Habitat Agency and the Open Space Authority.

**D-9 cont.**

Artificial Light At Night (ALAN) lighting is widely recognized as a significant impediment to wildlife movement through the landscape. The impacts of lighting are pervasive and affect biological function and behavior in almost all living things. The following studies show how ALAN harms all ecosystems and ecological networks:

- The book "Ecological Light Pollution" shows how light pollution affects foraging, reproduction, communication, and other critical behaviors in wildlife. ALAN also disturbs interspecific relations that have evolved dependent upon light and dark cycles, which then disrupts ecosystem integrity (https://esajournals.onlinelibrary.wiley.com/doi/full/10.1890/1540-9295%282004%2900 2%5B0191%3AELP%5D2.0.CO%3B2)
- ALAN affects ecology relations between flowers, pollinators, and predators (https://www.nature.com/articles/s41467-021-24394-0 )
- A review that draws together wide-ranging studies performed over the last decades that catalogue the effects of artificial-light-at-night (ALAN) upon living species and their environment. Numerous examples are given of how widespread exposure to ALAN is perturbing many aspects of plant and animal behaviour and survival: foraging, orientation, migration, seasonal reproduction, colonization and more. We examine the potential problems at the level of individual species and populations and extend the debate to the consequences for ecosystems.

**D-10**

https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full

- Isolated (rural) and mobile (e.g., vehicle headlight) sources of ALAN may have both very widespread and important biological influences. https://academic.oup.com/icb/advance-article/doi/10.1093/icb/icab145/6309306
- Cold, harsh white light with high Correlated Color Temperature (CCT) is a main driver for species disturbance. The International Dark Sky Association released new outdoor lighting guidelines this year, outlining that outdoor lighting fixtures should have a CCT of no more than 2200K (common industry now has a low temperature of 2700K) in order to protect wildlife (https://www.darksky.org/values-centered-lighting-resolution/?eType=EmailBlastContent&eId=e18a9f9f-e20c-469d-9cea-fc43510d1c14).
- A United Nations report highlights the many biological and ecological impacts of ALAN, and outlines guidelines to help preserve ecosystems, species and our night sky (https://www.iau.org/static/publications/dqskies-book-29-12-20.pdf).

**D-10 cont.**

These studies show that new light sources can impose adverse impacts on the biological resources.

- The IS should conduct a baseline photometric study at the project site.
- The IS should provide a lighting plan for the entire site and discuss any new lighting in detail, including a discussion of Correlated Color Temperature (CCT).
    - Light trespass into the canal and the 35-ft setback should be avoided, or recognized as a significant unavoidable impact.
    - Will new lighting be installed at the driveway intersection with Santa Teresa Blvd?

**Comment Letter D cont.**



The photographs below were taken on Santa Teresa Blvd. at the entrance to the Project site. (Photographs taken by Gregory Peck on August 4th at 4:15AM without camera correction for low light. Thus, the photos represent what people, and animals see at this time )

A. Santa Teresa Blvd. entrance to Project site

**D-10 cont.**

B. Santa Teresa Blvd. looking towards Tulare Hill

C. Looking from the project site towards San Jose

D. Looking from the project site towards Morgan Hill

D-10 cont.

The photographs show how dark the site is at this time, and why a photometric study is needed to evaluate any new lighting impacts to wildlife movement.

5. In a letter dated October 27, 2017 (see Attachment 3, PRA-1), San Jose planner Rina Shah explains the myriad reasons why City Staff planned to recommend to the Planning

D-11

Commission early denial of this project. Even with some changes to the project, the City's concerns with impacts to biological resources remain valid and significant.

6. We attended a public meeting in 2017 that attracted dozens of participants and over 100 comments (see Attachments 3 and 4, PRA-1 and PRA-2). We ask for additional public outreach and a new public meeting to reveal the project to neighbors and stakeholders.

D-11 cont.

We thank you for the opportunity to comment on this Mitigated Negative Declaration. We ask for community meetings and for a full EIR to be prepared for this Project. We believe we can make a fair argument, based on substantial evidence and in light of the whole record, that the Project as a whole would have significant, unavoidable impact to the environment.

Shani Kleinhaus, Environmental Advocate
Santa Clara Valley Audubon Society

Dave Poeschel, Open Space Committee Chair
Sierra Club Loma Prieta Chapter

Linda Ruthruff, Conservation Chair
California Native Plant Society, Santa Clara Valley Chapter

Alice Kaufman, Legislative Advocacy Director
Green Foothills

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Tanya Diamond, Co-Principal & Wildlife Ecologist,
MS in Conservation Biology and Ecology.
19130 Laurel Drive, Los Gatos, CA 95033.
P (408) 891-9833.

Expert Opinion re: GSCHWEND RESIDENCE PROJECT, FILE NOS: CP17-010/ER20-205

Date: October 7, 2021
To: Thai-Chau Le, Planner
City of San Jose

Dear Thai-Chau Le,

I am a wildlife biologist and Founder and Co-Principal at Pathways for Wildlife (PFW). PFW has been commissioned by the Santa Clara Valley Audubon Society to review and evaluate the potential impacts to biological resources and wildlife connectivity from the proposed Gschwend Residential Project (Project). I have been conducting wildlife connectivity studies in Coyote Valley and its vicinity since 2008. My Master's thesis at San Jose State University, titled 'Using GIS and Roadkill Data to Evaluate Habitat Connectivity Models for North American Badgers' (2009 (1)), included delineating habitat requirements and designing wildlife linkages for the American Badger in the Coyote Valley. In 2010, I formed PFW where, in addition to conducting surveys and monitoring habitat use, wildlife linkages, and safe road crossings, I conduct workshops for conservation organizations such as land trusts, citizen science groups, and colleges with particular emphasis on identifying suitable road crossing locations and habitat permeability for wildlife.

PFW is a consulting firm which specializes in identifying, monitoring and protecting wildlife linkages and implementing wildlife connectivity enhancements. Scientific research confirms that safeguarding wildlife movement for access to needed resources (food, water, etc.), dispersal and colonization, gene flow, seasonal migration, and population movement is critical for species' survival, especially when faced with a changing climate. It is widely recognized that by restricting animal movement, new development, roads and other barriers fragment wildlife habitat and threatens the long-term existence of wildlife populations. Preserving existing blocks of contiguous habitat and to maintain connectivity is the best solution to maintaining species' viability.

Since 2010, PFW has monitored wildlife movement, landscape permeability, connectivity and roadkill incidents in Santa Clara, Santa Cruz, Monterey, and San Benito counties. We regularly work with Caltrans, Midpeninsula Regional Open Space District, Peninsula Open Space Trust, the Land Trust of Santa Cruz County and other groups to identify important linkages wildlife utilize in their habitats that cross linear infrastructure barriers. Using data from wildlife cameras, telemetry data, and roadkill surveys, we are able to identify suitable locations to enhance or install safe wildlife crossing structures for wildlife, including mountain lions. Some of our important

E-1

Comment Letter E

engagements include wildlife connectivity projects for highways 17, 152 101, and 280 and roads in South San Jose and Coyote Valley.

PFW is currently engaged with the Coyote Valley Road Ecology Study, funded by the CA Department of Fish and Wildlife, whose purpose is to identify vital locations where wildlife travel between the newly protected properties in Coyote Valley, the Santa Cruz mountains (and Santa Teresa Ridge) to the west and Diablo Range to the east, and to develop wildlife connectivity enhancement recommendations.

I have reviewed the Initial Study, Appendix A Biological Resources Assessment (BRA) and the Mitigated Negative Declaration for the proposed Gschwend Residence Project which concludes that "*Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The Project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.*"

E-1 cont.

In my opinion, the proposed Project has the potential to irreversibly damage a critical wildlife linkage that has region-wide importance for the conservation of biodiversity (Conservation Lands Network Linkage, Valley Habitat Plan Linkage #8). I believe that an environmental impact report (EIR) is needed to fully assess and mitigate the likely significant and unavoidable impacts the Project would have on wildlife connectivity for the American Badger (California Species of Special Concern), Mountain Lion (candidate for listing under the California Endangered Species Act) and other wildlife species.

**The Project site is within a Critical Wildlife Linkage**

The Conservation Lands Network identifies linkage between the Santa Cruz mountains and the Diablo Range as critical to the viability of wildlife populations in the Bay Area (2). Linkages that allow wildlife movement across the landscape are essential to sustain wildlife populations. In 2011, the Conservation Lands Network released its first report (CLN 1.0). The report concluded that "looking ahead, the broader land and resource conservation communities must focus on linkage protection while the linkages still exist". The latest report (2019) of the Bay Area Critical Linkages study (3) shows that connected blocks of habitat are increasingly important in light of climate change, providing potential for refugia and migration across latitudinal and elevational gradients.

E-2

The proposed Project location disrupts a critical connection within the Bay Area Critical Linkage Design for the Santa Cruz Mountains to Diablo Range linkage (Figure 1, see also Habitat Connectivity map and Critical Linkage map (4)). This area is a critical thoroughfare area for wildlife movement between Santa Teresa County Park and Tulare Hill, and a critical connection

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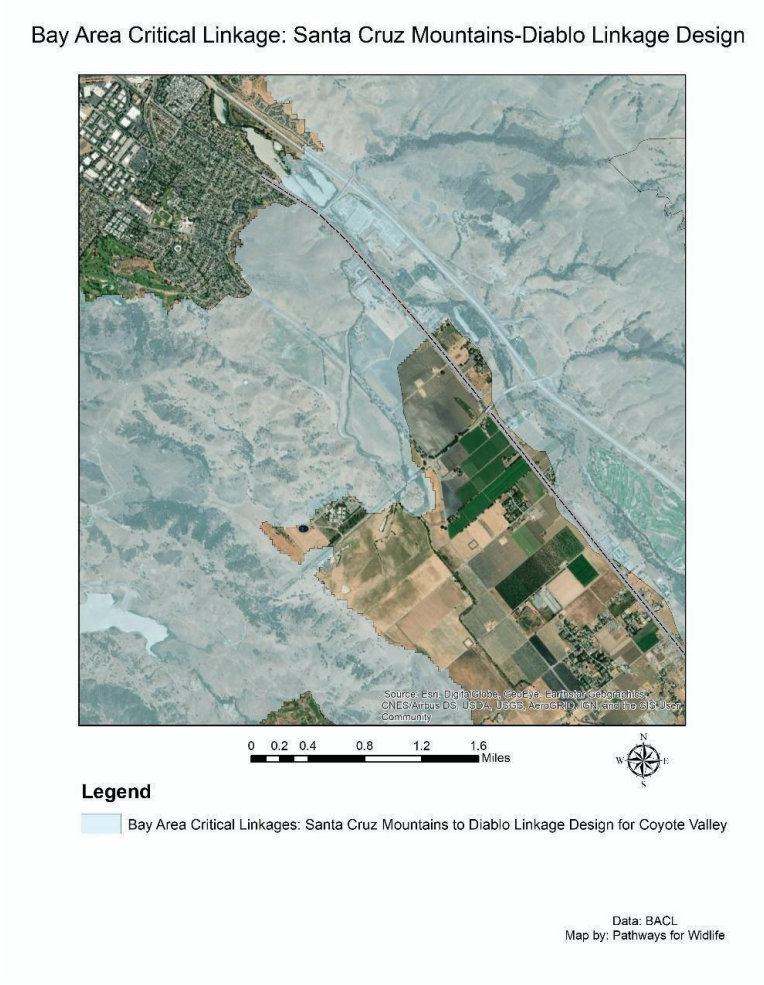
between Santa Cruz Mountains to Diablo Range. This critical connection is also highlighted by the Santa Clara Valley Habitat Plan (VHP). Linkage 8 of the VHP is delineated and discussed in chapter 5, Conservation Strategy (5), which provides under Land Acquisition Requirements by Conservation Analysis Zone, "Complete the linkage between the Diablo Range and the Santa Cruz Mountains across Tulare Hill".

Figure 1. Bay Are Critical Linkage Design for Coyote Valley.




E-2 cont.

**Wildlife Connectivity across Santa Teresa Boulevard**

From 2015-2016, PFW conducted the Coyote Valley Linkage Assessment (6) with funding from the California Department of Fish and Wildlife. This study provided the basis for the Coyote Valley Landscape Linkage report (7). Monitoring wildlife movement in north Coyote Valley and

E-3

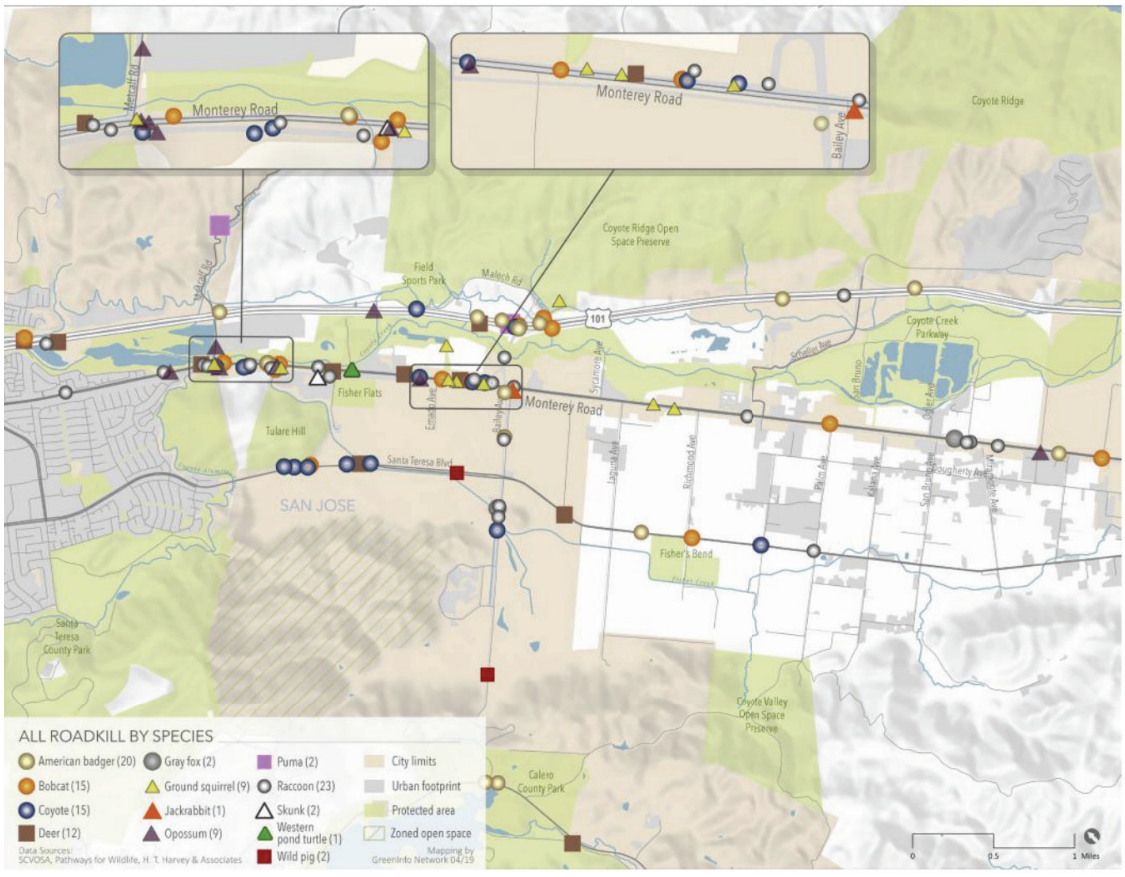
Comment Letter E

its surroundings, we identified only two wildlife crossing locations, both undercrossings, that were available for wildlife to safely travel across Santa Teresa Blvd. These locations are: 1) the culvert of the Coyote Alamitos Canal; and 2) the twin box culverts of the Fisher Creek undercrossing.

In 2019, the Santa Clara County Wildlife Corridor Technical Working Group, Coyote Valley Subcommittee published recommendations to reduce wildlife-vehicle collisions on the Monterey Road corridor in Coyote Valley (8). As a participant in this Technical Working Group, PFW researched wildlife-vehicle Collisions and roadkill along Santa Teresa Blvd. Our data showed multiple roadkills south of the project site (Figure 2 (8)), especially in the section between Fisher Creek and the ridge that connects Santa Teresa Park with Tulare Hill. The data shows that the ridge, which includes the Project site, is an important wildlife linkage and crossing area, and that the culvert under the Coyote Alamitos Canal provides a safe crossing, which results in fewer wildlife-vehicle collisions.

E-3 cont.

Figure 2: Wildlife-Vehicle Collisions and roadkill along Santa Teresa Blvd (PFW, 2019).



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Also in 2019, PFW observed that the Fisher Creek channel (including the two box culverts under Santa Teresa Blvd.) was flooded year-round. Since many wildlife species are hesitant to cross flooded channels, we reached out to Valley Water to inquire about the situation. We were informed by Valley Water (Don Arnold, personal communications) that the Fisher Creek undercrossing may be flooded for very long periods of time in the future. Our data from wildlife cameras installed in many culverts in the region show that most of our local terrestrial species (including mountain lions, badgers, coyotes, deer, bobcats and skunks) do not utilize flooded culverts. Thus, the Fisher Creek undercrossing is not always accessible to facilitate wildlife movement. This new information changed our evaluation of safe crossings for wildlife in this area. Absent substantial improvements to wildlife crossings at Fisher Creek, only one culvert will always be available for safe crossing in the north Coyote Valley area year round: the Coyote Alamitos Canal on the Gschwend property, which remains relatively dry throughout the year.

E-3 cont.

Road crossings, such as the Coyote Alamitos Canal, are important for the safety of both wildlife and people. The proposed house and associated driveway development would deter wildlife from using the Coyote Alamitos Canal culvert under Santa Teresa Blvd. Animals would then have to cross the road at grade at an increased risk of wildlife-vehicle collisions. In my opinion, this should be considered a significant impact to wildlife and a significant hazard to motorists.

**Impacts to wildlife species**

The Conservation Lands Network reports show that connectivity between the Santa Cruz Mountains and the Diablo Range is critical for conservation of Bay Area wildlife, especially wide-ranging species with low population densities, like mountain lions and the American badger.

E-4

1. <u>American Badger</u>

The American badger is a California Species of Special Concern (9) with low population sizes in open space areas throughout Santa Clara County. Badgers are very sensitive to human disturbance around burrows and can be easily displaced (10). The Biological Resources Assessment for the Project acknowledges "Suitable habitat is present, and there are 14 CNDDB occurrences within 5 miles of the project site." In my work, I recorded badger presence in proximity to the proposed Project site: at Santa Teresa County Park to the west, and Tulare Hill to the east (Figure 3 (1)).

E-5

My work designing wildlife linkage models for American badgers and then ground-truthing them shows that the Project's location falls within a critical habitat connection for American Badgers within the Coyote Valley linkage design. In Figure 3, I provide a least-cost path analysis that highlights the importance of the Project site and the culvert under Santa Teresa Blvd. The figure

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identifies this culvert as a critical route - one of the only safe crossings for badgers in Coyote Valley for badgers to safely cross Santa Teresa Blvd.

Badgers are likely to avoid this area due to increased human presence and are susceptible to vehicle collisions on roads (11) so the Project and the driveway by the culvert could sever this critical linkage for badgers. In my opinion, loss of habitat in this critical linkage, compounded by the loss of safe crossing within this linkage, are likely to jeopardize the ability for badgers to travel safely between the Santa Cruz Mountains and the Diablo Range, further fragmenting American Badger populations. This should be considered a significant, unavoidable impact.

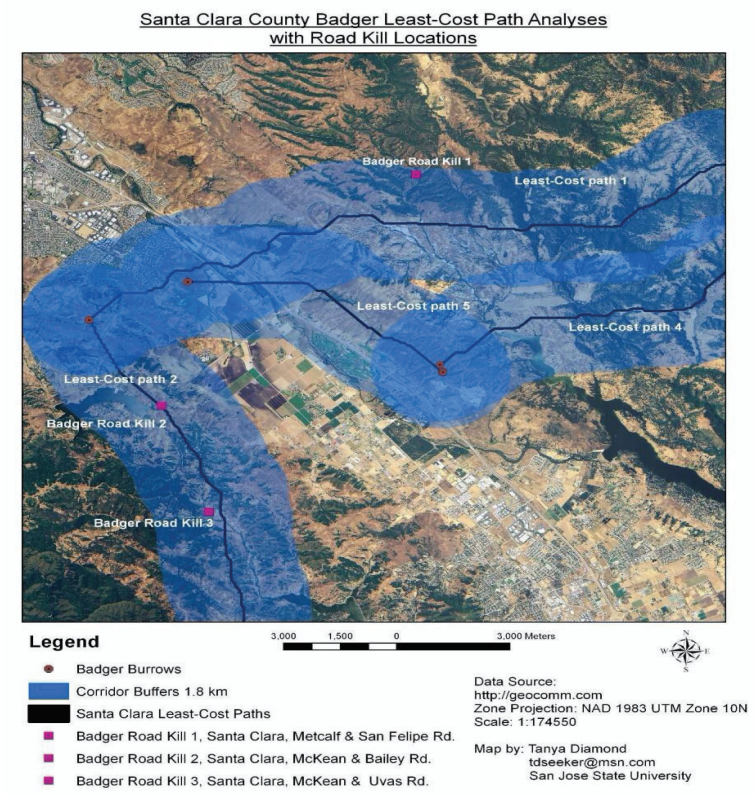


Figure 3. American badger connectivity modeling and field validation in Coyote Valley, 2008-2010 (1).

E-5 cont.

2. Mountain lion

The Biological Resources Assessment unjustifiably neglected to consider the mountain lion. Mountain lions are legally classified as "specially protected species". The California Department of Fish and Wildlife is currently completing a 12-month status review of mountain lions within the proposed evolutionarily significant unit (ESU) located in Southern California and along the

E-6

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central coast of California. This is due to the species low genetic effective population size in this ESU, which includes the Project site. Under the California Endangered Species Act (CESA), species classified as a candidate species are afforded the same protection as listed species. As a result, mountain lions in this proposed ESU are CESA-protected during the review period.

The low genetic effective population size is due to habitat fragmentation restricting the ability for mountain lions to travel between local populations, highlighting the importance of linkages between the Santa Cruz Mountains and the Diablo Range. Mountain lions have been recorded traveling through North Coyote Valley at Tulare Hill along Fisher Creek and Fisher Flats (Figures 4 and 5).

Figure 4. Mountain lion traveling along Fisher Creek at Tulare Hill on 2-11-2018 at 9:26pm.


E-6 cont.

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Figure 5. Mountain lion traveling along Fisher Flats at Tulare Hill on 2-11-2018 at 9:45pm, 19 minutes later.


E-6 cont.

It is critical to facilitate mountain lion movement between the Santa Cruz Mountains and the Diablo Range, and to avoid restrictions of such movement. Further habitat loss in this critical linkage will result in impacting wildlife movement and take away important habitat for species such as mountain lions. Many other wildlife linkages throughout the Bay Area have been lost due to homes deterring animals from using habitat and movement corridors within important linkages.

**3. Other species**

Bobcat

In 2017-2018, PFW participated in a research team led by Chris Wilmers at UC Santa Cruz (12), in which we radio collared bobcats throughout Coyote Valley to identify important habitat areas bobcats were using and road crossings they used to travel through.

E-7

The first bobcat we collared, B01 Serpentine, was at Tulare Hill (Figure 6). The type of radio collared that B01 Serpentine was fitted with collected data on his movements every 5 minutes, resulting in recording fine scale movement patterns. The red lines in Figure 7 show the data collected from B01 Serpentine's radio collar.

The Project site is part of B01 Serpentine home range.

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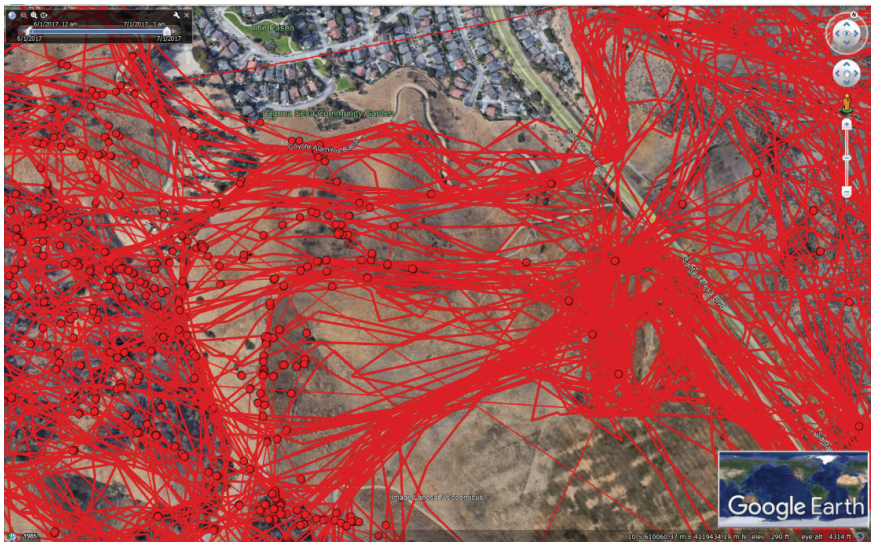
Figure 6. B01 Serpentine, radio collared at Tulare Hill on June 1st, 2017.

Figure 7. B01 Serpentine Radio Collar Data from Santa Teresa County Park to Tulare Hill, 2017-2018.




E-7 cont.

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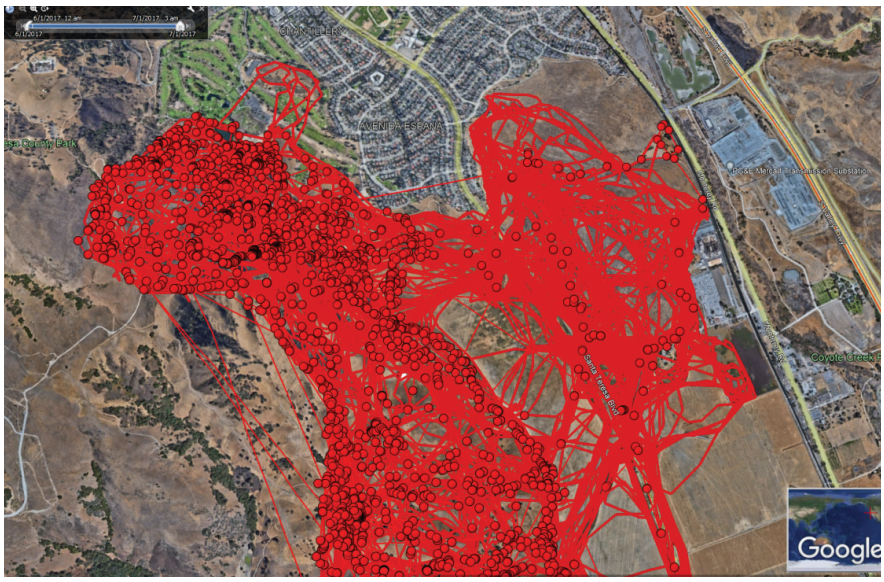
The radio collar data also shows that B01 Serpentine used the Project's property on a regular basis, hunting there or travelling through. The data also show that the bobcat kept a distance from homes. The culvert of the Coyote-Alamitos Canal provided this bobcate with safe passage under Santa Teresa Blvd. The proposed Project location was utilized by B01 Serpentine more than the habitat just south in Coyote Valley and Laguna Seca (Figure 8). There was a higher preference for traveling through the proposed Project site than the valley floor south of this location, indicating that the project site provides important habitat for bobcats.

Figure 8. B01 Serpentine Radio Collar Data at the proposed Project location and on the valley floor at Laguna Seca.




E-7 cont.

**The Biological Resource Assessment is inadequate**

The Biological Resources Assessment mistakenly suggests that the Project site is "in the vicinity of what the Habitat Plan identifies as terrestrial landscape Linkage #8". In fact, the site is entirely within terrestrial landscape Linkage #8, and it includes one of the most critical aspect of Linkage #8 - the Coyote Alamitos Canal.

E-8

Barriers to animal movement can, but do not have to be physical. In this case, the Project functions as a physical barrier due to the placement of this home which inhibits wildlife usage due to human presence and activity, lighting, vehicle headlights and driving along the Coyote Alamitos Canal within this critical linkage. In such a critical location, these are not minor changes to the property. Species such as mountain lion, and American badger, which may utilize the Project area, are sensitive to light disturbance (Beier 2006 (13), Rich and Longcore 2006 (14), Quinn 2008 (10), Wilmers et al. 2013 (15)), and tend to keep a distance from human residences Wilmers et al. 2013

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(15). The Project will introduce human residence, activity and light into the Linkage area which currently features limited human presence and light at night. More detail and analysis are needed regarding specific mitigation measures intended to minimize the significant and unavoidable impacts of new sources of artificial light (e.g., due to light emission from the home, outdoor lighting, the driveway and vehicle headlights). E-8 cont.

The Biological Resources Assessment neglects to include the Mountain lion. As discussed above, mountain lions have been recorded in the area, may use this critical linkage, and should be included in the analysis. E-9

The Initial Study and Mitigated Negative declaration identify Impact BIO-1: "Development of the project site may result in impacts to the American badger and special-status birds including burrowing owl, white-tailed kite, loggerhead shrike, and grasshopper sparrow". Mitigation measures are limited to pre-construction surveys and avoidance measures, and implementation of construction buffers. There is no mitigation for the impact of the Project on wildlife movement through this critical linkage. E-10

The CEQA documents for the Project find impacts to wildlife movement less than significant with mitigation despite the fact that every study in the region, including PFW work, highlight the critical importance of the site and the Coyote Alamitos Canal as an established wildlife linkage. As described in the VHP, this location is the "most northerly and narrowest connection between Diablo Range and the Santa Cruz Mountains. It provides important linkages for a variety of mammals and invertebrates." E-11

The proposed Project is likely to have a substantial adverse effect on American Badger (California Species of Special Concern) and mountain lion (Candidate for listing under the California Endangered Species Act). Moreover, I am certain that the Project will interfere substantially with the movement of the above species and many other native wildlife species. The Project has the potential to sever an established native resident and migratory wildlife corridors. In my opinion, the Project would result in the loss of critical wildlife habitat and connectivity for species such as American badger, mountain lions, bobcats, deer, coyote, and gray fox. It will further restrict wildlife movement in this critical location within the linkage, a linkage that is already a bottleneck and is constrained. Mountain lions and American badgers, which are sensitive to human developments and presence, exacerbate habitat fragmentation for these and other species, and threaten their persistence in the region (Wilmers et al 2013 (15), American Badger Species of Special Concern Report 2021 (16), It will also impede the completion of the linkage between the Diablo Range and the Santa Cruz Mountains across Tulare Hill towards Metcalf Canyon, thereby conflicting with the Valley Habitat Plan. E-12

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I believe that a fact-based, comprehensive Environmental Impact Report (EIR) must be prepared to provide an in-depth description of the Project site and plans for the home and the driveway in a local and regional context, and the context of cumulative impacts.

**An EIR is needed to provide additional analysis and mitigation for potentially significant and unavoidable impacts**

An EIR is needed to further analyze the potential direct and indirect impacts to American Badger and mountain lions, and to wildlife connectivity. Mitigation should consider:

E-12 cont.

1) compensatory mitigation for habitat loss;

2) the installation of an alternative safe road crossing for Santa Teresa Blvd. (culvert or land bridge) at the ridge that connects Santa Teresa hills with Tulare Hill, along with directional fencing to guide wildlife to the wildlife crossings

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